

Senator Scott K. Jenkins proposes the following substitute bill:

PROCUREMENT REVISIONS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott K. Jenkins

House Sponsor: Gage Froerer

LONG TITLE

General Description:

This bill modifies the Utah Procurement Code and related provisions.

Highlighted Provisions:

This bill:

- ▶ modifies, repeals, enacts, repeals and reenacts, and renumbers and amends provisions of the Utah Procurement Code and related provisions;
- ▶ modifies procurement provisions applicable to local entity building improvement and public works projects;
- ▶ modifies the Open and Public Meetings Act relating to the procurement process;
- ▶ modifies a provision relating to exemptions from the Utah Procurement Code;
- ▶ modifies a provision relating to limitations on certain procurement units;
- ▶ enacts language differentiating between an issuing procurement unit and a conducting procurement unit and clarifying the role of each;
- ▶ modifies deadlines for when applicable rulemaking authorities are required to initiate rulemaking proceedings;
- ▶ modifies duties of the chief procurement officer;
- ▶ modifies provisions relating to the prequalification of potential vendors;
- ▶ modifies provisions relating to the public notice of solicitations;



- 26 ▶ modifies requirements for the content of a request for proposals;
- 27 ▶ authorizes an issuing procurement unit to reject a proposal under certain
- 28 circumstances;
- 29 ▶ modifies provisions relating to the evaluation of proposals;
- 30 ▶ modifies provisions relating to the process of obtaining best and final offers;
- 31 ▶ provides for a justification statement and modifies provisions relating to a
- 32 cost-benefit analysis;
- 33 ▶ modifies provisions relating to the awarding of a contract;
- 34 ▶ modifies provisions relating to the award of a contract without competition;
- 35 ▶ repeals language relating to required standard provisions in a contract and replaces
- 36 it with language encouraging the establishment of standard contract clauses;
- 37 ▶ modifies provisions relating to contracts and the auditing of books and records;
- 38 ▶ modifies a provision relating to the selection committee for architect-engineer
- 39 services;
- 40 ▶ modifies provisions relating to protests and appeals of protests, including the
- 41 amount of security deposits or bonds;
- 42 ▶ modifies a provision relating to supplies and services that one procurement unit may
- 43 provide to another;
- 44 ▶ modifies a provision relating to cooperative purchasing;
- 45 ▶ rewrites and modifies provisions relating to unlawful conduct and penalties for
- 46 unlawful conduct in the context of procurement activities and makes those
- 47 provisions applicable to all public entities; and
- 48 ▶ makes technical, conforming, and clarifying changes.

49 **Money Appropriated in this Bill:**

50 None

51 **Other Special Clauses:**

52 This bill provides an immediate effective date.

53 **Utah Code Sections Affected:**

54 AMENDS:

55 **11-13-315**, as enacted by Laws of Utah 2013, Chapter 230

56 **11-39-103**, as last amended by Laws of Utah 2011, Chapter 387

- 57 [11-39-107](#), as last amended by Laws of Utah 2013, Chapter 448
- 58 [52-4-205](#), as last amended by Laws of Utah 2013, Chapters 238 and 426
- 59 [63B-2-102](#), as last amended by Laws of Utah 2012, Chapter 347
- 60 [63B-3-102](#), as last amended by Laws of Utah 2012, Chapter 347
- 61 [63B-4-102](#), as last amended by Laws of Utah 2012, Chapter 347
- 62 [63B-5-102](#), as last amended by Laws of Utah 2013, Chapter 465
- 63 [63B-6-102](#), as last amended by Laws of Utah 2012, Chapter 347
- 64 [63B-6-402](#), as last amended by Laws of Utah 2012, Chapter 347
- 65 [63B-7-102](#), as last amended by Laws of Utah 2012, Chapter 347
- 66 [63B-7-402](#), as last amended by Laws of Utah 2012, Chapter 347
- 67 [63B-8-102](#), as last amended by Laws of Utah 2012, Chapter 347
- 68 [63B-8-402](#), as last amended by Laws of Utah 2012, Chapter 347
- 69 [63B-9-103](#), as last amended by Laws of Utah 2012, Chapter 347
- 70 [63B-11-202](#), as last amended by Laws of Utah 2012, Chapter 347
- 71 [63F-1-205](#), as last amended by Laws of Utah 2012, Chapter 347
- 72 [63G-6a-102](#), as renumbered and amended by Laws of Utah 2012, Chapter 347
- 73 [63G-6a-103](#), as last amended by Laws of Utah 2013, Chapter 445
- 74 [63G-6a-104](#), as repealed and reenacted by Laws of Utah 2013, Chapter 445
- 75 [63G-6a-106](#), as last amended by Laws of Utah 2013, Chapter 445
- 76 [63G-6a-107](#), as last amended by Laws of Utah 2013, Chapter 445
- 77 [63G-6a-108](#), as last amended by Laws of Utah 2013, Chapter 445
- 78 [63G-6a-204](#), as last amended by Laws of Utah 2013, Chapter 445
- 79 [63G-6a-303](#), as last amended by Laws of Utah 2013, Chapter 445
- 80 [63G-6a-402](#), as last amended by Laws of Utah 2013, Chapter 445
- 81 [63G-6a-403](#), as last amended by Laws of Utah 2013, Chapter 445
- 82 [63G-6a-404](#), as last amended by Laws of Utah 2013, Chapter 445
- 83 [63G-6a-406](#), as last amended by Laws of Utah 2013, Chapter 445
- 84 [63G-6a-408](#), as last amended by Laws of Utah 2013, Chapter 445
- 85 [63G-6a-603](#), as last amended by Laws of Utah 2013, Chapter 445
- 86 [63G-6a-606](#), as last amended by Laws of Utah 2013, Chapter 445
- 87 [63G-6a-607](#), as last amended by Laws of Utah 2013, Chapter 445

- 88 **63G-6a-609**, as last amended by Laws of Utah 2013, Chapter 445
- 89 **63G-6a-611**, as last amended by Laws of Utah 2013, Chapter 445
- 90 **63G-6a-612**, as last amended by Laws of Utah 2013, Chapter 445
- 91 **63G-6a-702**, as last amended by Laws of Utah 2013, Chapter 445
- 92 **63G-6a-703**, as last amended by Laws of Utah 2013, Chapter 445
- 93 **63G-6a-704**, as last amended by Laws of Utah 2013, Chapter 445
- 94 **63G-6a-707**, as last amended by Laws of Utah 2013, Chapter 445
- 95 **63G-6a-708**, as last amended by Laws of Utah 2013, Chapter 445
- 96 **63G-6a-709**, as last amended by Laws of Utah 2013, Chapter 445
- 97 **63G-6a-709.5**, as enacted by Laws of Utah 2013, Chapter 445
- 98 **63G-6a-802**, as last amended by Laws of Utah 2013, Chapter 445
- 99 **63G-6a-904**, as last amended by Laws of Utah 2013, Chapter 445
- 100 **63G-6a-1103**, as last amended by Laws of Utah 2013, Chapter 445
- 101 **63G-6a-1105**, as renumbered and amended by Laws of Utah 2012, Chapter 347
- 102 **63G-6a-1204**, as last amended by Laws of Utah 2013, Chapter 445
- 103 **63G-6a-1205**, as last amended by Laws of Utah 2013, Chapter 445
- 104 **63G-6a-1206**, as last amended by Laws of Utah 2013, Chapter 445
- 105 **63G-6a-1402**, as last amended by Laws of Utah 2012, Chapter 330 and renumbered and
- 106 amended by Laws of Utah 2012, Chapter 347
- 107 **63G-6a-1502**, as last amended by Laws of Utah 2013, Chapter 445
- 108 **63G-6a-1503**, as last amended by Laws of Utah 2013, Chapter 445
- 109 **63G-6a-1505**, as renumbered and amended by Laws of Utah 2012, Chapter 347
- 110 **63G-6a-1602**, as last amended by Laws of Utah 2012, Chapter 91 and renumbered and
- 111 amended by Laws of Utah 2012, Chapter 347 and last amended by Coordination
- 112 Clause, Laws of Utah 2012, Chapter 347
- 113 **63G-6a-1603**, as last amended by Laws of Utah 2013, Chapter 445
- 114 **63G-6a-1702**, as last amended by Laws of Utah 2013, Chapter 445
- 115 **63G-6a-1703**, as last amended by Laws of Utah 2013, Chapter 445
- 116 **63G-6a-1706**, as enacted by Laws of Utah 2012, Chapter 347 and last amended by
- 117 Coordination Clause, Laws of Utah 2012, Chapter 347
- 118 **63G-6a-1802**, as last amended by Laws of Utah 2013, Chapter 445

- 119 [63G-6a-1902](#), as last amended by Laws of Utah 2013, Chapter 445
- 120 [63G-6a-1903](#), as last amended by Laws of Utah 2013, Chapter 445
- 121 [63G-6a-1904](#), as last amended by Laws of Utah 2013, Chapter 445
- 122 [63G-6a-1906](#), as last amended by Laws of Utah 2012, Chapter 91 and renumbered and
- 123 amended by Laws of Utah 2012, Chapter 347 and last amended by Coordination
- 124 Clause, Laws of Utah 2012, Chapter 347
- 125 [63G-6a-1907](#), as last amended by Laws of Utah 2012, Chapter 91 and renumbered and
- 126 amended by Laws of Utah 2012, Chapter 347 and last amended by Coordination
- 127 Clause, Laws of Utah 2012, Chapter 347
- 128 [63G-6a-1910](#), as last amended by Laws of Utah 2013, Chapter 445
- 129 [63G-6a-2103](#), as last amended by Laws of Utah 2013, Chapter 445
- 130 [63G-6a-2105](#), as last amended by Laws of Utah 2013, Chapter 445
- 131 [67-16-4](#), as last amended by Laws of Utah 2013, Chapter 445
- 132 [67-16-5](#), as last amended by Laws of Utah 2013, Chapter 445
- 133 [67-16-5.3](#), as last amended by Laws of Utah 2013, Chapter 445
- 134 [67-16-5.6](#), as last amended by Laws of Utah 2013, Chapter 445
- 135 [67-16-6](#), as last amended by Laws of Utah 2013, Chapter 445

136 ENACTS:

- 137 [63G-6a-109](#), Utah Code Annotated 1953
- 138 [63G-6a-2401](#), Utah Code Annotated 1953
- 139 [63G-6a-2402](#), Utah Code Annotated 1953
- 140 [63G-6a-2403](#), Utah Code Annotated 1953
- 141 [63G-6a-2404](#), Utah Code Annotated 1953
- 142 [63G-6a-2405](#), Utah Code Annotated 1953
- 143 [63G-6a-2406](#), Utah Code Annotated 1953
- 144 [63G-6a-2407](#), Utah Code Annotated 1953

145 REPEALS AND REENACTS:

- 146 [63G-6a-1202](#), as last amended by Laws of Utah 2013, Chapter 445

147 RENUMBERS AND AMENDS:

- 148 [63G-6a-707.5](#), (Renumbered from 63G-6a-705, as last amended by Laws of Utah 2013,
- 149 Chapter 445)

150 REPEALS:

151 **63G-6a-1803**, as last amended by Laws of Utah 2012, Chapter 91 and renumbered and
152 amended by Laws of Utah 2012, Chapter 347 and last amended by Coordination
153 Clause, Laws of Utah 2012, Chapter 347

154 **63G-6a-1905**, as last amended by Laws of Utah 2013, Chapter 445

155 **63G-6a-2301**, as enacted by Laws of Utah 2012, Chapter 347

156 **63G-6a-2302**, as last amended by Laws of Utah 2013, Chapter 445

157 **63G-6a-2304.5**, as enacted by Laws of Utah 2013, Chapter 445

158 **63G-6a-2305**, as last amended by Laws of Utah 2013, Chapter 445

159 **63G-6a-2306**, as last amended by Laws of Utah 2013, Chapter 445

160 **63G-6a-2307**, as last amended by Laws of Utah 2013, Chapter 445

161 **63G-6a-2308**, as enacted by Laws of Utah 2013, Chapter 445

162

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

164 Section 1. Section **11-13-315** is amended to read:

165 **11-13-315. Taxed interlocal entity.**

166 (1) As used in this section:

167 (a) "Asset" means funds, money, an account, real or personal property, or personnel.

168 (b) "Public asset" means:

169 (i) an asset used by a public entity;

170 (ii) tax revenue;

171 (iii) state funds; or

172 (iv) public funds.

173 (c) (i) "Taxed interlocal entity" means a project entity that:

174 (A) is not exempt from a tax or fee in lieu of taxes imposed in accordance with Part 3,

175 Project Entity Provisions;

176 (B) does not receive a payment of funds from a federal agency or office, state agency or
177 office, political subdivision, or other public agency or office other than a payment that does not
178 materially exceed the greater of the fair market value and the cost of a service provided or
179 property conveyed by the project entity; and

180 (C) does not receive, expend, or have the authority to compel payment from tax

181 revenue.

182 (ii) Before and on May 1, 2014, "taxed interlocal entity" includes an interlocal entity
183 that:

184 (A) (I) was created before 1981 for the purpose of providing power supply at wholesale
185 to its members; or

186 (II) is described in Subsection 11-13-204(7);

187 (B) does not receive a payment of funds from a federal agency or office, state agency or
188 office, political subdivision, or other public agency or office other than a payment that does not
189 materially exceed the greater of the fair market value and the cost of a service provided or
190 property conveyed by the interlocal entity; and

191 (C) does not receive, expend, or have the authority to compel payment from tax
192 revenue.

193 (d) (i) "Use" means to use, own, manage, hold, keep safe, maintain, invest, deposit,
194 administer, receive, expend, appropriate, disburse, or have custody.

195 (ii) "Use" includes, when constituting a noun, the corresponding nominal form of each
196 term in Subsection (1)(d)(i), individually.

197 (2) Notwithstanding any other provision of law, the use of an asset by a taxed interlocal
198 entity does not constitute the use of a public asset.

199 (3) Notwithstanding any other provision of law, a taxed interlocal entity's use of an
200 asset that was a public asset prior to the taxed interlocal entity's use of the asset does not
201 constitute a taxed interlocal entity's use of a public asset.

202 (4) Notwithstanding any other provision of law, an official of a project entity is not a
203 public treasurer.

204 (5) Notwithstanding any other provision of law, a taxed interlocal entity's governing
205 body, as described in Section 11-13-206, shall determine and direct the use of an asset by the
206 taxed interlocal entity.

207 (6) ~~(a)~~ A taxed interlocal entity is not subject to the provisions of Title 63G, Chapter
208 6a, Utah Procurement Code.

209 ~~[(b) An agent of a taxed interlocal entity is not an external procurement unit as defined~~
210 ~~in Section 63G-6a-104.]~~

211 (7) (a) A taxed interlocal entity is not a participating local entity as defined in Section

212 63A-3-401.

213 (b) For each fiscal year of a taxed interlocal entity, the taxed interlocal entity shall
214 provide:

215 (i) the taxed interlocal entity's financial statements for and as of the end of the fiscal
216 year and the prior fiscal year, including the taxed interlocal entity's balance sheet as of the end
217 of the fiscal year and the prior fiscal year, and the related statements of revenues and expenses
218 and of cash flows for the fiscal year; and

219 (ii) the accompanying auditor's report and management's discussion and analysis with
220 respect to the taxed interlocal entity's financial statements for and as of the end of the fiscal
221 year.

222 (c) The taxed interlocal entity shall provide the information described in Subsections
223 (7)(b)(i) and (b)(ii):

224 (i) in a manner described in Subsection 63A-3-405(3); and

225 (ii) within a reasonable time after the taxed interlocal entity's independent auditor
226 delivers to the taxed interlocal entity's governing body the auditor's report with respect to the
227 financial statements for and as of the end of the fiscal year.

228 (d) Notwithstanding Subsections (7)(b) and (c) or a taxed interlocal entity's compliance
229 with one or more of the requirements of Title 63A, Chapter 3, Division of Finance:

230 (i) the taxed interlocal entity is not subject to Title 63A, Chapter 3, Division of
231 Finance; and

232 (ii) the information described in Subsection (7)(b)(i) or (ii) does not constitute public
233 financial information as defined in Section 63A-3-401.

234 (8) (a) A taxed interlocal entity's governing body is not a governing board as defined in
235 Section 51-2a-102.

236 (b) A taxed interlocal entity is not subject to the provisions of Title 51, Chapter 2a,
237 Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local
238 Entities Act.

239 Section 2. Section 11-39-103 is amended to read:

240 **11-39-103. Requirements for undertaking a building improvement or public**
241 **works project -- Request for bids -- Authority to reject bids.**

242 (1) If the estimated cost of the building improvement or public works project exceeds

243 the bid limit, the local entity shall, if it determines to proceed with the building improvement or
244 public works project:

245 (a) request bids for completion of the building improvement or public works project
246 by:

247 (i) (A) publishing notice at least twice in a newspaper published or of general
248 circulation in the local entity at least five days before opening the bids; or

249 (B) if there is no newspaper published or of general circulation in the local entity as
250 described in Subsection (1)(a)(i)(A), posting notice at least five days before opening the bids in
251 at least five public places in the local entity and leaving the notice posted for at least three days;
252 and

253 (ii) publishing notice in accordance with Section 45-1-101, at least five days before
254 opening the bids; and

255 (b) except as provided in Subsection (3), enter into a contract for the completion of the
256 building improvement or public works project with:

257 (i) the lowest responsive responsible bidder; or

258 (ii) for a design-build project formulated by a local entity, [~~except as provided in~~
259 ~~Section 11-39-107;~~] a responsible bidder that:

260 (A) offers design-build services; and

261 (B) satisfies the local entity's criteria relating to financial strength, past performance,
262 integrity, reliability, and other factors that the local entity uses to assess the ability of a bidder
263 to perform fully and in good faith the contract requirements for a design-build project.

264 (2) (a) Each notice under Subsection (1)(a) shall indicate that the local entity may reject
265 any or all bids submitted.

266 (b) (i) The cost of a building improvement or public works project may not be divided
267 to avoid:

268 (A) exceeding the bid limit; and

269 (B) subjecting the local entity to the requirements of this section.

270 (ii) Notwithstanding Subsection (2)(b)(i), a local entity may divide the cost of a
271 building improvement or public works project that would, without dividing, exceed the bid
272 limit if the local entity complies with the requirements of this section with respect to each part
273 of the building improvement or public works project that results from dividing the cost.

274 (3) (a) The local entity may reject any or all bids submitted.

275 (b) If the local entity rejects all bids submitted but still intends to undertake the
276 building improvement or public works project, the local entity shall again request bids by
277 following the procedure provided in Subsection (1)(a).

278 (c) If, after twice requesting bids by following the procedure provided in Subsection
279 (1)(a), the local entity determines that no satisfactory bid has been submitted, the governing
280 body may undertake the building improvement or public works project as it considers
281 appropriate.

282 Section 3. Section **11-39-107** is amended to read:

283 **11-39-107. Procurement code.**

284 (1) This chapter may not be construed to:

285 (a) prohibit a county or municipal legislative body from adopting the procedures of the
286 procurement code; or

287 (b) limit the application of the procurement code to a local district or special service
288 district.

289 (2) A local entity may adopt procedures for the following construction contracting
290 methods:

291 (a) construction manager/general contractor, as defined in Section [63G-6a-103](#); ~~[or]~~

292 (b) a method that requires that the local entity draft a plan, specifications, and an
293 estimate for the building improvement or public works project~~[-]; or~~

294 (c) design-build, as defined in Section [63G-6a-103](#), if the local entity consults with a
295 professional engineer licensed under Title 58, Chapter 22, Professional Engineers and
296 Professional Land Surveyors Licensing Act, or an architect licensed under Title 58, Chapter 3a,
297 Architects Licensing Act, who has design-build experience and is employed by or under
298 contract with the local entity.

299 ~~[(3) For a public works project only and that costs \$1,000,000 or more, in consultation~~
300 ~~with a professional engineer licensed under Title 58, Chapter 22, Professional Engineers and~~
301 ~~Professional Land Surveyors Licensing Act, who has design-build experience and is employed~~
302 ~~by or is under contract with the owner, the following may enter into a contract for design-build,~~
303 ~~as defined in Section [63G-6a-103](#), and adopt the procedures and follow the provisions of the~~
304 ~~procurement code for the procurement of and as the procedures and provisions relate to a~~

305 ~~design-build:]~~

306 ~~[(a) a city of the first class;]~~

307 ~~[(b) a local district; or]~~

308 ~~[(c) a special service district.]~~

309 [(4)] (3) (a) In seeking bids and awarding a contract for a building improvement or
310 public works project, a county or a municipal legislative body may elect to follow the
311 provisions of the procurement code, as the county or municipal legislative body considers
312 appropriate under the circumstances, for specification preparation, source selection, or contract
313 formation.

314 (b) A county or municipal legislative body's election to adopt the procedures of the
315 procurement code may not excuse the county or municipality, respectively, from complying
316 with the requirements to award a contract for work in excess of the bid limit and to publish
317 notice of the intent to award.

318 (c) An election under Subsection [(4)] (3)(a) may be made on a case-by-case basis,
319 unless the county or municipality has previously adopted the [~~provisions of Title 63G, Chapter~~
320 ~~6a, Utah Procurement Code~~] procurement code.

321 (d) The county or municipal legislative body shall:

322 (i) make each election under Subsection [(4)] (3)(a) in an open meeting; and

323 (ii) specify in its action the portions of the procurement code to be followed.

324 [(5)] (4) If the estimated cost of the building improvement or public works project
325 proposed by a local district or special service district exceeds the bid limit, the governing body
326 of the local district or special service district may, if it determines to proceed with the building
327 improvement or public works project, use the competitive procurement procedures of the
328 procurement code in place of the comparable provisions of this chapter.

329 Section 4. Section **52-4-205** is amended to read:

330 **52-4-205. Purposes of closed meetings -- Certain issues prohibited in closed**
331 **meetings.**

332 (1) A closed meeting described under Section **52-4-204** may only be held for:

333 (a) except as provided in Subsection (3), discussion of the character, professional
334 competence, or physical or mental health of an individual;

335 (b) strategy sessions to discuss collective bargaining;

- 336 (c) strategy sessions to discuss pending or reasonably imminent litigation;
- 337 (d) strategy sessions to discuss the purchase, exchange, or lease of real property,
338 including any form of a water right or water shares, if public discussion of the transaction
339 would:
- 340 (i) disclose the appraisal or estimated value of the property under consideration; or
341 (ii) prevent the public body from completing the transaction on the best possible terms;
- 342 (e) strategy sessions to discuss the sale of real property, including any form of a water
343 right or water shares, if:
- 344 (i) public discussion of the transaction would:
- 345 (A) disclose the appraisal or estimated value of the property under consideration; or
346 (B) prevent the public body from completing the transaction on the best possible terms;
- 347 (ii) the public body previously gave public notice that the property would be offered for
348 sale; and
- 349 (iii) the terms of the sale are publicly disclosed before the public body approves the
350 sale;
- 351 (f) discussion regarding deployment of security personnel, devices, or systems;
- 352 (g) investigative proceedings regarding allegations of criminal misconduct;
- 353 (h) as relates to the Independent Legislative Ethics Commission, conducting business
354 relating to the receipt or review of ethics complaints;
- 355 (i) as relates to an ethics committee of the Legislature, a purpose permitted under
356 Subsection [52-4-204\(1\)\(a\)\(iii\)\(C\)](#);
- 357 (j) as relates to the Independent Executive Branch Ethics Commission created in
358 Section [63A-14-202](#), conducting business relating to an ethics complaint;
- 359 (k) as relates to a county legislative body, discussing commercial information as
360 defined in Section [59-1-404](#);
- 361 (l) as relates to the Utah Higher Education Assistance Authority and its appointed
362 board of directors, discussing fiduciary or commercial information as defined in Section
363 [53B-12-102](#); [or]
- 364 (m) deliberations, not including any information gathering activities, of a public body
365 acting in the capacity of:
- 366 (i) an evaluation committee under Title 63G, Chapter 6a, Utah Procurement Code,

367 during the process of evaluating responses to a solicitation, as defined in Section 63G-6a-103;

368 (ii) a protest officer, defined in Section 63G-6a-103, during the process of making a
 369 decision on a protest under Title 63G, Chapter 6a, Part 16, Controversies and Protests; or

370 (iii) a procurement appeals panel under Title 63G, Chapter 6a, Utah Procurement
 371 Code, during the process of deciding an appeal under Title 63G, Chapter 6a, Part 17,
 372 Procurement Appeals Board;

373 (n) the purpose of considering information that is designated as a trade secret, as
 374 defined in Section 13-24-2, if the public body's consideration of the information is necessary in
 375 order to properly conduct a procurement under Title 63G, Chapter 6a, Utah Procurement Code;

376 (o) the purpose of discussing information ~~that is designated as a trade secret~~ ~~that, at the time of the meeting, the public~~
 377 body determines is necessary to be kept from public disclosure in order for the public body to
 378 fulfill its duties under Title 63G, Chapter 6a, Utah Procurement Code, including the duty to
 379 conduct a fair procurement process] provided to the public body during the procurement process
 379a under Title 63G, Chapter 6a, Utah Procurement Code, if, at the time of the meeting:

379b (i) the information may not, under Title 63G, Chapter 6a, Utah Procurement Code, be
 379c disclosed to a member of the public or to a participant in the procurement process; and

379d (ii) the public body needs to review or discuss the information in order to properly
 379e fulfill its role and responsibilities in the procurement process ~~that is designated as a trade secret~~ ; or

380 ~~[(m)]~~ (p) a purpose for which a meeting is required to be closed under Subsection (2).

381 (2) The following meetings shall be closed:

382 (a) a meeting of the Health and Human Services Interim Committee to review a fatality
 383 review report described in Subsection 62A-16-301(1)(a), and the responses to the report
 384 described in Subsections 62A-16-301(2) and (4);

385 (b) a meeting of the Child Welfare Legislative Oversight Panel to:

386 (i) review a fatality review report described in Subsection 62A-16-301(1)(a), and the
 387 responses to the report described in Subsections 62A-16-301(2) and (4); or

388 (ii) review and discuss an individual case, as described in Subsection 62A-4a-207(5);
 389 and

390 (c) a meeting of a conservation district as defined in Section 17D-3-102 for the purpose
 391 of advising the Natural Resource Conservation Service of the United States Department of
 392 Agriculture on a farm improvement project if the discussed information is protected
 393 information under federal law.

394 (3) In a closed meeting, a public body may not:

395 (a) interview a person applying to fill an elected position;

396 (b) discuss filling a midterm vacancy or temporary absence governed by Title 20A,

397 Chapter 1, Part 5, Candidate Vacancy and Vacancy and Temporary Absence in Elected Office;

398 or

399 (c) discuss the character, professional competence, or physical or mental health of the
 400 person whose name was submitted for consideration to fill a midterm vacancy or temporary
 401 absence governed by Title 20A, Chapter 1, Part 5, Candidate Vacancy and Vacancy and
 402 Temporary Absence in Elected Office.

403 Section 5. Section **63B-2-102** is amended to read:

404 **63B-2-102. Maximum amount -- Projects authorized.**

405 (1) The total amount of bonds issued under this part may not exceed \$80,000,000.

406 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
 407 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
 408 Subsection (2).

409 (b) These costs may include the cost of acquiring land, interests in land, easements and
 410 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
 411 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
 412 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
 413 covered by construction of the projects plus a period of six months after the end of the
 414 construction period and all related engineering, architectural, and legal fees.

415 (c) For the division, proceeds shall be provided for the following:

416 CAPITAL IMPROVEMENTS

417	1	Alterations, Repairs, and Improvements	\$8,413,900
418		TOTAL IMPROVEMENTS	\$8,413,900

419 CAPITAL FACILITIES CONSTRUCTION

420	PROJECT	PROJECT	AMOUNT	ESTIMATED
	PRIORITY	DESCRIPTION	FUNDED	OPERATIONS
				AND
				MAINTENANCE
				COSTS
421	1	Corrections - Northern Utah Community Corrections Center Phase II	\$2,729,700	\$158,000

422	2	University of Utah Marriot Library Phase II	\$10,200,000	\$881,600
423	3	Ogden Courts Building Phase II	\$12,096,000	\$340,000
424	4	Utah National Guard - Southeast Utah Armory Phase II	\$397,800	\$70,500
425	5	Southern Utah University Library Phase II	\$7,004,400	\$427,000
426	6	Utah Valley Special Events Center Phase II	\$11,845,300	\$536,900
427	7	Salt Lake Community College - Land	\$1,300,000	\$0
428	8	Tax Commission Building	\$14,224,000	\$812,000
429	9	Dixie College Business Building	\$2,823,300	\$187,800
430	10	Salt Lake Community College South City 3rd Floor and Boiler	\$4,009,500	\$257,600
431	11	Public Education - Deaf and Blind Classrooms	\$3,456,100	\$124,800
432		TOTAL CONSTRUCTION	\$70,086,100	
433		TOTAL IMPROVEMENTS AND CONSTRUCTION	\$78,500,000	

- 434 (d) For purposes of this section, operations and maintenance costs:
- 435 (i) are estimates only;
- 436 (ii) may include any operations and maintenance costs already funded in existing
- 437 agency budgets; and
- 438 (iii) are not commitments by this Legislature or future Legislatures to fund those
- 439 operations and maintenance costs.
- 440 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
- 441 constitute a limitation on the amount that may be expended for any project.
- 442 (b) The board may revise these estimates and redistribute the amount estimated for a
- 443 project among the projects authorized.
- 444 (c) The commission, by resolution and in consultation with the board, may delete one

445 or more projects from this list if the inclusion of that project or those projects in the list could
446 be construed to violate state law or federal law or regulation.

447 (4) (a) The division may enter into agreements related to these projects before the
448 receipt of proceeds of bonds issued under this chapter.

449 (b) The division shall make those expenditures from unexpended and unencumbered
450 building funds already appropriated to the Capital Projects Fund.

451 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
452 of bonds issued under this chapter.

453 (d) The commission may, by resolution, make any statement of intent relating to that
454 reimbursement that is necessary or desirable to comply with federal tax law.

455 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
456 it is the intent of the Legislature that the balance necessary to complete the projects be
457 addressed by future Legislatures, either through appropriations or through the issuance or sale
458 of bonds.

459 (b) For those phased projects, the division may enter into contracts for amounts not to
460 exceed the anticipated full project funding but may not allow work to be performed on those
461 contracts in excess of the funding already authorized by the Legislature.

462 (c) Those contracts shall contain a provision for termination of the contract for the
463 convenience of the state [~~as required by Section 63G-6a-1202~~].

464 (d) It is also the intent of the Legislature that this authorization to the division does not
465 bind future Legislatures to fund projects initiated from this authorization.

466 Section 6. Section **63B-3-102** is amended to read:

467 **63B-3-102. Maximum amount -- Projects authorized.**

468 (1) The total amount of bonds issued under this part may not exceed \$64,600,000.

469 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
470 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
471 Subsection (2).

472 (b) These costs may include the cost of acquiring land, interests in land, easements and
473 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
474 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
475 convenient to the facilities, interest estimated to accrue on these bonds during the period to be

476 covered by construction of the projects plus a period of six months after the end of the
 477 construction period and all related engineering, architectural, and legal fees.

478 (c) For the division, proceeds shall be provided for the following:

479	CAPITAL IMPROVEMENTS		
480	1	Alterations, Repairs, and Improvements	\$5,000,000
481	TOTAL IMPROVEMENTS		\$5,000,000

482 style="text-align: center;">CAPITAL AND ECONOMIC DEVELOPMENT

483			ESTIMATED OPERATIONS AND MAINTENANCE COSTS
	PRIORITY PROJECT	PROJECT DESCRIPTION	AMOUNT FUNDED
484	1	University of Utah Marriott Library Phase III (Final)	\$13,811,500 \$881,600
485	2	Bridgerland Applied Technology Center Utah State University Space	\$2,400,000 \$0
486	3	Weber State University - Heat Plant	\$2,332,100 \$9,600
487	4	Department of Human Services - Division of Youth Corrections renamed in 2003 to the Division of Juvenile Justice Services	\$4,180,000 \$400,000
488	5	Snow College - Administrative Services/Student Center	\$3,885,100 \$224,500
489	6	Ogden Weber Applied Technology Center - Metal Trades Building Design and Equipment Purchase	\$750,000 \$0
490	7	Department of Corrections B-Block Remodel	\$1,237,100 \$72,000

491	8	Utah State University - Old Main Phase III Design	\$550,000	\$0
492	9	Department of Corrections - 144 bed Uintah Expansion	\$6,700,000	\$168,800
493	10	Southern Utah University Administrative Services/Student Center	\$5,630,400	\$314,200
494	11	Anasazi Museum	\$760,200	\$8,500
495	12	Hill Air Force Base - Easements Purchase	\$9,500,000	\$0
496	13	Signetics Building Remodel	\$2,000,000	\$0
497	14	Antelope Island Visitors Center	\$750,000	\$30,000
498	15	State Fair Park - Master Study	\$150,000	\$0
499	16	Utah National Guard - Draper Land	\$380,800	\$0
500	17	Davis Applied Technology Center - Design	\$325,000	\$0
501	18	Palisade State Park - Land and Park Development	\$800,000	\$0
502	19	Department of Human Services - Cedar City Land	\$80,000	\$0
503	20	Department of Human Services - Clearfield Land	\$163,400	\$0
504	21	Electronic technology, equipment, and hardware	\$2,500,000	\$0
505		TOTAL CAPITAL AND ECONOMIC DEVELOPMENT	\$58,885,600	
506		TOTAL IMPROVEMENTS AND CAPITAL AND ECONOMIC DEVELOPMENT	\$63,885,600	

- 507 (d) For purposes of this section, operations and maintenance costs:
- 508 (i) are estimates only;
- 509 (ii) may include any operations and maintenance costs already funded in existing

510 agency budgets; and

511 (iii) are not commitments by this Legislature or future Legislatures to fund those
512 operations and maintenance costs.

513 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
514 constitute a limitation on the amount that may be expended for any project.

515 (b) The board may revise these estimates and redistribute the amount estimated for a
516 project among the projects authorized.

517 (c) The commission, by resolution and in consultation with the board, may delete one
518 or more projects from this list if the inclusion of that project or those projects in the list could
519 be construed to violate state law or federal law or regulation.

520 (4) (a) The division may enter into agreements related to these projects before the
521 receipt of proceeds of bonds issued under this chapter.

522 (b) The division shall make those expenditures from unexpended and unencumbered
523 building funds already appropriated to the Capital Projects Fund.

524 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
525 of bonds issued under this chapter.

526 (d) The commission may, by resolution, make any statement of intent relating to that
527 reimbursement that is necessary or desirable to comply with federal tax law.

528 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
529 it is the intent of the Legislature that the balance necessary to complete the projects be
530 addressed by future Legislatures, either through appropriations or through the issuance or sale
531 of bonds.

532 (b) For those phased projects, the division may enter into contracts for amounts not to
533 exceed the anticipated full project funding but may not allow work to be performed on those
534 contracts in excess of the funding already authorized by the Legislature.

535 (c) Those contracts shall contain a provision for termination of the contract for the
536 convenience of the state [~~as required by Section 63G-6a-1202~~].

537 (d) It is also the intent of the Legislature that this authorization to the division does not
538 bind future Legislatures to fund projects initiated from this authorization.

539 Section 7. Section **63B-4-102** is amended to read:

540 **63B-4-102. Maximum amount -- Projects authorized.**

541 (1) The total amount of bonds issued under this part may not exceed \$45,300,000.

542 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
 543 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
 544 Subsection (2).

545 (b) These costs may include the cost of acquiring land, interests in land, easements and
 546 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
 547 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
 548 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
 549 covered by construction of the projects plus a period of six months after the end of the
 550 construction period, and all related engineering, architectural, and legal fees.

551 (c) For the division, proceeds shall be provided for the following:

552 CAPITAL IMPROVEMENTS

553	Alterations, Repairs, and Improvements	\$7,200,000
554	TOTAL IMPROVEMENTS	\$7,200,000

555 CAPITAL AND ECONOMIC DEVELOPMENT

556	PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATIONS AND MAINTENANCE COSTS
557	Corrections - Uinta IVA	\$11,300,000	\$212,800
558	Utah County Youth Correctional Facility	\$6,650,000	\$245,000
559	Ogden Weber Applied Technology Center - Metal Trades	\$5,161,000	\$176,000
560	Project Reserve Fund	\$3,500,000	None
561	Weber State University - Browning Center Remodel	\$3,300,000	None
562	Heber Wells Building Remodel	\$2,000,000	None
563	Higher Education Davis County - Land Purchase	\$1,600,000	None

564	National Guard -- Provo Armory	\$1,500,000	\$128,000
565	Department of Natural Resources - Pioneer Trails Visitor Center	\$900,000	\$65,000
566	Higher Education Design Projects	\$800,000	Varies depending upon projects selected
567	Salt Lake Community College - South Valley Planning	\$300,000	None
568	Division of Youth Corrections renamed in 2003 to the Division of Juvenile Justice Services - Logan Land Purchase	\$120,000	None
569	TOTAL CAPITAL AND ECONOMIC DEVELOPMENT		\$37,131,000
570	TOTAL IMPROVEMENTS AND CAPITAL AND ECONOMIC DEVELOPMENT		\$44,331,000

- 571 (d) For purposes of this section, operations and maintenance costs:
- 572 (i) are estimates only;
- 573 (ii) may include any operations and maintenance costs already funded in existing
- 574 agency budgets; and
- 575 (iii) are not commitments by this Legislature or future Legislatures to fund those
- 576 operations and maintenance costs.
- 577 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
- 578 constitute a limitation on the amount that may be expended for any project.
- 579 (b) The board may revise these estimates and redistribute the amount estimated for a
- 580 project among the projects authorized.
- 581 (c) The commission, by resolution and in consultation with the board, may delete one
- 582 or more projects from this list if the inclusion of that project or those projects in the list could
- 583 be construed to violate state law or federal law or regulation.
- 584 (4) (a) The division may enter into agreements related to these projects before the
- 585 receipt of proceeds of bonds issued under this chapter.
- 586 (b) The division shall make those expenditures from unexpended and unencumbered

587 building funds already appropriated to the Capital Projects Fund.

588 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
589 of bonds issued under this chapter.

590 (d) The commission may, by resolution, make any statement of intent relating to that
591 reimbursement that is necessary or desirable to comply with federal tax law.

592 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
593 it is the intent of the Legislature that the balance necessary to complete the projects be
594 addressed by future Legislatures, either through appropriations or through the issuance or sale
595 of bonds.

596 (b) For those phased projects, the division may enter into contracts for amounts not to
597 exceed the anticipated full project funding but may not allow work to be performed on those
598 contracts in excess of the funding already authorized by the Legislature.

599 (c) Those contracts shall contain a provision for termination of the contract for the
600 convenience of the state [~~as required by Section 63G-6a-1202~~].

601 (d) It is also the intent of the Legislature that this authorization to the division does not
602 bind future Legislatures to fund projects initiated from this authorization.

603 Section 8. Section **63B-5-102** is amended to read:

604 **63B-5-102. Maximum amount -- Projects authorized.**

605 (1) The total amount of bonds issued under this part may not exceed \$32,000,000.

606 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
607 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
608 Subsection (2).

609 (b) These costs may include the cost of acquiring land, interests in land, easements and
610 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
611 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
612 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
613 covered by construction of the projects plus a period of six months after the end of the
614 construction period, and all related engineering, architectural, and legal fees.

615 (c) For the division, proceeds shall be provided for the following:

616	CAPITAL IMPROVEMENTS	
617	Alterations, Repairs, and Improvements	\$7,600,000

618	TOTAL IMPROVEMENTS		\$7,600,000
619	CAPITAL AND ECONOMIC DEVELOPMENT		
620			ESTIMATED OPERATIONS AND
		AMOUNT	MAINTENANCE
	PROJECT DESCRIPTION	FUNDED	COSTS
621	Corrections - Gunnison (192 Beds)	\$13,970,000	\$210,000
622	University of Utah -- Gardner Hall	\$7,361,000	\$203,900
623	Weber State University Davis Campus -- Land Purchase	\$771,000	None
624	Department of Workforce Services Cedar City -- Land Purchase	\$148,000	None
625	Utah State University Eastern Durrant School -- Land Purchase	\$400,000	None
626	State Hospital - Forensic Design (200 beds)	\$750,000	\$575,000
627	TOTAL CAPITAL AND ECONOMIC DEVELOPMENT	\$23,400,000	
628	TOTAL IMPROVEMENTS AND CAPITAL AND ECONOMIC DEVELOPMENT	\$31,000,000	

- 629 (d) For purposes of this section, operations and maintenance costs:
- 630 (i) are estimates only;
- 631 (ii) may include any operations and maintenance costs already funded in existing
- 632 agency budgets; and
- 633 (iii) are not commitments by this Legislature or future Legislatures to fund those
- 634 operations and maintenance costs.
- 635 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
- 636 constitute a limitation on the amount that may be expended for any project.
- 637 (b) The board may revise these estimates and redistribute the amount estimated for a
- 638 project among the projects authorized.

639 (c) The commission, by resolution and in consultation with the board, may delete one
640 or more projects from this list if the inclusion of that project or those projects in the list could
641 be construed to violate state law or federal law or regulation.

642 (4) (a) The division may enter into agreements related to these projects before the
643 receipt of proceeds of bonds issued under this chapter.

644 (b) The division shall make those expenditures from unexpended and unencumbered
645 building funds already appropriated to the Capital Projects Fund.

646 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
647 of bonds issued under this chapter.

648 (d) The commission may, by resolution, make any statement of intent relating to that
649 reimbursement that is necessary or desirable to comply with federal tax law.

650 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
651 it is the intent of the Legislature that the balance necessary to complete the projects be
652 addressed by future Legislatures, either through appropriations or through the issuance or sale
653 of bonds.

654 (b) For those phased projects, the division may enter into contracts for amounts not to
655 exceed the anticipated full project funding but may not allow work to be performed on those
656 contracts in excess of the funding already authorized by the Legislature.

657 (c) Those contracts shall contain a provision for termination of the contract for the
658 convenience of the state [~~as required by Section 63G-6a-1202~~].

659 (d) It is also the intent of the Legislature that this authorization to the division does not
660 bind future Legislatures to fund projects initiated from this authorization.

661 Section 9. Section **63B-6-102** is amended to read:

662 **63B-6-102. Maximum amount -- Projects authorized.**

663 (1) The total amount of bonds issued under this part may not exceed \$57,000,000.

664 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
665 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
666 Subsection (2).

667 (b) These costs may include the cost of acquiring land, interests in land, easements and
668 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
669 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or

670 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
 671 covered by construction of the projects plus a period of six months after the end of the
 672 construction period, and all related engineering, architectural, and legal fees.

673 (c) For the division, proceeds shall be provided for the following:

CAPITAL AND ECONOMIC DEVELOPMENT		ESTIMATED OPERATIONS AND MAINTENANCE
PROJECT DESCRIPTION	AMOUNT FUNDED	
676 Youth Corrections - Carbon / Emery (18 beds)	\$2,298,100	\$70,000
677 State Hospital - 100 bed Forensic Facility	\$13,800,700	\$320,600
678 Utah State University - Widtsoe Hall	\$23,986,700	\$750,200
679 Davis Applied Technology Center - Medical/Health Tech Addition	\$6,344,900	\$144,000
680 Southern Utah University -- Physical Education Building (Design)	\$1,100,000	\$456,100
681 Salt Lake Community College -- High Technology Building, 90th So. Campus (Design)	\$1,165,000	\$718,500
682 Department of Natural Resources - Antelope Island Road	\$3,600,000	None
683 Youth Corrections - Region 1 72 Secured Bed Facility	\$1,500,000	None
684 Department of Natural Resources - Dead Horse Point Visitors Center	\$1,350,000	\$5,700
685 TOTAL CAPITAL AND ECONOMIC DEVELOPMENT	\$55,145,400	

686 (d) For purposes of this section, operations and maintenance costs:

687 (i) are estimates only;

688 (ii) may include any operations and maintenance costs already funded in existing

689 agency budgets; and

690 (iii) are not commitments by this Legislature or future Legislatures to fund those
691 operations and maintenance costs.

692 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
693 constitute a limitation on the amount that may be expended for any project.

694 (b) The board may revise these estimates and redistribute the amount estimated for a
695 project among the projects authorized.

696 (c) The commission, by resolution and in consultation with the board, may delete one
697 or more projects from this list if the inclusion of that project or those projects in the list could
698 be construed to violate state law or federal law or regulation.

699 (4) (a) The division may enter into agreements related to these projects before the
700 receipt of proceeds of bonds issued under this chapter.

701 (b) The division shall make those expenditures from unexpended and unencumbered
702 building funds already appropriated to the Capital Projects Fund.

703 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
704 of bonds issued under this chapter.

705 (d) The commission may, by resolution, make any statement of intent relating to that
706 reimbursement that is necessary or desirable to comply with federal tax law.

707 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
708 it is the intent of the Legislature that the balance necessary to complete the projects be
709 addressed by future Legislatures, either through appropriations or through the issuance or sale
710 of bonds.

711 (b) For those phased projects, the division may enter into contracts for amounts not to
712 exceed the anticipated full project funding but may not allow work to be performed on those
713 contracts in excess of the funding already authorized by the Legislature.

714 (c) Those contracts shall contain a provision for termination of the contract for the
715 convenience of the state [~~as required by Section 63G-6a-1202~~].

716 (d) It is also the intent of the Legislature that this authorization to the division does not
717 bind future Legislatures to fund projects initiated from this authorization.

718 Section 10. Section **63B-6-402** is amended to read:

719 **63B-6-402. Maximum amount -- Projects authorized.**

720 (1) The total amount of bonds issued under this part may not exceed \$9,000,000.

721 (2) (a) Proceeds from the issuance of bonds shall be provided to the State Tax
722 Commission to provide funds to pay all or part of the cost of the project described in this
723 Subsection (2).

724 (b) These costs may include:

725 (i) the cost of acquisition, development, and conversion of computer hardware and
726 software for motor vehicle fee systems and tax collection and accounting systems of the state;

727 (ii) interest estimated to accrue on these bonds during the period to be covered by that
728 development and conversion, plus a period of six months following the completion of the
729 development and conversion; and

730 (iii) all related engineering, consulting, and legal fees.

731 (c) For the State Tax Commission, proceeds shall be provided for the following:

732	PROJECT DESCRIPTION	AMOUNT FUNDED
733	UTAX SYSTEMS ACQUISITION AND DEVELOPMENT	\$8,500,000

734 (3) The commission, by resolution may decline to issue bonds if the project could be
735 construed to violate state law or federal law or regulation.

736 (4) (a) For this project, for which only partial funding is provided in Subsection (2), it
737 is the intent of the Legislature that the balance necessary to complete the project be addressed
738 by future Legislatures, either through appropriations or through the issuance or sale of bonds.

739 (b) The State Tax Commission may enter into contracts for amounts not to exceed the
740 anticipated full project funding but may not allow work to be performed on those contracts in
741 excess of the funding already authorized by the Legislature.

742 (c) Those contracts shall contain a provision for termination of the contract for the
743 convenience of the state [~~as required by Section 63G-6a-1202~~].

744 (d) It is also the intent of the Legislature that this authorization to the State Tax
745 Commission does not bind future Legislatures to fund projects initiated from this authorization.

746 Section 11. Section **63B-7-102** is amended to read:

747 **63B-7-102. Maximum amount -- Projects authorized.**

748 (1) The total amount of bonds issued under this part may not exceed \$33,600,000.

749 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide

750 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
 751 Subsection (2).

752 (b) These costs may include the cost of acquiring land, interests in land, easements and
 753 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
 754 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
 755 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
 756 covered by construction of the projects plus a period of six months after the end of the
 757 construction period, and all related engineering, architectural, and legal fees.

758 (c) For the division, proceeds shall be provided for the following:

759	PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATIONS AND MAINTENANCE
760	Southern Utah University Land Purchase	\$4,600,000	\$0
761	Salt Lake Community College High Tech Center - Jordan Campus	\$3,980,700	\$507,900
762	Children's Special Health Care Needs Clinic	\$755,400	\$247,600
763	Youth Corrections - 2 @ 32 beds (Vernal / Logan)	\$419,500	\$276,000
764	Corrections - Gunnison 288 bed and Lagoon Expansion	\$8,425,600	\$0
765	University of Utah - Cowles Building	\$445,500	\$101,700
766	Utah Valley State College - Technical Building	\$1,166,300	\$391,000
767	Sevier Valley Applied Technology Center - Shop Expansion	\$3,014,300	\$443,300
768	Division of Parks and Recreation Statewide Restrooms	\$1,000,000	\$22,700
769	Murray Highway Patrol Office	\$2,300,000	\$81,000
770	Department of Workforce Services - Davis County Employment Center	\$2,780,000	\$128,100

771	State Hospital - Rampton II	\$1,600,000	\$462,000
772	Courts - 4th District Land - Provo	\$1,368,000	\$0
773	Dixie College - Land	\$1,000,000	\$0
774	TOTAL CAPITAL AND ECONOMIC DEVELOPMENT	\$32,855,300	

- 775 (d) For purposes of this section, operations and maintenance costs:
- 776 (i) are estimates only;
- 777 (ii) may include any operations and maintenance costs already funded in existing
- 778 agency budgets; and
- 779 (iii) are not commitments by this Legislature or future Legislatures to fund those
- 780 operations and maintenance costs.
- 781 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
- 782 constitute a limitation on the amount that may be expended for any project.
- 783 (b) The board may revise these estimates and redistribute the amount estimated for a
- 784 project among the projects authorized.
- 785 (c) The commission, by resolution and in consultation with the board, may delete one
- 786 or more projects from this list if the inclusion of that project or those projects in the list could
- 787 be construed to violate state law or federal law or regulation.
- 788 (4) (a) The division may enter into agreements related to these projects before the
- 789 receipt of proceeds of bonds issued under this chapter.
- 790 (b) The division shall make those expenditures from unexpended and unencumbered
- 791 building funds already appropriated to the Capital Projects Fund.
- 792 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
- 793 of bonds issued under this chapter.
- 794 (d) The commission may, by resolution, make any statement of intent relating to that
- 795 reimbursement that is necessary or desirable to comply with federal tax law.
- 796 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
- 797 it is the intent of the Legislature that the balance necessary to complete the projects be
- 798 addressed by future Legislatures, either through appropriations or through the issuance or sale
- 799 of bonds.

800 (b) For those phased projects, the division may enter into contracts for amounts not to
801 exceed the anticipated full project funding but may not allow work to be performed on those
802 contracts in excess of the funding already authorized by the Legislature.

803 (c) Those contracts shall contain a provision for termination of the contract for the
804 convenience of the state [~~as required by Section 63G-6a-1202~~].

805 (d) It is also the intent of the Legislature that this authorization to the division does not
806 bind future Legislatures to fund projects initiated from this authorization.

807 Section 12. Section 63B-7-402 is amended to read:

808 **63B-7-402. Maximum amount -- Projects authorized.**

809 (1) The total amount of bonds issued under this part may not exceed \$16,500,000.

810 (2) (a) Proceeds from the issuance of bonds shall be provided to the State Tax
811 Commission to provide funds to pay all or part of the cost of the project described in this
812 Subsection (2).

813 (b) These costs may include:

814 (i) the cost of acquisition, development, and conversion of computer hardware and
815 software for motor vehicle fee systems and tax collection and accounting systems of the state;

816 (ii) interest estimated to accrue on these bonds during the period to be covered by that
817 development and conversion, plus a period of six months following the completion of the
818 development and conversion; and

819 (iii) all related engineering, consulting, and legal fees.

820 (c) For the State Tax Commission, proceeds shall be provided for the following:

821	PROJECT	AMOUNT
	DESCRIPTION	FUNDED
822	UTAX SYSTEMS ACQUISITION AND	\$15,650,000
	DEVELOPMENT	

823 (3) The commission, by resolution may decline to issue bonds if the project could be
824 construed to violate state law or federal law or regulation.

825 (4) (a) For this project, for which only partial funding is provided in Subsection (2), it
826 is the intent of the Legislature that the balance necessary to complete the project be addressed
827 by future Legislatures, either through appropriations or through the issuance or sale of bonds.

828 (b) The State Tax Commission may enter into contracts for amounts not to exceed the

829 anticipated full project funding but may not allow work to be performed on those contracts in
830 excess of the funding already authorized by the Legislature.

831 (c) Those contracts shall contain a provision for termination of the contract for the
832 convenience of the state [~~as required by Section 63G-6a-1202~~].

833 (d) It is also the intent of the Legislature that this authorization to the State Tax
834 Commission does not bind future Legislatures to fund projects initiated from this authorization.

835 Section 13. Section **63B-8-102** is amended to read:

836 **63B-8-102. Maximum amount -- Projects authorized.**

837 (1) The total amount of bonds issued under this part may not exceed \$48,500,000.

838 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
839 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
840 Subsection (2).

841 (b) These costs may include the cost of acquiring land, interests in land, easements and
842 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
843 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
844 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
845 covered by construction of the projects plus a period of six months after the end of the
846 construction period, and all related engineering, architectural, and legal fees.

847 (c) For the division, proceeds shall be provided for the following:

PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATIONS AND MAINTENANCE
849 Southern Utah University - Physical Education Building	\$2,493,200	\$447,744
850 Utah Valley State College - Information Sciences Building	\$29,000,000	\$721,875
851 University of Utah - Cowles Building Renovation	\$7,268,500	\$140,217
852 Vernal District Court	\$4,539,500	\$149,989

853 Salt Lake Community College - Applied Education \$4,200,000 \$281,784
Center

854 TOTAL CAPITAL AND ECONOMIC \$47,501,200
DEVELOPMENT

855 (d) For purposes of this section, operations and maintenance costs:

856 (i) are estimates only;

857 (ii) may include any operations and maintenance costs already funded in existing
858 agency budgets; and

859 (iii) are not commitments by this Legislature or future Legislatures to fund those
860 operations and maintenance costs.

861 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
862 constitute a limitation on the amount that may be expended for any project.

863 (b) The board may revise these estimates and redistribute the amount estimated for a
864 project among the projects authorized.

865 (c) The commission, by resolution and in consultation with the board, may delete one
866 or more projects from this list if the inclusion of that project or those projects in the list could
867 be construed to violate state law or federal law or regulation.

868 (4) (a) The division may enter into agreements related to these projects before the
869 receipt of proceeds of bonds issued under this chapter.

870 (b) The division shall make those expenditures from unexpended and unencumbered
871 building funds already appropriated to the Capital Projects Fund.

872 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
873 of bonds issued under this chapter.

874 (d) The commission may, by resolution, make any statement of intent relating to that
875 reimbursement that is necessary or desirable to comply with federal tax law.

876 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
877 it is the intent of the Legislature that the balance necessary to complete the projects be
878 addressed by future Legislatures, either through appropriations or through the issuance or sale
879 of bonds.

880 (b) For those phased projects, the division may enter into contracts for amounts not to
881 exceed the anticipated full project funding but may not allow work to be performed on those

882 contracts in excess of the funding already authorized by the Legislature.

883 (c) Those contracts shall contain a provision for termination of the contract for the
884 convenience of the state [~~as required by Section 63G-6a-1202~~].

885 (d) It is also the intent of the Legislature that this authorization to the division does not
886 bind future Legislatures to fund projects initiated from this authorization.

887 Section 14. Section **63B-8-402** is amended to read:

888 **63B-8-402. Maximum amount -- Projects authorized.**

889 (1) The total amount of bonds issued under this part may not exceed \$7,400,000.

890 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
891 funds to pay all or part of the cost of acquiring and constructing the project listed in this
892 Subsection (2).

893 (b) These costs may include the cost of acquiring land, interests in land, easements and
894 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
895 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
896 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
897 covered by construction of the projects plus a period of six months after the end of the
898 construction period, and all related engineering, architectural, and legal fees.

899 (c) For the division, proceeds shall be provided for the following:

PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATIONS AND MAINTENANCE
901 State Hospital - Rampton II	\$7,000,000	\$462,000

902 (d) For purposes of this section, operations and maintenance costs:

903 (i) are estimates only;

904 (ii) may include any operations and maintenance costs already funded in existing
905 agency budgets; and

906 (iii) are not commitments by this Legislature or future Legislatures to fund those
907 operations and maintenance costs.

908 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
909 constitute a limitation on the amount that may be expended for any project.

910 (b) The board may revise these estimates and redistribute the amount estimated for a
911 project among the projects authorized.

912 (c) The commission, by resolution and in consultation with the board, may delete one
913 or more projects from this list if the inclusion of that project or those projects in the list could
914 be construed to violate state law or federal law or regulation.

915 (4) (a) The division may enter into agreements related to these projects before the
916 receipt of proceeds of bonds issued under this chapter.

917 (b) The division shall make those expenditures from unexpended and unencumbered
918 building funds already appropriated to the Capital Projects Fund.

919 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
920 of bonds issued under this chapter.

921 (d) The commission may, by resolution, make any statement of intent relating to that
922 reimbursement that is necessary or desirable to comply with federal tax law.

923 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
924 it is the intent of the Legislature that the balance necessary to complete the projects be
925 addressed by future Legislatures, either through appropriations or through the issuance or sale
926 of bonds.

927 (b) For those phased projects, the division may enter into contracts for amounts not to
928 exceed the anticipated full project funding but may not allow work to be performed on those
929 contracts in excess of the funding already authorized by the Legislature.

930 (c) Those contracts shall contain a provision for termination of the contract for the
931 convenience of the state [~~as required by Section 63G-6a-1202~~].

932 (d) It is also the intent of the Legislature that this authorization to the division does not
933 bind future Legislatures to fund projects initiated from this authorization.

934 Section 15. Section **63B-9-103** is amended to read:

935 **63B-9-103. Other capital facility authorizations and intent language.**

936 (1) It is the intent of the Legislature that:

937 (a) Utah State University use institutional funds to plan, design, and construct a
938 renovation and expansion of the Edith Bowen School under the direction of the director of the
939 Division of Facilities Construction and Management unless supervisory authority has been
940 delegated;

941 (b) no state funds be used for any portion of this project; and

942 (c) the university may request state funds for operations and maintenance to the extent
943 that the university is able to demonstrate to the Board of Regents that the facility meets
944 approved academic and training purposes under Board of Regents policy R710.

945 (2) It is the intent of the Legislature that:

946 (a) the University of Utah use institutional funds to plan, design, and construct a
947 College of Science Math Center under the direction of the director of the Division of Facilities
948 Construction and Management unless supervisory authority has been delegated;

949 (b) no state funds be used for any portion of this project; and

950 (c) the university may request state funds for operations and maintenance to the extent
951 that the university is able to demonstrate to the Board of Regents that the facility meets
952 approved academic and training purposes under Board of Regents policy R710.

953 (3) It is the intent of the Legislature that:

954 (a) the University of Utah use institutional funds to plan, design, and construct a
955 Burbidge Athletics and Academics Building under the direction of the director of the Division
956 of Facilities Construction and Management unless supervisory authority has been delegated;

957 (b) no state funds be used for any portion of this project; and

958 (c) the university may not request state funds for operations and maintenance.

959 (4) It is the intent of the Legislature that:

960 (a) the University of Utah use institutional funds to plan, design, and construct an
961 expansion to the bookstore under the direction of the director of the Division of Facilities
962 Construction and Management unless supervisory authority has been delegated;

963 (b) no state funds be used for any portion of this project; and

964 (c) the university may not request state funds for operations and maintenance.

965 (5) It is the intent of the Legislature that:

966 (a) the University of Utah use institutional funds to plan, design, and construct a Health
967 Sciences/Basic Sciences Building under the direction of the director of the Division of
968 Facilities Construction and Management unless supervisory authority has been delegated;

969 (b) no state funds be used for any portion of this project; and

970 (c) the university may request state funds for operations and maintenance to the extent
971 that the university is able to demonstrate to the Board of Regents that the facility meets

972 approved academic and training purposes under Board of Regents policy R710.

973 (6) It is the intent of the Legislature that:

974 (a) Weber State University use institutional funds to plan, design, and construct an
975 expansion to the stadium under the direction of the director of the Division of Facilities
976 Construction and Management unless supervisory authority has been delegated;

977 (b) no state funds be used for any portion of this project; and

978 (c) the university may not request state funds for operations and maintenance.

979 (7) It is the intent of the Legislature that:

980 (a) Utah Valley State College use institutional funds to plan, design, and construct a
981 baseball stadium under the direction of the director of the Division of Facilities Construction
982 and Management unless supervisory authority has been delegated;

983 (b) no state funds be used for any portion of this project; and

984 (c) the college may not request state funds for operations and maintenance.

985 (8) It is the intent of the Legislature that:

986 (a) Southern Utah University use institutional funds to plan, design, and construct a
987 weight training room under the direction of the director of the Division of Facilities
988 Construction and Management unless supervisory authority has been delegated;

989 (b) no state funds be used for any portion of this project; and

990 (c) the university may not request state funds for operations and maintenance.

991 (9) It is the intent of the Legislature that:

992 (a) Snow College may lease land at the Snow College Richfield campus to a private
993 developer for the construction and operation of student housing;

994 (b) the oversight and inspection of the construction comply with Section [63A-5-206](#);

995 (c) no state funds be used for any portion of this project; and

996 (d) the college may not request state funds for operations and maintenance.

997 (10) It is the intent of the Legislature that:

998 (a) Salt Lake Community College may lease land at the Jordan campus to Jordan
999 School District for the construction and operation of an Applied Technology Education Center;

1000 (b) the oversight and inspection of the construction comply with Section [63A-5-206](#);

1001 (c) no state funds be used for any portion of this project; and

1002 (d) the college may not request state funds for operations and maintenance.

1003 (11) It is the intent of the Legislature that:

1004 (a) the Department of Transportation exchange its maintenance station at Kimball
1005 Junction for property located near Highway 40 in Summit County; and

1006 (b) the Department of Transportation use federal funds, rent paid by the Salt Lake
1007 Organizing Committee for the use of the maintenance station, and any net proceeds resulting
1008 from the exchange of property to construct a replacement facility under the direction of the
1009 director of the Division of Facilities Construction and Management unless supervisory
1010 authority has been delegated.

1011 (12) It is the intent of the Legislature that:

1012 (a) the Department of Transportation sell surplus property in Utah County;

1013 (b) the Department of Transportation use funds from that sale to remodel existing
1014 space and add an addition to the Region 3 Complex; and

1015 (c) the project cost not exceed the funds received through sale of property.

1016 (13) It is the intent of the Legislature that the Department of Workforce Services use
1017 proceeds from property sales to purchase additional property adjacent to its state-owned facility
1018 in Logan.

1019 (14) (a) It is the intent of the Legislature that, because only partial funding is provided
1020 for the Heat Plant/Infrastructure Project at Utah State University, the balance necessary to
1021 complete this project be addressed by future Legislatures, either through appropriations or
1022 through the issuance of bonds.

1023 (b) (i) In compliance with Section [63A-5-207](#), the division may enter into contracts for
1024 amounts not to exceed the anticipated full project funding but may not allow work to be
1025 performed on those contracts in excess of the funding already authorized by the Legislature.

1026 (ii) Those contracts shall contain a provision for termination of the contract for the
1027 convenience of the state [~~as required by Section [63G-6a-1202](#)].~~

1028 (c) It is also the intent of the Legislature that this authorization to the division does not
1029 bind future Legislatures to fund the Heat Plant/Infrastructure Project at Utah State University.

1030 Section 16. Section **63B-11-202** is amended to read:

1031 **63B-11-202. Maximum amount -- Projects authorized.**

1032 (1) (a) The total amount of bonds issued under this part may not exceed \$21,250,000.

1033 (b) When Utah State University certifies to the commission that the university has

1034 obtained reliable commitments, convertible to cash, of \$5,000,000 or more in nonstate funds to
 1035 construct an addition to the new engineering building and demolish the existing engineering
 1036 classroom building, the commission may issue and sell general obligation bonds in a total
 1037 amount not to exceed \$6,100,000.

1038 (c) When the University of Utah certifies to the commission that the university has
 1039 obtained reliable commitments, convertible to cash, of \$13,000,000 or more in nonstate funds
 1040 to construct a new engineering building, the commission may issue and sell general obligation
 1041 bonds in a total amount not to exceed \$15,150,000.

1042 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
 1043 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
 1044 Subsection (2).

1045 (b) These costs may include the cost of acquiring land, interests in land, easements and
 1046 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
 1047 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
 1048 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
 1049 covered by construction of the projects plus a period of six months after the end of the
 1050 construction period, and all related engineering, architectural, and legal fees.

1051 (c) For the division, proceeds shall be provided for the following:

PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATING AND MAINTENANCE COSTS
1053 1. Utah State University Engineering Building Renovation	\$5,943,500	\$425,000
1054 2. University of Utah New Engineering Building	\$15,000,000	\$489,000
1055 COSTS OF ISSUANCE	\$306,500	
1056 TOTAL CAPITAL AND ECONOMIC DEVELOPMENT		\$21,250,000

1057 (d) For purposes of this section, operations and maintenance costs:

1058 (i) are estimates only;

1059 (ii) may include any operations and maintenance costs already funded in existing
1060 agency budgets; and

1061 (iii) are not commitments by this Legislature or future Legislatures to fund those
1062 operations and maintenance costs.

1063 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
1064 constitute a limitation on the amount that may be expended for any project.

1065 (b) The board may revise these estimates and redistribute the amount estimated for a
1066 project among the projects authorized.

1067 (c) The commission, by resolution and in consultation with the board, may delete one
1068 or more projects from this list if the inclusion of that project or those projects in the list could
1069 be construed to violate state law or federal law or regulation.

1070 (4) (a) The division may enter into agreements related to these projects before the
1071 receipt of proceeds of bonds issued under this chapter.

1072 (b) The division shall make those expenditures from unexpended and unencumbered
1073 building funds already appropriated to the Capital Projects Fund.

1074 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
1075 of bonds issued under this chapter.

1076 (d) The commission may, by resolution, make any statement of intent relating to that
1077 reimbursement that is necessary or desirable to comply with federal tax law.

1078 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
1079 it is the intent of the Legislature that the balance necessary to complete the projects be
1080 addressed by future Legislatures, either through appropriations or through the issuance or sale
1081 of bonds.

1082 (b) For those phased projects, the division may enter into contracts for amounts not to
1083 exceed the anticipated full project funding but may not allow work to be performed on those
1084 contracts in excess of the funding already authorized by the Legislature.

1085 (c) Those contracts shall contain a provision for termination of the contract for the
1086 convenience of the state [~~as required by Section 63G-6a-1202~~].

1087 (d) It is also the intent of the Legislature that this authorization to the division does not
1088 bind future Legislatures to fund projects initiated from this authorization.

1089 Section 17. Section **63F-1-205** is amended to read:

1090 **63F-1-205. Approval of acquisitions of information technology.**

1091 (1) (a) Except as provided in Title 63M, Chapter 1, Part 26, Government Procurement
1092 Private Proposal Program, in accordance with Subsection (2), the chief information officer
1093 shall approve the acquisition by an executive branch agency of:

- 1094 (i) information technology equipment;
- 1095 (ii) telecommunications equipment;
- 1096 (iii) software;
- 1097 (iv) services related to the items listed in Subsections (1)(a)(i) through (iii); and
- 1098 (v) data acquisition.

1099 (b) The chief information officer may negotiate the purchase, lease, or rental of private
1100 or public information technology or telecommunication services or facilities in accordance with
1101 this section.

1102 (c) Where practical, efficient, and economically beneficial, the chief information
1103 officer shall use existing private and public information technology or telecommunication
1104 resources.

1105 (d) Notwithstanding another provision of this section, an acquisition authorized by this
1106 section shall comply with rules made by the applicable rulemaking authority under Title 63G,
1107 Chapter 6a, Utah Procurement Code.

1108 (2) Before negotiating a purchase, lease, or rental under Subsection (1) for an amount
1109 that exceeds the value established by the chief information officer by rule in accordance with
1110 Section 63F-1-206, the chief information officer shall:

1111 (a) conduct an analysis of the needs of executive branch agencies and subscribers of
1112 services and the ability of the proposed information technology or telecommunications services
1113 or supplies to meet those needs; and

1114 (b) for purchases, leases, or rentals not covered by an existing statewide contract,
1115 provide in writing to the chief procurement officer in the Division of Purchasing and General
1116 Services that:

- 1117 (i) the analysis required in Subsection (2)(a) was completed; and
- 1118 (ii) based on the analysis, the proposed purchase, lease, rental, or master contract of
1119 services, products, or supplies is practical, efficient, and economically beneficial to the state
1120 and the executive branch agency or subscriber of services.

- 1121 (3) In approving an acquisition described in Subsections (1) and (2), the chief
1122 information officer shall:
- 1123 (a) establish by administrative rule, in accordance with Section 63F-1-206, standards
1124 under which an agency must obtain approval from the chief information officer before
1125 acquiring the items listed in Subsections (1) and (2);
- 1126 (b) for those acquisitions requiring approval, determine whether the acquisition is in
1127 compliance with:
- 1128 (i) the executive branch strategic plan;
1129 (ii) the applicable agency information technology plan;
1130 (iii) the budget for the executive branch agency or department as adopted by the
1131 Legislature; and
- 1132 (iv) Title 63G, Chapter 6a, Utah Procurement Code; and
- 1133 (c) in accordance with Section 63F-1-207, require coordination of acquisitions between
1134 two or more executive branch agencies if it is in the best interests of the state.
- 1135 (4) (a) Each executive branch agency shall provide the chief information officer with
1136 complete access to all information technology records, documents, and reports:
- 1137 (i) at the request of the chief information officer; and
1138 (ii) related to the executive branch agency's acquisition of any item listed in Subsection
1139 (1).
- 1140 (b) Beginning July 1, 2006 and in accordance with administrative rules established by
1141 the department under Section 63F-1-206, no new technology projects may be initiated by an
1142 executive branch agency or the department unless the technology project is described in a
1143 formal project plan and the business case analysis has been approved by the chief information
1144 officer and agency head. The project plan and business case analysis required by this
1145 Subsection (4) shall be in the form required by the chief information officer, and shall include:
- 1146 (i) a statement of work to be done and existing work to be modified or displaced;
1147 (ii) total cost of system development and conversion effort, including system analysis
1148 and programming costs, establishment of master files, testing, documentation, special
1149 equipment cost and all other costs, including overhead;
- 1150 (iii) savings or added operating costs that will result after conversion;
1151 (iv) other advantages or reasons that justify the work;

- 1152 (v) source of funding of the work, including ongoing costs;
- 1153 (vi) consistency with budget submissions and planning components of budgets; and
- 1154 (vii) whether the work is within the scope of projects or initiatives envisioned when the
- 1155 current fiscal year budget was approved.

1156 (5) (a) The chief information officer and the Division of Purchasing and General
1157 Services shall work cooperatively to establish procedures under which the chief information
1158 officer shall monitor and approve acquisitions as provided in this section.

1159 (b) The procedures established under this section shall include at least the written
1160 certification required by Subsection [63G-6a-303](#)~~(5)~~(1)(e).

1161 Section 18. Section **63G-6a-102** is amended to read:

1162 **63G-6a-102. Purpose of chapter.**

1163 The underlying purposes and policies of this chapter are:

1164 (1) to simplify, clarify, and modernize the law governing procurement ~~[by this]~~ in the
1165 state;

1166 (2) to ensure the fair and equitable treatment of all persons who deal with the
1167 procurement system ~~[of this state]~~;

1168 (3) to provide increased economy in state procurement activities; and

1169 (4) to foster effective broad-based competition within the free enterprise system.

1170 Section 19. Section **63G-6a-103** is amended to read:

1171 **63G-6a-103. Definitions.**

1172 As used in this chapter:

1173 (1) "Architect-engineer services" means:

1174 (a) professional services within the scope of the practice of architecture as defined in
1175 Section [58-3a-102](#); ~~[or]~~

1176 (b) professional engineering as defined in Section [58-22-102](#)~~[-]~~; or

1177 (c) master planning and programming services.

1178 (2) "Bidder" means a person who responds to an invitation for bids.

1179 (3) "Change directive" means a written order signed by the procurement officer that
1180 directs the contractor to suspend work or make changes, as authorized by contract, without the
1181 consent of the contractor.

1182 (4) "Change order" means a written alteration in specifications, delivery point, rate of

1183 delivery, period of performance, price, quantity, or other provisions of a contract, upon mutual
1184 agreement of the parties to the contract.

1185 (5) "Chief procurement officer" means the chief procurement officer appointed under
1186 Subsection [63G-6a-302\(1\)](#).

1187 (6) "Conducting procurement unit" means a procurement unit that conducts all aspects
1188 of a procurement:

1189 (a) except:

1190 (i) reviewing a solicitation to verify that it is in proper form; and

1191 (ii) causing the publication of a notice of a solicitation; and

1192 (b) including:

1193 (i) preparing any solicitation document;

1194 (ii) appointing an evaluation committee;

1195 (iii) conducting the evaluation process, except as provided in Subsection
1196 [63G-6a-707\(5\)\(b\)](#) relating to scores calculated for costs of proposals;

1197 (iv) selecting and recommending the person to be awarded a contract;

1198 (v) negotiating the terms and conditions of a contract, subject to the issuing
1199 procurement unit's approval; and

1200 (vi) administering a contract.

1201 [~~(6)~~] (7) (a) "Construction" means the process of building, renovating, altering,
1202 improving, or repairing a public building or public work.

1203 (b) "Construction" does not include the routine operation, routine repair, or routine
1204 maintenance of an existing structure, building, or real property.

1205 [~~(7)~~] (8) (a) "Construction manager/general contractor" means a contractor who enters
1206 into a contract for the management of a construction project when the contract allows the
1207 contractor to subcontract for additional labor and materials that are not included in the
1208 contractor's cost proposal submitted at the time of the procurement of the contractor's services.

1209 (b) "Construction manager/general contractor" does not include a contractor whose
1210 only subcontract work not included in the contractor's cost proposal submitted as part of the
1211 procurement of the contractor's services is to meet subcontracted portions of change orders
1212 approved within the scope of the project.

1213 [~~(8)~~] (9) "Contract" means an agreement for the procurement or disposal of a

1214 procurement item.

1215 ~~[(9)]~~ (10) "Contractor" means a person who is awarded a contract with a procurement
1216 unit.

1217 ~~[(10)]~~ (11) "Cooperative procurement" means procurement conducted by, or on behalf
1218 of[;]:

1219 (a) more than one procurement unit[;]; or [by]

1220 (b) a procurement unit [~~and an external procurement unit.~~] and a cooperative
1221 purchasing organization.

1222 ~~[(11)]~~ (12) "Cost-plus-a-percentage-of-cost contract" means a contract where the
1223 contractor is paid a percentage over and above the contractor's actual expenses or costs.

1224 ~~[(12)]~~ (13) "Cost-reimbursement contract" means a contract under which a contractor
1225 is reimbursed for costs which are allowed and allocated in accordance with the contract terms
1226 and the provisions of this chapter, and a fee, if any.

1227 ~~[(13)]~~ (14) "Days" means calendar days, unless expressly provided otherwise.

1228 ~~[(14)]~~ (15) "Definite quantity contract" means a fixed price contract that provides for
1229 the supply of a specified amount of goods over a specified period, with deliveries scheduled
1230 according to a specified schedule.

1231 ~~[(15)]~~ (16) "Design-build" means the procurement of architect-engineer services and
1232 construction by the use of a single contract with the design-build provider.

1233 ~~[(16)]~~ (17) "Director" means the director of the division.

1234 ~~[(17)]~~ (18) "Established catalogue price" means the price included in a catalogue, price
1235 list, schedule, or other form that:

1236 (a) is regularly maintained by a manufacturer or contractor;

1237 (b) is either published or otherwise available for inspection by customers; and

1238 (c) states prices at which sales are currently or were last made to a significant number
1239 of any category of buyers or buyers constituting the general buying public for the supplies or
1240 services involved.

1241 ~~[(18)]~~ (19) "Fixed price contract" means a contract that provides a price, for each
1242 procurement item obtained under the contract, that is not subject to adjustment except to the
1243 extent that:

1244 (a) the contract provides, under circumstances specified in the contract, for an

1245 adjustment in price that is not based on cost to the contractor; or

1246 (b) an adjustment is required by law.

1247 [~~(19)~~] (20) "Fixed price contract with price adjustment" means a fixed price contract

1248 that provides for an upward or downward revision of price, precisely described in the contract,

1249 that:

1250 (a) is based on the consumer price index or another commercially acceptable index,

1251 source, or formula; and

1252 (b) is not based on a percentage of the cost to the contractor.

1253 [~~(20)~~] (21) (a) "Grant" means furnishing, by a public entity or by any other public or

1254 private source, financial or other assistance to a person to support a program authorized by law.

1255 (b) "Grant" does not include:

1256 (i) an award whose primary purpose is to procure an end product or procurement item;

1257 or

1258 (ii) a contract that is awarded as a result of a procurement or a procurement process.

1259 [~~(21)~~] (22) "Head of a procurement unit" means:

1260 (a) as it relates to a legislative procurement unit, any person designated by rule made

1261 by the applicable rulemaking authority;

1262 (b) as it relates to an executive branch procurement unit:

1263 (i) the director of a division; or

1264 (ii) any other person designated by the board, by rule;

1265 (c) as it relates to a judicial procurement unit:

1266 (i) the Judicial Council; or

1267 (ii) any other person designated by the Judicial Council, by rule;

1268 (d) as it relates to a local government procurement unit:

1269 (i) the legislative body of the local government procurement unit; or

1270 (ii) any other person designated by the local government procurement unit;

1271 (e) as it relates to a local district, the board of trustees of the local district or a designee

1272 of the board of trustees;

1273 (f) as it relates to a special service district, the governing body of the special service

1274 district or a designee of the governing body;

1275 (g) as it relates to a local building authority, the board of directors of the local building

1276 authority or a designee of the board of directors;

1277 (h) as it relates to a conservation district, the board of supervisors of the conservation
1278 district or a designee of the board of supervisors;

1279 (i) as it relates to a public corporation, the board of directors of the public corporation
1280 or a designee of the board of directors;

1281 (j) as it relates to a school district or any school or entity within a school district, the
1282 board of the school district, or the board's designee;

1283 (k) as it relates to a charter school, the individual or body with executive authority over
1284 the charter school, or the individual's or body's designee;

1285 (l) as it relates to an institution of higher education of the state, the president of the
1286 institution of higher education, or the president's designee; or

1287 (m) as it relates to a public transit district, the board of trustees or a designee of the
1288 board of trustees.

1289 ~~[(22)]~~ (23) "Indefinite quantity contract" means a fixed price contract that:

1290 (a) is for an indefinite amount of procurement items to be supplied as ordered by a
1291 procurement unit; and

1292 (b) (i) does not require a minimum purchase amount; or

1293 (ii) provides a maximum purchase limit.

1294 ~~[(23)]~~ (24) "Independent procurement authority" means authority granted to a
1295 procurement unit~~;~~ under Subsection ~~[63G-6a-108(2), to engage in a procurement without~~
1296 ~~oversight or control of the division]~~ 63G-6a-106(4)(a).

1297 ~~[(24)]~~ (25) "Invitation for bids" includes all documents, including documents that are
1298 attached or incorporated by reference, used for soliciting bids to provide a procurement item to
1299 a procurement unit.

1300 ~~[(25)]~~ (26) "Issuing procurement unit" means a procurement unit that:

1301 ~~[(a) the division, if the division issues the invitation for bids or the request for~~
1302 ~~proposals; or]~~

1303 ~~[(b) the procurement unit, with independent procurement authority, that issues the~~
1304 ~~invitation for bids or the request for proposals.]~~

1305 (a) reviews a solicitation to verify that it is in proper form;

1306 (b) causes the notice of a solicitation to be published; and

- 1307 (c) negotiates the terms and conditions of a contract.
- 1308 [~~(26)~~] (27) "Labor hour contract" is a contract where:
- 1309 (a) the supplies and materials are not provided by, or through, the contractor; and
- 1310 (b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and
- 1311 profit for a specified number of labor hours or days.
- 1312 [~~(27)~~] (28) "Multiple award contracts" means the award of a contract for an indefinite
- 1313 quantity of a procurement item to more than one bidder or offeror.
- 1314 [~~(28)~~] (29) "Multiyear contract" means a contract that extends beyond a one-year
- 1315 period, including a contract that permits renewal of the contract, without competition, beyond
- 1316 the first year of the contract.
- 1317 [~~(29)~~] (30) "Municipality" means a city or a town.
- 1318 [~~(30)~~] (31) "Offeror" means a person who responds to a request for proposals.
- 1319 [~~(31)~~] (32) "Preferred bidder" means a bidder that is entitled to receive a reciprocal
- 1320 preference under the requirements of this chapter.
- 1321 [~~(32)~~] (33) (a) "Procure" or "procurement" means buying, purchasing, renting, leasing,
- 1322 leasing with an option to purchase, or otherwise acquiring a procurement item.
- 1323 (b) "Procure" or "procurement" includes all functions that pertain to the obtaining of a
- 1324 procurement item, including:
- 1325 (i) the description of requirements;
- 1326 (ii) the selection process;
- 1327 (iii) solicitation of sources;
- 1328 (iv) the preparation for soliciting a procurement item; and
- 1329 (v) the award of a contract~~[-and].~~
- 1330 [~~(vi) all phases of contract administration.~~]
- 1331 [~~(33)~~] (34) "Procurement item" means a supply, a service, construction, or technology.
- 1332 [~~(34)~~] (35) "Procurement officer" means:
- 1333 (a) as it relates to a procurement unit with independent procurement authority:
- 1334 (i) the head of the procurement unit;
- 1335 (ii) a designee of the head of the procurement unit; or
- 1336 (iii) a person designated by rule made by the applicable rulemaking authority; or
- 1337 (b) as it relates to the division or a procurement unit without independent procurement

1338 authority, the chief procurement officer.

1339 ~~[(35)]~~ (36) "Professional service" means a service that requires a high degree of
1340 specialized knowledge and discretion in the performance of the service, including:

- 1341 (a) legal services;
- 1342 (b) consultation services;
- 1343 (c) architectural services;
- 1344 (d) engineering;
- 1345 (e) design;
- 1346 (f) underwriting;
- 1347 (g) bond counsel;
- 1348 (h) financial advice;
- 1349 (i) construction management;
- 1350 (j) medical services;
- 1351 (k) psychiatric services; or
- 1352 (l) counseling services.

1353 ~~[(36)]~~ (37) "Protest officer" means:

- 1354 (a) as it relates to the division or a procurement unit with independent procurement
1355 authority:
 - 1356 (i) the head of the procurement unit;
 - 1357 (ii) a designee of the head of the procurement unit; or
 - 1358 (iii) a person designated by rule made by the applicable rulemaking authority; or
- 1359 (b) as it relates to a procurement unit without independent procurement authority, the
1360 chief procurement officer or the chief procurement officer's designee.

1361 ~~[(37)]~~ (38) "Request for information" means a nonbinding process where a
1362 procurement unit requests information relating to a procurement item.

1363 ~~[(38)]~~ (39) "Request for proposals" includes all documents, including documents that
1364 are attached or incorporated by reference, used for soliciting proposals to provide a
1365 procurement item to a procurement unit.

1366 (40) "Request for statement of qualifications" means all documents used to solicit
1367 information about the qualifications of the person interested in responding to a potential
1368 procurement, including documents attached or incorporated by reference.

1369 ~~[(39)]~~ (41) "Requirements contract" means a contract:

1370 (a) where a contractor agrees to provide a procurement unit's entire requirements for
1371 certain procurement items at prices specified in the contract during the contract period; and

1372 (b) that:

1373 (i) does not require a minimum purchase amount; or

1374 (ii) provides a maximum purchase limit.

1375 ~~[(40)]~~ (42) "Responsible" means ~~[that a bidder or offeror: (a) is]~~ being capable, in all
1376 respects, of: ~~[to fully perform the contract requirements solicited in an invitation for bids or a~~
1377 ~~request for proposals; and]~~

1378 ~~[(b) has the integrity and reliability to ensure good faith performance.]~~

1379 (a) meeting all the requirements of a solicitation; and

1380 (b) fully performing all the requirements of the contract resulting from the solicitation,
1381 including being financially solvent with sufficient financial resources to perform the contract.

1382 ~~[(41)]~~ (43) "Responsive" means ~~[that a bidder or offeror submits a response to an~~
1383 ~~invitation for bids or a request for proposals that conforms]~~ conforming in all material respects
1384 to the invitation for bids or request for proposals.

1385 ~~[(42)]~~ (44) "Sealed" means manually or electronically sealed and submitted bids or
1386 proposals.

1387 ~~[(43)]~~ (45) (a) "Services" means the furnishing of labor, time, or effort by a contractor,
1388 not involving the delivery of a specific end product other than a report that is incidental to the
1389 required performance.

1390 (b) "Services" does not include an employment agreement or a collective bargaining
1391 agreement.

1392 (46) "Sole source contract" means a contract resulting from a sole source procurement.

1393 (47) "Sole source procurement" means a procurement without competition pursuant to
1394 a determination under Subsection [63G-6a-802\(2\)\(a\)](#) that there is only one source for the
1395 procurement item.

1396 (48) "Solicitation" means an invitation for bids, request for proposals, notice of a sole
1397 source procurement, request for statement of qualifications, request for information, or any
1398 document used to obtain bids, proposals, pricing, qualifications, or information for the purpose
1399 of entering into a procurement contract.

1400 [~~(44)~~] (49) "Specification" means any description of the physical or functional
1401 characteristics, or nature of a procurement item included in an invitation for bids or a request
1402 for proposals, or otherwise specified or agreed to by a procurement unit, including a description
1403 of:

- 1404 (a) a requirement for inspecting or testing a procurement item; or
- 1405 (b) preparing a procurement item for delivery.

1406 [~~(45)~~] (50) "Standard procurement process" means one of the following methods of
1407 obtaining a procurement item:

- 1408 (a) bidding, as described in Part 6, Bidding;
- 1409 (b) request for proposals, as described in Part 7, Request for Proposals; or
- 1410 (c) small purchases, in accordance with the requirements established under Section
1411 [63G-6a-408](#).

1412 [~~(46)~~] (51) "State cooperative contract" means a contract awarded by the division for
1413 and in behalf of all public entities.

1414 (52) "Statement of qualifications" means a written statement submitted to a
1415 procurement unit in response to a request for statement of qualifications.

1416 [~~(47)~~] (53) (a) "Subcontractor" means a person under contract with a contractor or
1417 another subcontractor to provide services or labor for design or construction.

1418 (b) "Subcontractor" includes a trade contractor or specialty contractor.

1419 (c) "Subcontractor" does not include a supplier who provides only materials,
1420 equipment, or supplies to a contractor or subcontractor.

1421 [~~(48)~~] (54) "Supplies" means all property, including equipment, materials, and printing.

1422 [~~(49)~~] (55) "Tie bid" means that the lowest responsive and responsible bids are
1423 identical in price.

1424 [~~(50)~~] (56) "Time and materials contract" means a contract where the contractor is
1425 paid:

1426 (a) the actual cost of direct labor at specified hourly rates;

1427 (b) the actual cost of materials and equipment usage; and

1428 (c) an additional amount, expressly described in the contract, to cover overhead and
1429 profit, that is not based on a percentage of the cost to the contractor.

1430 Section 20. Section **63G-6a-104** is amended to read:

1431 **63G-6a-104. Definitions of government entities.**

1432 As used in this chapter:

1433 (1) "Applicable rulemaking authority" means:

1434 (a) as it relates to a legislative procurement unit, the Legislative Management
1435 Committee, which shall adopt a policy establishing requirements applicable to a legislative
1436 procurement unit;

1437 (b) as it relates to a judicial procurement unit, the Judicial Council;

1438 (c) as it relates to an executive branch procurement unit, except to the extent provided
1439 in Subsections (1)(d) through (g), the board;

1440 (d) as it relates to the State Building Board, created in Section 63A-5-101, the State
1441 Building Board, but only to the extent that the rules relate to procurement authority expressly
1442 granted to the State Building Board by statute;

1443 (e) as it relates to the Division of Facilities Construction and Management, created in
1444 Section 63A-5-201, the director of the Division of Facilities Construction and Management,
1445 but only to the extent that the rules relate to procurement authority expressly granted to the
1446 Division of Facilities Construction and Management by statute;

1447 (f) as it relates to the Office of the Attorney General, the attorney general, but only to
1448 the extent that the rules relate to procurement authority expressly granted to the attorney
1449 general by statute;

1450 (g) as it relates to the Department of Transportation, created in Section 72-1-201, the
1451 executive director of the Department of Transportation, but only to the extent that the rules
1452 relate to procurement authority expressly granted to the Department of Transportation by
1453 statute;

1454 (h) as it relates to a local government procurement unit, the legislative body of the local
1455 government procurement unit, not as a delegation of authority from the Legislature, but under
1456 the local government procurement unit's own legislative authority;

1457 (i) as it relates to a school district or a public school, the Utah State Procurement Policy
1458 Board, except to the extent that a school district makes its own nonadministrative rules, with
1459 respect to a particular subject, that do not conflict with the provisions of this chapter;

1460 (j) as it relates to a state institution of higher education, the State Board of Regents;

1461 (k) as it relates to a public transit district, the chief executive of the public transit

1462 district;

1463 (l) as it relates to a local district or a special service district:

1464 (i) before ~~[May 13, 2014]~~ January 1, 2015, the board of trustees of the local district or
1465 the governing body of the special service district; or

1466 (ii) on or after ~~[May 13, 2014]~~ January 1, 2015, the board, except to the extent that the
1467 board of trustees of the local district or the governing body of the special service district makes
1468 its own rules:

1469 (A) with respect to a subject addressed by board rules; or

1470 (B) that are in addition to board rules; or

1471 (m) as it relates to a procurement unit, other than a procurement unit described in

1472 Subsections (1)(a) through (l), the board.

1473 (2) "Board" means the Utah State Procurement Policy Board, created in Section
1474 [63G-6a-202](#).

1475 (3) "Building board" means the State Building Board created in Section [63A-5-101](#).

1476 (4) "Conservation district" is as defined in Section [17D-3-102](#).

1477 (5) "Cooperative purchasing organization" means an organization, association, or
1478 alliance of purchasers established to combine purchasing power in order to obtain the best
1479 value for the purchasers by engaging in procurements in accordance with Section [63G-6a-2105](#).

1480 ~~[(5)]~~ (6) "Division" means the Division of Purchasing and General Services.

1481 ~~[(6)]~~ (7) "Educational procurement unit" means:

1482 (a) a school district;

1483 (b) a public school, including a local school board or a charter school;

1484 (c) Utah Schools for the Deaf and Blind;

1485 (d) the Utah Education Network; or

1486 (e) an institution of higher education of the state.

1487 ~~[(7)]~~ (8) "Executive branch procurement unit" means each department, division, office,
1488 bureau, agency, or other organization within the state executive branch, including the division
1489 and the attorney general's office.

1490 ~~[(8)]~~ "External procurement unit" means:

1491 ~~[(a)]~~ a buying organization not located in this state which, if located in this state, would
1492 qualify as a procurement unit; or]

1493 [~~(b) an agency of the United States.~~]

1494 (9) "Judicial procurement unit" means:

1495 (a) the Utah Supreme Court;

1496 (b) the Utah Court of Appeals;

1497 (c) the Judicial Council;

1498 (d) a state judicial district; or

1499 (e) each office, committee, subcommittee, or other organization within the state

1500 judicial branch.

1501 (10) "Legislative procurement unit" means:

1502 (a) the Legislature;

1503 (b) the Senate;

1504 (c) the House of Representatives;

1505 (d) a staff office of an entity described in Subsection (10)(a), (b), or (c); or

1506 (e) each office, committee, subcommittee, or other organization within the state

1507 legislative branch.

1508 (11) "Local building authority" is as defined in Section [17D-2-102](#).

1509 (12) "Local district" is as defined in Section [17B-1-102](#).

1510 (13) "Local government procurement unit" means:

1511 (a) a county or municipality, and each office or agency of the county or municipality,
1512 unless the county or municipality adopts its own procurement code by ordinance;

1513 (b) a county or municipality, and each office or agency of the county or municipality,
1514 that has adopted this entire chapter by ordinance; or

1515 (c) a county or municipality, and each office or agency of the county or municipality,
1516 that has adopted a portion of this chapter by ordinance, to the extent that the term is used in the
1517 adopted portion of this chapter.

1518 (14) (a) "Procurement unit" means:

1519 (i) a legislative procurement unit;

1520 (ii) an executive branch procurement unit;

1521 (iii) a judicial procurement unit;

1522 (iv) an educational procurement unit;

1523 (v) a local government procurement unit;

- 1524 (vi) a local district;
- 1525 (vii) a special service district;
- 1526 (viii) a local building authority;
- 1527 (ix) a conservation district;
- 1528 (x) a public corporation; or
- 1529 (xi) a public transit district.
- 1530 (b) "Procurement unit" does not include a political subdivision created under Title 11,
- 1531 Chapter 13, Interlocal Cooperation Act.
- 1532 (15) "Public corporation" is as defined in Section [63E-1-102](#).
- 1533 (16) "Public entity" means any state government entity or a political subdivision of the
- 1534 state, including:
- 1535 (a) a procurement unit;
- 1536 (b) a municipality or county, regardless of whether the municipality or county has
- 1537 adopted this chapter or any part of this chapter; and
- 1538 (c) any other government entity located in Utah that expends public funds.
- 1539 (17) "Public transit district" means a public transit district organized under Title 17B,
- 1540 Chapter 2a, Part 8, Public Transit District Act.
- 1541 (18) "Special service district" is as defined in Section [17D-1-102](#).
- 1542 Section 21. Section **63G-6a-106** is amended to read:
- 1543 **63G-6a-106. Specific statutory authority -- Limitations on authority of chief**
- 1544 **procurement officer and division.**
- 1545 ~~[(1) The procurement authority given to a procurement unit under the following~~
- 1546 ~~provisions shall be retained, and shall be applied only to the extent described in those~~
- 1547 ~~provisions:]~~
- 1548 (1) A procurement unit with procurement authority under the following provisions has
- 1549 independent procurement authority to the extent of the applicable provisions and for the
- 1550 procurement items specified in the applicable provisions:
- 1551 (a) Title 53B, State System of Higher Education;
- 1552 (b) Title 63A, Chapter 5, State Building Board - Division of Facilities Construction
- 1553 and Management;
- 1554 (c) Title 67, Chapter 5, Attorney General;

1555 (d) Title 72, Transportation Code; and

1556 (e) Title 78A, Chapter 5, District [~~Courts~~] Court.

1557 (2) Except as otherwise provided in Sections 63G-6a-105 and 63G-6a-107, a
1558 procurement unit shall conduct a procurement in accordance with this chapter.

1559 (3) (a) The Department of Transportation may make rules governing the procurement
1560 of highway construction or improvement.

1561 (b) The applicable rulemaking authority for a public transit district may make rules
1562 governing the procurement of a transit construction project or a transit improvement project.

1563 (c) This Subsection (3) supersedes Subsections (1) and (2).

1564 [~~(4) Except to the extent otherwise agreed to in a memorandum of understanding~~
1565 ~~between the division and the following entities, the authority of the chief procurement officer~~
1566 ~~and of the division does not extend to a procurement unit with independent procurement~~
1567 ~~authority.]~~

1568 [~~(5) An entity described in Subsection (4) may, without supervision, interference, or~~
1569 ~~involvement by the chief procurement officer or the division, but consistent with the~~
1570 ~~requirements of this chapter:]~~

1571 (4) (a) A procurement unit listed in Subsection (4)(b) may, without the supervision,
1572 interference, oversight, control, or involvement of the division or the chief procurement officer,
1573 but in accordance with the requirements of this chapter:

1574 [~~(a)~~] (i) engage in a standard procurement process;

1575 [~~(b)~~] (ii) procure an item under an exception, as provided in this chapter, to the
1576 requirement to use a standard procurement process; or

1577 [~~(c)~~] (iii) otherwise engage in an act authorized or required by this chapter.

1578 (b) The procurement units to which Subsection (4)(a) applies are:

1579 (i) a legislative procurement unit;

1580 (ii) a judicial procurement unit;

1581 (iii) an educational procurement unit;

1582 (iv) a local government procurement unit;

1583 (v) a conservation district;

1584 (vi) a local building authority;

1585 (vii) a local district;

1586 (viii) a public corporation;
1587 (ix) a special service district;
1588 (x) a public transit district; and
1589 (xi) a procurement unit referred to in Subsection (1), to the extent authorized in
1590 Subsection (1).

1591 (c) A procurement unit with independent procurement authority shall comply with the
1592 requirements of this chapter.

1593 (d) Notwithstanding Subsection (4)(a), a procurement unit with independent
1594 procurement authority may agree in writing with the division to extend the authority of the
1595 division or the chief procurement officer to the procurement unit, as provided in the agreement.

1596 ~~[(6)]~~ (5) (a) The attorney general may, in accordance with the provisions of this
1597 chapter, but without involvement by the division or the chief procurement officer:

1598 ~~[(a)]~~ (i) retain outside counsel; or
1599 ~~[(b)]~~ (ii) procure litigation support services, including retaining an expert witness.

1600 ~~[(7) An entity described in Subsection (4)]~~

1601 (b) A procurement unit with independent procurement authority that is not represented
1602 by the attorney general's office may, in accordance with the provisions of this chapter, but
1603 without involvement by the division or the chief procurement officer:

1604 ~~[(a)]~~ (i) retain outside counsel; or
1605 ~~[(b)]~~ (ii) procure litigation support services, including retaining an expert witness.

1606 ~~[(8)]~~ (b) The state auditor's office may, in accordance with the provisions of this
1607 chapter, but without involvement by the division or the chief procurement officer, procure audit
1608 services.

1609 ~~[(9)]~~ (7) The state treasurer may, in accordance with the provisions of this chapter, but
1610 without involvement by the division or the chief procurement officer, procure:

1611 (a) deposit and investment services; and

1612 (b) services related to issuing bonds.

1613 Section 22. Section **63G-6a-107** is amended to read:

1614 **63G-6a-107. Exemptions from chapter -- Compliance with federal law.**

1615 (1) Except for Part ~~[23]~~ 24, Unlawful Conduct and Penalties, the provisions of this
1616 chapter ~~[are not applicable]~~ do not apply to:

- 1617 (a) funds administered under the Percent-for-Art Program of the Utah Percent-for-Art
 1618 Act;
- 1619 (b) grants awarded by the state or contracts between the state and any of the following:
- 1620 (i) an educational procurement unit;
- 1621 (ii) a conservation district;
- 1622 (iii) a local building authority;
- 1623 (iv) a local district;
- 1624 (v) a public corporation;
- 1625 (vi) a special service district;
- 1626 (vii) a public transit district; or
- 1627 (viii) two or more of the entities described in Subsections (1)(b)(i) through (vii), acting
 1628 under legislation that authorizes intergovernmental cooperation;
- 1629 (c) medical supplies or medical equipment, including service agreements for medical
 1630 equipment, obtained through a purchasing consortium by the Utah State Hospital, the Utah
 1631 State Developmental Center, the University of Utah Hospital, or any other hospital owned by
 1632 the state or a political subdivision of the state, if:
- 1633 (i) the consortium uses a competitive procurement process; and
- 1634 (ii) the chief administrative officer of the hospital makes a written finding that the
 1635 prices for purchasing medical supplies and medical equipment through the consortium are
 1636 competitive with market prices; or
- 1637 (d) goods purchased for resale~~;~~ to the public.
- 1638 [~~(e) any action taken by a majority of both houses of the Legislature.~~]
- 1639 [~~(2) (a) Notwithstanding Subsection (1), the provisions of Part 23, Unlawful Conduct~~
 1640 ~~and Penalties, are not applicable to an entity described in Subsection (1)(b)(ii), (iii), (iv), (vi),~~
 1641 ~~(vii), or (viii).~~]
- 1642 [~~(b)~~] (2) This chapter does not prevent a procurement unit from complying with the
 1643 terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.
- 1644 (3) This chapter does not apply to any action taken by a majority of both houses of the
 1645 Legislature.
- 1646 [~~(3)~~] (4) Notwithstanding any conflicting provision of this chapter, when a
 1647 procurement involves the expenditure of federal assistance, federal contract funds, local

1648 matching funds, or federal financial participation funds, the procurement unit shall comply
1649 with mandatory applicable federal law and regulations not reflected in this chapter.

1650 ~~[(4)]~~ (5) This chapter does not supersede the requirements for retention or withholding
1651 of construction proceeds and release of construction proceeds as provided in Section [13-8-5](#).

1652 Section 23. Section **63G-6a-108** is amended to read:

1653 **63G-6a-108. Limitations on and responsibility of executive branch procurement**
1654 **units.**

1655 (1) ~~[Except as provided in Subsection (2), a]~~ An executive branch procurement unit
1656 may not engage in a procurement unless:

1657 (a) the procurement is made under the direction and control of the division; or

1658 ~~[(b) the division, pursuant to rules made by the board, permits the procurement unit to~~
1659 ~~make the procurement on its own.]~~

1660 ~~[(2) Subsection (1) does not apply to the following procurement units, all of which~~
1661 ~~have independent procurement authority:]~~

1662 ~~[(a) a legislative procurement unit;]~~

1663 ~~[(b) a judicial procurement unit;]~~

1664 ~~[(c) an educational procurement unit;]~~

1665 ~~[(d) a local government procurement unit;]~~

1666 ~~[(e) a conservation district;]~~

1667 ~~[(f) a local building authority;]~~

1668 ~~[(g) a local district;]~~

1669 ~~[(h) a public corporation;]~~

1670 ~~[(i) a special service district;]~~

1671 ~~[(j) the Utah Housing Corporation; or]~~

1672 ~~[(k) a public transit district.]~~

1673 ~~[(3) A procurement unit with independent procurement authority is not exempt from~~
1674 ~~complying with the requirements of this chapter.]~~

1675 (b) the procurement is made under Section [63G-6a-106](#).

1676 (2) An executive branch procurement unit that conducts any part of a procurement
1677 under this chapter is responsible to conduct that part of the procurement in compliance with
1678 this chapter.

1679 Section 24. Section **63G-6a-109** is enacted to read:

1680 **63G-6a-109. Issuing procurement unit and conducting procurement unit.**

1681 (1) With respect to a procurement by an executive branch procurement unit:

1682 (a) the division is the issuing procurement unit; and

1683 (b) the executive branch procurement unit is the conducting procurement unit and is
1684 responsible to ensure that the procurement is conducted in compliance with this chapter.

1685 (2) With respect to a procurement by any other procurement unit, the procurement unit
1686 is both the issuing procurement unit and the conducting procurement unit.

1687 Section 25. Section **63G-6a-204** is amended to read:

1688 **63G-6a-204. Applicability of rules and regulations of Utah State Procurement**
1689 **Policy Board and State Building Board -- Report to interim committee.**

1690 (1) Except as provided in Subsection (2), rules made by the board under this chapter
1691 shall govern all procurement units for which the board is the applicable rulemaking authority.

1692 (2) The building board rules governing procurement of construction, architect-engineer
1693 services, and leases apply to the procurement of construction, architect-engineer services, and
1694 leases of real property by the Division of Facilities Construction and Management.

1695 (3) An applicable rulemaking authority may make its own rules, consistent with this
1696 chapter, governing procurement by a person over which the applicable rulemaking authority
1697 has rulemaking authority.

1698 (4) The board shall make a report on or before July 1 of each year to a legislative
1699 interim committee, designated by the Legislative Management Committee created under
1700 Section **36-12-6**, on the establishment, implementation, and enforcement of the rules made
1701 under Section **63G-6a-203**.

1702 (5) Notwithstanding Subsection **63G-3-301**(13)(b), an applicable rulemaking authority
1703 is ~~is~~, ~~on or before May 13, 2014,~~ required to initiate rulemaking proceedings, for rules required
1704 to be made under this chapter ~~is~~, on or before:

1705 (a) May 13, 2014, if the applicable rulemaking authority is the board; or

1706 (b) January 1, 2015, for each other applicable rulemaking authority.

1707 Section 26. Section **63G-6a-303** is amended to read:

1708 **63G-6a-303. Duties of chief procurement officer.**

1709 (1) Except as otherwise specifically provided in this chapter, the chief procurement

1710 officer serves as the central procurement officer of the state and shall:

1711 ~~[(1)]~~ (a) adopt office policies governing the internal functions of the division;

1712 ~~[(2)]~~ (b) procure or supervise each procurement over which the chief procurement

1713 officer has authority;

1714 ~~[(3)]~~ (c) establish and maintain programs for the inspection, testing, and acceptance of

1715 each procurement item over which the chief procurement officer has authority;

1716 ~~[(4)]~~ (d) prepare statistical data concerning each procurement and procurement usage

1717 of a state procurement unit;

1718 ~~[(5)]~~ (e) ensure that:

1719 ~~[(a)]~~ (i) before approving a procurement not covered by an existing statewide contract

1720 for information technology or telecommunications supplies or services, the chief information

1721 officer and the agency have stated in writing to the division that the needs analysis required in

1722 Section 63F-1-205 was completed, unless the procurement is approved in accordance with

1723 Title 63M, Chapter 1, Part 26, Government Procurement Private Proposal Program; and

1724 ~~[(b)]~~ (ii) the oversight authority required by Subsection (5)(a) is not delegated outside

1725 the division; ~~[and]~~

1726 ~~[(6)]~~ (f) provide training to procurement units and to persons who do business with

1727 procurement units[-];

1728 (g) if the chief procurement officer determines that a procurement over which the chief

1729 procurement officer has authority is out of compliance with this chapter or board rules:

1730 (i) correct or amend the procurement to bring it into compliance; or

1731 (ii) cancel the procurement, if:

1732 (A) it is not feasible to bring the procurement into compliance; or

1733 (B) the chief procurement officer determines that it is in the best interest of the state to

1734 cancel the procurement; and

1735 (h) if the chief procurement officer determines that a contract over which the chief

1736 procurement officer has authority is out of compliance with this chapter or board rules, correct

1737 or amend the contract to bring it into compliance or cancel the contract:

1738 (i) if the chief procurement officer determines that correcting, amending, or canceling

1739 the contract is in the best interest of the state; and

1740 (ii) after consultation with the attorney general's office.

- 1741 (2) The chief procurement officer may:
1742 (a) correct, amend, or cancel a procurement as provided in Subsection (1)(g) at any
1743 stage of the procurement process; and
1744 (b) correct, amend, or cancel a contract as provided in Subsection (1)(h) at any time
1745 during the term of the contract.

1746 Section 27. Section **63G-6a-402** is amended to read:

1747 **63G-6a-402. Procurement unit required to comply with Utah Procurement Code**
1748 **and applicable rules -- Rulemaking authority -- Reporting.**

1749 (1) Except as otherwise provided in Section **63G-6a-107**, Section **63G-6a-403**, Part 8,
1750 Exceptions to Procurement Requirements, or elsewhere in this chapter, a procurement unit may
1751 not obtain a procurement item, unless:

1752 (a) if the procurement unit is the division or a procurement unit with independent
1753 procurement authority, the procurement unit:

1754 (i) uses a standard procurement process or an exception to a standard procurement
1755 process, described in Part 8, Exceptions to Procurement Requirements; and

1756 (ii) complies with:

1757 (A) the requirements of this chapter; and

1758 (B) the rules made pursuant to this chapter by the applicable rulemaking authority;

1759 (b) if the procurement unit is a county, a municipality, or the Utah Housing
1760 Corporation, the procurement unit complies with:

1761 (i) the requirements of this chapter that are adopted by the procurement unit; and

1762 (ii) all other procurement requirements that the procurement unit is required to comply
1763 with; or

1764 (c) if the procurement unit is not a procurement unit described in [~~Subsections~~]

1765 Subsection (1)(a) or (b), the procurement unit:

1766 (i) obtains the procurement item under the direction and approval of the division,
1767 unless otherwise provided by a rule made by the board;

1768 (ii) uses a standard procurement process; and

1769 (iii) complies with:

1770 (A) the requirements of this chapter; and

1771 (B) the rules made pursuant to this chapter by the applicable rulemaking authority.

1772 (2) Subject to Subsection (3), the applicable rulemaking authority shall make rules
1773 relating to the management and control of procurements and procurement procedures by a
1774 procurement unit.

1775 (3) (a) Rules made under Subsection (2) shall ensure compliance with the federal
1776 contract prohibition provisions of the Sudan Accountability and Divestment Act of 2007 (Pub.
1777 L. No. 110-174) that prohibit contracting with a person doing business in Sudan.

1778 (b) The State Building Board rules governing procurement of construction,
1779 architect-engineer services, and leases apply to the procurement of construction,
1780 architect-engineer services, and leases of real property by the Division of Facilities
1781 Construction and Management.

1782 (4) An applicable rulemaking authority that is subject to Title 63G, Chapter 3, Utah
1783 Administrative Rulemaking Act, shall make the rules described in this chapter in accordance
1784 with the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

1785 (5) The State Building Board shall make a report on or before July 1 of each year to a
1786 legislative interim committee, designated by the Legislative Management Committee created
1787 under Section 36-12-6, on the establishment, implementation, and enforcement of the rules
1788 made by the State Building Board under this chapter.

1789 Section 28. Section **63G-6a-403** is amended to read:

1790 **63G-6a-403. Prequalification of potential vendors.**

1791 (1) [~~(a)~~] As used in this section[, "vendor" means]:

1792 (a) "Closed-ended prequalification process" means a process to prequalify potential
1793 vendors under this section that is characterized by:

1794 (i) a short, specified period of time during which potential vendors may be
1795 prequalified; and

1796 (ii) a specified date at which prequalifications expire.

1797 (b) "Open-ended prequalification process" means a process to prequalify vendors and
1798 potential vendors under this section that is characterized by an indeterminate period of time
1799 during any part of which vendors or potential vendors may be prequalified and the
1800 prequalification of previously prequalified vendors or potential vendors may be periodically
1801 renewed.

1802 (c) "Vendor" means:

- 1803 (i) a bidder;
- 1804 (ii) an offeror; or
- 1805 (iii) a contractor, including an architect or an engineer.
- 1806 ~~[(b)]~~ (2) A procurement unit may, in accordance with this section:
- 1807 ~~[(i)]~~ (a) using a closed-ended prequalification process or an open-ended
- 1808 prequalification process:
- 1809 (i) prequalify potential vendors to provide any procurement item or type of
- 1810 procurement item specified by the procurement unit; ~~[and]~~ or
- 1811 (ii) rank architects, engineers, or other professional service providers to begin the fee
- 1812 negotiation process, as provided in this chapter; and
- 1813 ~~[(i)]~~ (b) limit participation in ~~[an invitation for bids, a request for proposals, or an~~
- 1814 ~~approved vendor list]~~ a standard procurement process to the prequalified potential vendors for
- 1815 the specified procurement item or type of procurement item.
- 1816 ~~[(2)]~~ (3) To prequalify potential vendors ~~[to provide a specified type of procurement~~
- 1817 ~~item]~~ or rank professional service providers, a procurement unit shall issue a request for
- 1818 statement of qualifications.
- 1819 ~~[(3)]~~ (4) A procurement unit that issues a request for statement of qualifications:
- 1820 (a) shall:
- 1821 ~~[(a)]~~ (i) publish the request for statement of qualifications in accordance with the
- 1822 requirements of Section ~~[63G-6a-402]~~ 63G-6a-406; and
- 1823 ~~[(b)]~~ (ii) state in the request for statement of qualifications:
- 1824 ~~[(i)]~~ (A) the procurement item or type of procurement item to which the request for
- 1825 statement of qualifications relates;
- 1826 ~~[(ii)]~~ (B) the scope of work to be performed;
- 1827 ~~[(iii)]~~ (C) the instructions and ~~[the]~~ deadline for ~~[providing information in response to~~
- 1828 ~~the request for]~~ submitting a statement of qualifications;
- 1829 ~~[(iv)]~~ (D) the ~~[minimum]~~ criteria ~~[for prequalification]~~ by which the procurement unit
- 1830 will evaluate statements of qualifications;
- 1831 (E) whether the prequalification process is a closed-ended prequalification process or
- 1832 an open-ended prequalification process;
- 1833 ~~[(v)]~~ (F) if the prequalification process is a closed-ended prequalification process, the

1834 period of time during which the list of prequalified potential vendors will remain in effect,
1835 which may not be longer than 18 months after the list of prequalified potential vendors is made
1836 available to the public under Subsection [(8)] (11)(b); ~~and~~

1837 (G) if the prequalification process is an open-ended prequalification process, when a
1838 potential vendor may submit a statement of qualifications for the potential vendor to be
1839 considered for inclusion on the list of prequalified potential vendors; and

1840 ~~[(vi)]~~ (H) that a procurement unit may limit participation in an invitation for bids or a
1841 request for proposals~~[-, during the time period described in Subsection (3)(b)(v);]~~ to the
1842 potential vendors that are prequalified to provide the specified procurement item or type of
1843 procurement item[-]; and

1844 (b) may request the person submitting a statement of qualifications to provide:

1845 (i) basic information about the person;

1846 (ii) the person's experience and work history;

1847 (iii) information about the person's management and staff;

1848 (iv) information about the person's licenses, certifications, and other qualifications;

1849 (v) any applicable performance ratings;

1850 (vi) financial statements reporting the person's financial condition; and

1851 (vii) any other pertinent information.

1852 (5) (a) In order to renew a prequalification, a vendor or potential vendor that has been
1853 previously prequalified through an open-ended prequalification process shall submit a
1854 statement of qualifications no more than 18 months after the previous prequalification of that
1855 vendor or potential vendor.

1856 (b) A previously prequalified vendor or potential vendor submitting a statement of
1857 qualifications under Subsection (5)(a) shall comply with all requirements applicable at that
1858 time to a potential vendor seeking prequalification for the first time.

1859 (6) A procurement unit may at any time modify prequalification requirements of an
1860 open-ended prequalification process.

1861 ~~[(4)]~~ (7) The ~~[minimum]~~ criteria described in Subsection ~~[(3)(b)(iv)]~~ (4)(a)(ii)(D):

1862 (a) shall include the prequalification requirements unique to the procurement;

1863 (b) may include performance rating criteria; and

1864 (c) may not be so restrictive that the criteria unreasonably limit competition.

1865 ~~[(5)]~~ (8) A procurement unit may, before making a final list of prequalified vendors,
 1866 request additional information to clarify responses made to the request for statement of
 1867 qualifications.

1868 ~~[(6)]~~ (9) A potential vendor shall be included on the list of prequalified potential
 1869 vendors if the potential vendor:

1870 (a) submits a timely, responsive response to the request for statement of qualifications;
 1871 and

1872 (b) meets the [~~minimum~~] criteria for qualification described in Subsection ~~[(3)(b)(iv)]~~
 1873 (4)(a)(ii)(D).

1874 ~~[(7)]~~ (10) If a request for statement of qualifications will result in only one potential
 1875 vendor being placed on the list of prequalified potential vendors:

1876 (a) the procurement unit shall cancel the request for statement of qualifications; and

1877 (b) the list may not be used by the procurement unit.

1878 ~~[(8)]~~ (11) The procurement unit shall:

1879 (a) before making the list of prequalified potential vendors available to the public,
 1880 provide each potential vendor who provided information in response to the request, but who
 1881 did not meet the minimum qualifications for placement on the list, a written justification
 1882 statement describing why the potential vendor did not meet the criteria for inclusion on the list;
 1883 and

1884 (b) [~~within 30 days after the day of the deadline described in Subsection (3)(b)(iii),]~~
 1885 make the list of prequalified potential vendors available to the public[-] within 30 days after:

1886 (i) completing the evaluation process, if the prequalification process is a closed-ended
 1887 prequalification process; or

1888 (ii) updating the list of prequalified potential vendors, if the prequalification process is
 1889 an open-ended prequalification process.

1890 Section 29. Section **63G-6a-404** is amended to read:

1891 **63G-6a-404. Approved vendor list.**

1892 (1) (a) As used in this section, "vendor" [is] has the same meaning as defined in

1893 [~~Subsection~~] Section 63G-6a-403~~[(1)(a)]~~.

1894 (b) The process described in this section may not be used for construction projects that
 1895 cost more than an amount specified by the applicable rulemaking authority.

1896 (c) The division or a procurement unit with independent procurement authority may
1897 compile a list of approved vendors from which procurement items may be obtained.

1898 (2) An approved vendor list may only be compiled from timely, responsive responses
1899 received under Section 63G-6a-403 or the process described in Part 15, Architect-Engineer
1900 Services.

1901 (3) In order to ensure equal treatment of vendors on an approved vendor list, for
1902 services other than the services described in Subsection (4) or (5) the procurement unit shall
1903 use one of the following methods in an unbiased manner:

1904 (a) a rotation system, organized alphabetically, numerically, or randomly;

1905 (b) assigning vendors to a specified geographical area; or

1906 (c) classifying each vendor based on each vendor's particular expertise, qualifications,
1907 or field.

1908 (4) (a) For a construction project that costs less than the amount established by the
1909 applicable rulemaking authority, under Subsection (1)(b), a procurement unit shall select a
1910 potential construction contractor from an approved potential contractor list, using an invitation
1911 for bids or a request for proposals.

1912 (b) For architectural or engineering services for a construction project described in
1913 Subsection (4)(a), a procurement unit shall select a potential contractor from an approved
1914 potential contractor list:

1915 (i) using a rotation system, organized alphabetically, numerically, or randomly;

1916 (ii) assigning a potential contractor to a specified geographical area; or

1917 (iii) classifying each potential contractor based on the potential contractor's field or
1918 area of expertise.

1919 (5) A procurement unit may not use an approved vendor list described in this section
1920 for a construction project with a cost that is equal to or greater than the amount established by
1921 the applicable rulemaking authority under Subsection (1)(b).

1922 (6) (a) After selecting a potential contractor under Subsection (4)(b), a procurement
1923 unit shall enter into fee negotiations with the potential contractor.

1924 (b) If, after good faith negotiations, the procurement unit and the potential contractor
1925 are unable to negotiate a fee that is acceptable to both parties, the procurement unit shall select
1926 another contractor under Subsection (4)(b) and enter into fee negotiations with that potential

1927 contractor.

1928 Section 30. Section **63G-6a-406** is amended to read:

1929 **63G-6a-406. Public notice of certain solicitations.**

1930 (1) The division or a procurement unit with independent procurement authority that
1931 issues [~~an invitation for bids, a request for proposals, or a notice of sole source procurement~~] a
1932 solicitation required to be published in accordance with this section, shall provide public notice
1933 that includes:

1934 (a) [~~for an invitation for bids or a request for proposals,~~] the name of the [~~issuing~~]
1935 conducting procurement unit;

1936 (b) the name of the procurement unit acquiring the procurement item;

1937 (c) [~~for an invitation for bids or a request for proposals,~~] information on how to contact
1938 the issuing procurement unit [~~in relation to the invitation for bids or request for proposals~~];

1939 [~~(d) for a notice of sole source procurement, contact information and other information~~
1940 ~~relating to contesting, or obtaining additional information in relation to, the sole source~~
1941 ~~procurement;~~]

1942 [~~(e) for an invitation for bids or a request for proposals, the date of the opening and~~
1943 ~~closing of the invitation for bids or request for proposals;~~]

1944 [~~(f) for a notice of sole source procurement, the earliest date that the procurement unit~~
1945 ~~may make the sole source procurement;~~]

1946 (d) the date of the opening and closing of the solicitation;

1947 [~~(g)~~] (e) information on how to obtain a copy of the [invitation for bids, request for
1948 proposals, or further information related to the sole source procurement; and] procurement
1949 documents;

1950 [~~(h)~~] (f) a general description of the procurement items that will be obtained through
1951 the standard procurement process or sole source procurement[-]; and

1952 (g) for a notice of a sole source procurement;

1953 (i) contact information and other information relating to contesting or obtaining
1954 additional information relating to the sole source procurement; and

1955 (ii) the earliest date that the procurement unit may make the sole source procurement.

1956 (2) Except as provided in Subsection (4), [~~for an invitation for bids or a request for~~
1957 ~~proposals,~~] the issuing procurement unit shall publish the notice described in Subsection (1)[~~;~~]

1958 ~~using at least one of the following methods]:~~

1959 (a) at least seven days before the day of the deadline for submission of a bid or other
1960 response~~[-publish the notice:]; and~~

1961 (b) (i) in a newspaper of general circulation in the state; [~~or~~]

1962 (ii) in a newspaper of local circulation in the area:

1963 (A) directly impacted by the procurement; or

1964 (B) over which the procurement unit has jurisdiction; [~~or~~]

1965 [~~(b) at least seven consecutive days before the day of the deadline for submission of a~~
1966 ~~bid or other response, publish the notice:]~~

1967 [(~~†~~)] (iii) on the main website for the issuing procurement unit or the procurement unit
1968 acquiring the procurement item; or

1969 [(~~†~~)] (iv) on a state website that is owned, managed by, or provided under contract
1970 with, the division for posting a public procurement notice.

1971 (3) Except as provided in Subsection (4), for a sole source procurement for which
1972 notice is required to be published in accordance with this section, the issuing procurement unit
1973 [~~making the sole source procurement~~] shall publish the notice described in Subsection (1)~~];~~
1974 ~~using at least one of the following methods]:~~

1975 (a) at least seven days before the [~~day on which the procurement unit makes the~~
1976 ~~acquisition of the sole source procurement[-publish the notice:]~~ item; and

1977 (b) (i) in a newspaper of general circulation in the state; [~~or~~]

1978 (ii) in a newspaper of local circulation in the area:

1979 (A) directly impacted by the procurement; or

1980 (B) over which the procurement unit has jurisdiction; [~~or~~]

1981 [~~(b) at least seven consecutive days before the day on which the procurement unit~~
1982 ~~makes the sole source procurement, publish the notice:]~~

1983 [(~~†~~)] (iii) on the main website for the procurement unit acquiring the procurement item;
1984 or

1985 [(~~†~~)] (iv) on a state website that is owned by, managed by, or provided under contract
1986 with, the division for posting a procurement notice.

1987 (4) An issuing procurement unit~~[-or the procurement unit making a sole source~~
1988 ~~procurement]~~ may reduce the seven-day period described in Subsection (2) or (3), if the

1989 procurement officer or the procurement officer's designee signs a written statement that:

1990 (a) states that a shorter time is needed; and

1991 (b) [~~as it relates to an invitation for bids or a request for proposals,~~] determines that
1992 competition from multiple sources may be obtained within the shorter period of time.

1993 (5) (a) An issuing procurement unit shall make a copy of [~~an invitation for bids or a~~
1994 ~~request for proposals~~] the solicitation documents available for public inspection at the main
1995 office of the issuing procurement unit or on the website described in Subsection (2)(b) until the
1996 award of the contract or the cancellation of the procurement.

1997 (b) A procurement unit [~~making~~] issuing a sole source procurement shall make a copy
1998 of information related to the sole source procurement available for public inspection at the
1999 main office of the procurement unit or on the website described in Subsection (3)(b) until the
2000 award of the contract or the cancellation of the procurement.

2001 (c) A procurement unit shall maintain all records in accordance with Part 20, Records.
2002 Section 31. Section **63G-6a-408** is amended to read:

2003 **63G-6a-408. Small purchases.**

2004 (1) As used in this section:

2005 (a) "Annual cumulative threshold" means the maximum total annual amount,
2006 established by the applicable rulemaking authority under Subsection (2)(a)(i), that a
2007 procurement unit may expend to obtain procurement items from the same source under this
2008 section.

2009 (b) "Individual procurement threshold" means the maximum amount, established by
2010 the applicable rulemaking authority under Subsection (2)(a)(ii), for which a procurement unit
2011 may purchase a procurement item under this section.

2012 (c) "Single procurement aggregate threshold" means the maximum total amount,
2013 established by the applicable rulemaking authority under Subsection (2)(a)(iii), that a
2014 procurement unit may expend to obtain multiple procurement items from one source at one
2015 time under this section.

2016 (2) The applicable rulemaking authority may make rules governing small purchases,
2017 including:

2018 (a) establishing expenditure thresholds, including:

2019 (i) an annual cumulative threshold;

- 2020 (ii) an individual procurement threshold; and
- 2021 (iii) a single procurement aggregate threshold;
- 2022 (b) establishing procurement requirements relating to the thresholds described in
- 2023 Subsection (2)(a); and
- 2024 (c) the use of electronic, telephone, or written quotes.
- 2025 (3) Expenditures made under this section by a procurement unit may not exceed a
- 2026 threshold established by the applicable rulemaking authority, unless the chief procurement
- 2027 officer or the head of a procurement unit with independent procurement authority gives written
- 2028 authorization to exceed the threshold that includes the reasons for exceeding the threshold.
- 2029 (4) Except as provided in Subsection (5), an executive branch procurement unit may
- 2030 not obtain a procurement item through a small purchase standard procurement process if the
- 2031 procurement item may be obtained through a state cooperative contract or a contract awarded
- 2032 by the chief procurement officer under Subsection [63G-6a-2105\(1\)](#).
- 2033 (5) Subsection (4) does not apply if:
- 2034 (a) the procurement item is obtained for an unanticipated, urgent or unanticipated,
- 2035 emergency condition, including:
- 2036 (i) an item needed to avoid stopping a public construction project;
- 2037 (ii) an immediate repair to a facility or equipment; or
- 2038 (iii) another emergency condition; ~~H~~ → [or] ← ~~H~~
- 2039 (b) the chief procurement officer or the head of a procurement unit that is an executive
- 2040 branch procurement unit with independent procurement authority:
- 2041 (i) determines in writing that it is in the best interest of the procurement unit to obtain
- 2042 an individual procurement item outside of the state contract, comparing:
- 2043 (A) the contract terms and conditions applicable to the procurement item under the
- 2044 state contract with the contract terms and conditions applicable to the procurement item if the
- 2045 procurement item is obtained outside of the state contract;
- 2046 (B) the maintenance and service applicable to the procurement item under the state
- 2047 contract with the maintenance and service applicable to the procurement item if the
- 2048 procurement item is obtained outside of the state contract;
- 2049 (C) the warranties applicable to the procurement item under the state contract with the
- 2050 warranties applicable to the procurement item if the procurement item is obtained outside of

2051 the state contract;

2052 (D) the quality of the procurement item under the state contract with the quality of the
2053 procurement item if the procurement item is obtained outside of the state contract; and

2054 (E) the cost of the procurement item under the state contract with the cost of the
2055 procurement item if the procurement item is obtained outside of the state contract;

2056 (ii) for a procurement item that, if defective in its manufacture, installation, or
2057 performance, may result in serious physical injury, death, or substantial property damage,
2058 determines in writing that the terms and conditions, relating to liability for injury, death, or
2059 property damage, available from the source other than the contractor who holds the state
2060 contract, are similar to, or better than, the terms and conditions available under the state
2061 contract; and

2062 (iii) grants an exception, in writing, to the requirement described in

2062a Subsection (4) ~~H~~→ [:-] ; **or**

2062b **(c)(i) the cost of the procurement item does not exceed \$100; and**

2062c **(ii) the closest physical location of the contractor providing the procurement item under**
2062d **a state cooperative contract or contract awarded by the chief procurement officer is more than**
2062e **60 miles from the procurement unit's location where the procurement item is needed.** ←~~H~~

2063 (6) Except as otherwise expressly provided in this section, a procurement unit:

2064 (a) may not use the small purchase standard procurement process described in this
2065 section for ongoing, continuous, and regularly scheduled procurements that exceed the annual
2066 cumulative threshold; and

2067 (b) shall make its ongoing, continuous, and regularly scheduled procurements that
2068 exceed the annual cumulative threshold through a contract awarded through another standard
2069 procurement process described in this chapter or an applicable exception to another standard
2070 procurement process, described in Part 8, Exceptions to Procurement Requirements.

2071 (7) This section does not prohibit regularly scheduled payments for a procurement item
2072 obtained under another provision of this chapter.

2073 (8) (a) It is unlawful for a person to intentionally or knowingly divide a procurement
2074 into one or more smaller procurements with the intent to make a procurement:

2075 [~~(a)~~] (i) qualify as a small purchase, if, before dividing the procurement, it would not
2076 have qualified as a small purchase; or

2077 [~~(b)~~] (ii) meet a threshold established by rule made by the applicable rulemaking
2078 authority, if, before dividing the procurement, it would not have met the threshold.

2079 (b) A person who engages in the conduct made unlawful under Subsection (8)(a) is
2080 guilty of:

2081 (i) a second degree felony, if the value of the procurement before being divided is

2082 \$1,000,000 or more;

2083 (ii) a third degree felony, if the value of the procurement before being divided is

2084 \$250,000 or more but less than \$1,000,000;

2085 (iii) a class A misdemeanor, if the value of the procurement before being divided is

2086 \$100,000 or more but less than \$250,000; or

2087 (iv) a class B misdemeanor, if the value of the procurement before being divided is less

2088 than \$100,000.

2089 (9) A division of a procurement that is prohibited under Subsection (8) includes doing

2090 any of the following with the intent or knowledge described in Subsection (8):

2091 (a) making two or more separate purchases;

2092 (b) dividing an invoice or purchase order into two or more invoices or purchase orders;

2093 or

2094 (c) making smaller purchases over a period of time.

2095 (10) A person who violates Subsection (8) is subject to the criminal penalties described

2096 in Section [~~63G-6a-2305~~] [63G-6a-2405](#).

2097 (11) The Division of Finance within the Department of Administrative Services may

2098 conduct an audit of an executive branch procurement unit to verify compliance with the

2099 requirements of this section.

2100 (12) An executive branch procurement unit may not make a small purchase after

2101 January 1, 2014, unless the chief procurement officer certifies that the person responsible for

2102 procurements in the procurement unit has satisfactorily completed training on this section and

2103 the rules made under this section.

2104 Section 32. Section **63G-6a-603** is amended to read:

2105 **63G-6a-603. Invitation for bids -- Contents -- Notice.**

2106 (1) The bidding standard procurement process begins when the [~~division or a~~

2107 ~~procurement unit with independent procurement authority~~] issuing procurement unit issues an

2108 invitation for bids.

2109 (2) An invitation for bids shall:

2110 (a) state the period of time during which bids will be accepted;

2111 (b) describe the manner in which a bid shall be submitted;

2112 (c) state the place where a bid shall be submitted; and

2113 (d) include, or incorporate by reference:
2114 (i) a description of the procurement items sought;
2115 (ii) the objective criteria that will be used to evaluate the bids; and
2116 (iii) the required contractual terms and conditions.
2117 (3) An issuing procurement unit shall publish an invitation for bids in accordance with
2118 the requirements of Section [63G-6a-406](#).

2119 Section 33. Section **63G-6a-606** is amended to read:

2120 **63G-6a-606. Evaluation of bids -- Award -- Cancellation -- Disqualification.**

2121 (1) [~~The division or a~~] A procurement unit [~~with independent procurement authority~~]
2122 that conducts a procurement using a bidding standard procurement process shall evaluate each
2123 bid using the objective criteria described in the invitation for bids, which may include:

- 2124 (a) experience;
- 2125 (b) performance ratings;
- 2126 (c) inspection;
- 2127 (d) testing;
- 2128 (e) quality;
- 2129 (f) workmanship;
- 2130 (g) time and manner of delivery;
- 2131 (h) references;
- 2132 (i) financial stability;
- 2133 (j) cost;
- 2134 (k) suitability for a particular purpose; or
- 2135 (l) other objective criteria specified in the invitation for bids.

2136 (2) Criteria not described in the invitation for bids may not be used to evaluate a bid.

2137 (3) The conducting procurement unit shall:

- 2138 (a) award the contract as soon as practicable to:
2139 (i) the lowest responsive and responsible bidder who meets the objective criteria
2140 described in the invitation for bids; or

2141 (ii) if, in accordance with Subsection (4), the procurement officer or the head of the
2142 conducting procurement unit disqualifies the bidder described in Subsection (3)(a)(i), the next
2143 lowest responsive and responsible bidder who meets the objective criteria described in the

2144 invitation for bids; or

2145 (b) cancel the invitation for bids without awarding a contract.

2146 (4) In accordance with Subsection (5), the procurement officer or the head of the
2147 conducting procurement unit may disqualify a bidder for:

2148 (a) a violation of this chapter;

2149 (b) a violation of a requirement of the invitation for bids;

2150 (c) unlawful or unethical conduct; or

2151 (d) a change in circumstance that, had the change been known at the time the bid was
2152 submitted, would have caused the bidder to not be the lowest responsive and responsible bidder
2153 who meets the objective criteria described in the invitation for bids.

2154 (5) A procurement officer or head of a conducting procurement unit who disqualifies a
2155 bidder under Subsection (4) shall:

2156 (a) make a written finding, stating the reasons for disqualification; and

2157 (b) provide a copy of the written finding to the disqualified bidder.

2158 (6) If a conducting procurement unit cancels an invitation for bids without awarding a
2159 contract, the conducting procurement unit shall make available for public inspection a written
2160 justification for the cancellation.

2161 Section 34. Section **63G-6a-607** is amended to read:

2162 **63G-6a-607. Action when all bids are over budget.**

2163 (1) Except as provided in Subsection (2) or (3), if the fiscal officer for the conducting
2164 procurement unit certifies that all accepted bids exceed available funds and that the lowest
2165 responsive and responsible bidder does not exceed the available funds by more than 5%, the
2166 procurement officer may negotiate an adjustment of the bid price and bid requirements with the
2167 lowest responsive and responsible bidder in order to bring the bid within the amount of
2168 available funds.

2169 (2) A procurement officer may not adjust the bid requirements under Subsection (1) if
2170 there is a substantial likelihood that, had the adjustment been included in the invitation for
2171 bids, a person that did not submit a bid would have submitted a responsive, responsible, and
2172 competitive bid.

2173 (3) The Division of Facilities Construction and Management is exempt from the
2174 requirements of this section if:

2175 (a) the building board adopts rules governing procedures when all accepted bids exceed
2176 available funds; and

2177 (b) the Division of Facilities Construction and Management complies with the rules
2178 described in Subsection (3)(a).

2179 Section 35. Section **63G-6a-609** is amended to read:

2180 **63G-6a-609. Multiple stage bidding process.**

2181 (1) [~~The division or a~~] A procurement unit [~~with independent procurement authority~~]
2182 that conducts a procurement using a bidding standard procurement process may [~~conduct a bid~~
2183 ~~in~~] use multiple stages[;] to:

- 2184 (a) narrow the number of bidders who will progress to a subsequent stage;
- 2185 (b) prequalify bidders for subsequent stages, in accordance with Section **63G-6a-403**;
- 2186 (c) enter into a contract for a single procurement; or
- 2187 (d) award multiple contracts for a series of upcoming procurements.

2188 (2) The invitation for bids for a multiple stage bidding process shall:

- 2189 (a) describe the requirements for, and purpose of, each stage of the process;
- 2190 (b) indicate whether the procurement unit intends to award:
 - 2191 (i) a single contract; or
 - 2192 (ii) multiple contracts for a series of upcoming procurements; and
- 2193 (c) state that:
 - 2194 (i) the first stage is for prequalification only;
 - 2195 (ii) a bidder may not submit any pricing information in the first stage of the process;

2196 and

2197 (iii) bids in the second stage will only be accepted from a person who prequalifies in
2198 the first stage.

2199 (3) During the first stage, the conducting procurement unit:

- 2200 (a) shall prequalify bidders to participate in subsequent stages, in accordance with
2201 Section **63G-6a-403**;
- 2202 (b) shall prohibit the submission of pricing information until the final stage; and
- 2203 (c) may, before beginning the second stage, request additional information to clarify
2204 the qualifications of the bidders who submit timely responses.

2205 (4) Contracts may only be awarded for a procurement item described in stage one of

2206 the invitation for bids.

2207 (5) The ~~[division or a]~~ conducting procurement unit ~~[with independent procurement~~
2208 ~~authority may conduct a bid in]~~ may use as many stages as it determines to be appropriate.

2209 (6) Except as otherwise expressly provided in this section, ~~[the division or]~~ a
2210 procurement unit ~~[with independent procurement authority shall conduct]~~ conducting a
2211 multiple stage bidding process ~~[in accordance]~~ under this section shall ensure compliance with
2212 this part.

2213 (7) The applicable rulemaking authority may make rules governing the use of a
2214 multiple stage process described in this section.

2215 Section 36. Section **63G-6a-611** is amended to read:

2216 **63G-6a-611. Invitation for bids for reverse auction -- Notice contents --**
2217 **Agreement to terms and conditions.**

2218 (1) The reverse auction bidding process begins when the ~~[division or a]~~ issuing
2219 procurement unit ~~[with independent procurement authority]~~ issues an invitation for bids to
2220 prequalify bidders to participate in the reverse auction.

2221 (2) The invitation for bids shall:

2222 (a) state the period of time during which bids will be accepted;

2223 (b) state that the bid will be conducted by reverse auction;

2224 (c) describe the procurement items sought;

2225 (d) describe the minimum requirements to become prequalified;

2226 (e) state the required contractual terms and conditions; and

2227 (f) describe the procedure that the ~~[division or the]~~ conducting procurement unit ~~[with~~
2228 ~~independent procurement authority]~~ will follow in ~~[conducting]~~ the reverse auction.

2229 (3) In order to participate in a reverse auction, a bidder shall agree to:

2230 (a) the specifications, and contractual terms and conditions, of the procurement; and

2231 (b) be trained in, and abide by, the procedure that the division or the procurement unit
2232 with independent procurement authority will follow in conducting the reverse auction.

2233 (4) The division or a procurement unit with independent procurement authority shall
2234 publish an invitation for bids for a reverse auction in accordance with the requirements of
2235 Section [63G-6a-406](#).

2236 Section 37. Section **63G-6a-612** is amended to read:

2237 **63G-6a-612. Conduct of reverse auction.**

2238 (1) [~~When~~] A procurement unit conducting a reverse auction[~~the division or a~~
2239 ~~procurement unit with independent procurement authority~~]:

2240 (a) may conduct the reverse auction at a physical location or by electronic means;

2241 (b) shall permit all prequalified bidders to participate in the reverse auction;

2242 (c) may not permit a bidder to participate in the reverse auction if the bidder did not
2243 prequalify to participate in the reverse auction;

2244 (d) may not accept a bid after the time for submission of a bid has expired;

2245 (e) shall update the bids on a real time basis; and

2246 (f) shall conduct the reverse auction in a manner that permits each bidder to:

2247 (i) bid against each other; and

2248 (ii) lower the bidder's price below the lowest bid before the reverse auction closes.

2249 (2) At the end of the reverse auction, the conducting procurement unit shall:

2250 (a) award the contract as soon as practicable to the lowest responsive and responsible
2251 bidder who meets the objective criteria described in the invitation for bids; or

2252 (b) cancel the reverse auction without awarding a contract.

2253 (3) After the reverse auction is finished, the conducting procurement [~~officer~~] unit shall
2254 make publicly available:

2255 (a) (i) the amount of the final bid submitted by each bidder during the reverse auction;
2256 and

2257 (ii) the identity of the bidder that submitted each final bid; and

2258 (b) if practicable:

2259 (i) the amount of each bid submitted during the reverse auction; and

2260 (ii) the identity of the bidder that submitted each bid.

2261 Section 38. Section **63G-6a-702** is amended to read:

2262 **63G-6a-702. Contracts awarded by request for proposals.**

2263 (1) A request for proposals standard procurement process may be used instead of
2264 bidding if the procurement officer determines, in writing, that the request for proposals
2265 standard procurement process will provide the best value to the procurement unit.

2266 (2) The request for proposals standard procurement process is appropriate to use for:

2267 (a) the procurement of professional services;

- 2268 (b) a design-build procurement;
- 2269 (c) when cost is not the most important factor to be considered in making the selection
- 2270 that is most advantageous to the procurement unit; or
- 2271 (d) when factors, in addition to cost, are highly significant in making the selection that
- 2272 is most advantageous to the procurement unit.

2273 (3) The procurement of architect-engineer services is governed by Part 15,
2274 Architect-Engineer Services.

2275 Section 39. Section **63G-6a-703** is amended to read:

2276 **63G-6a-703. Request for proposals -- Notice -- Contents.**

2277 (1) The request for proposals standard procurement process begins when the division
2278 or a procurement unit with independent procurement authority issues a request for proposals.

2279 (2) A request for proposals shall:

2280 (a) state the period of time during which a proposal will be accepted;

2281 (b) describe the manner in which a proposal shall be submitted;

2282 (c) state the place where a proposal shall be submitted;

2283 (d) include, or incorporate by reference:

2284 (i) a description of the procurement items sought;

2285 (ii) a description of the subjective and objective criteria that will be used to evaluate
2286 the proposal; and

2287 (iii) the standard contractual terms and conditions required by the authorized
2288 purchasing entity;

2289 (e) state the relative weight that will be given to each score [awarded] for the criteria
2290 described in Subsection (2)(d)(ii), including cost;

2291 (f) state the formula that will be used to determine the score awarded for the cost of
2292 each proposal;

2293 (g) if the request for proposals will be conducted in multiple stages, as described in
2294 Section **63G-6a-710**, include a description of the stages and the criteria and scoring that will be
2295 used to screen offerors at each stage; and

2296 (h) state that discussions may be conducted with offerors who submit proposals
2297 determined to be reasonably susceptible of being selected for award, followed by an
2298 opportunity to make best and final offers, but that proposals may be accepted without

2299 discussions.

2300 (3) The division or a procurement unit with independent procurement authority shall
2301 publish a request for proposals in accordance with the requirements of Section 63G-6a-406.

2302 Section 40. Section 63G-6a-704 is amended to read:

2303 **63G-6a-704. Opening of proposals and acceptance.**

2304 (1) An issuing procurement unit shall ensure that proposals are opened in a manner that
2305 avoids disclosing the contents to competing offerors during the evaluation process.

2306 (2) An issuing procurement unit may not accept a proposal~~[(a)]~~ after the time for
2307 submission of a proposal has expired~~[; or]~~.

2308 ~~[(b) that is not responsive to the request for proposals.]~~

2309 (3) At any time during the request for proposals standard procurement process, a
2310 conducting procurement unit may reject a proposal if the conducting procurement unit
2311 determines that:

2312 (a) the person submitting the proposal is not responsible; or

2313 (b) the proposal is not responsive or does not meet mandatory minimum requirements
2314 stated in the request for proposals.

2315 Section 41. Section 63G-6a-707 is amended to read:

2316 **63G-6a-707. Evaluation of proposals -- Evaluation committee.**

2317 (1) ~~[Each proposal shall be evaluated]~~ To determine which proposal provides the best
2318 value to the procurement unit, the evaluation committee shall evaluate each responsive and
2319 responsible proposal that has not been disqualified from consideration under the provisions of
2320 this chapter, using the criteria described in the request for proposals, which may include:

2321 (a) experience;

2322 (b) performance ratings;

2323 (c) inspection;

2324 (d) testing;

2325 (e) quality;

2326 (f) workmanship;

2327 (g) time, manner, or schedule of delivery;

2328 (h) references;

2329 (i) financial ~~[stability]~~ solvency;

- 2330 (j) suitability for a particular purpose;
- 2331 (k) management plans;
- 2332 (l) cost; or
- 2333 (m) other subjective or objective criteria specified in the request for proposals.
- 2334 (2) Criteria not described in the request for proposals may not be used to evaluate a
- 2335 proposal.
- 2336 (3) The ~~[issuing]~~ conducting procurement unit shall:
- 2337 (a) appoint an evaluation committee consisting of at least three individuals; and
- 2338 (b) ensure that the evaluation committee and each member of the evaluation
- 2339 committee:
- 2340 (i) does not have a conflict of interest with any of the offerors;
- 2341 (ii) can fairly evaluate each proposal;
- 2342 (iii) does not contact or communicate with an offeror ~~[for any reason other than~~
- 2343 conducting the standard procurement process] concerning the procurement outside the official
- 2344 evaluation committee process; and
- 2345 (iv) conducts the evaluation in a manner that ensures a fair and competitive process
- 2346 and avoids the appearance of impropriety.
- 2347 (4) The evaluation committee may, with the approval of the head of the conducting
- 2348 procurement unit, enter into discussions or conduct interviews with, or [participate in] attend
- 2349 presentations by, the offerors.
- 2350 (5) (a) Except as provided in ~~[Subsection (6) or]~~ Subsections (5)(b) and (7), each
- 2351 member of the evaluation committee is prohibited from knowing, or having access to, any
- 2352 information relating to the cost, or the scoring of the cost, of a proposal until after the
- 2353 evaluation committee submits its final recommended scores on all other criteria to the issuing
- 2354 procurement unit.
- 2355 (b) The issuing procurement unit shall:
- 2356 (i) if applicable, assign an individual who is not a member of the evaluation committee
- 2357 to calculate scores for cost based on the applicable scoring formula, weighting, and other
- 2358 scoring procedures contained in the request for proposals;
- 2359 (ii) review the evaluation committee's scores and correct any errors, scoring
- 2360 inconsistencies, and reported noncompliance with this chapter;

2361 (iii) add the scores calculated for cost, if applicable, to the evaluation committee's final
2362 recommended scores on criteria other than cost to derive the total combined score for each
2363 responsive and responsible proposal; and

2364 (iv) provide to the evaluation committee the total combined score calculated for each
2365 responsive and responsible proposal, including any applicable cost formula, weighting, and
2366 scoring procedures used to calculate the total combined scores.

2367 (c) The evaluation committee may not:

2368 (i) change its final recommended scores described in Subsection (5)(a) after the
2369 evaluation committee has submitted those scores to the issuing procurement unit; or

2370 (ii) change cost scores calculated by the issuing procurement unit.

2371 (6) (a) As used in this Subsection (6), "management fee" includes only the following
2372 fees of the construction manager/general contractor:

2373 (i) preconstruction phase services;

2374 (ii) monthly supervision fees for the construction phase; and

2375 (iii) overhead and profit for the construction phase.

2376 (b) When selecting a construction manager/general contractor for a construction
2377 project, the evaluation committee:

2378 (i) may score a construction manager/general contractor based upon criteria contained
2379 in the solicitation, including qualifications, performance ratings, references, management plan,
2380 certifications, and other project specific criteria described in the solicitation;

2381 (ii) may, as described in the solicitation, weight and score the management fee as a
2382 fixed rate or as a fixed percentage of the estimated contract value;

2383 ~~[(i)]~~ (iii) may, at any time after the opening of the responses to the request for
2384 proposals, have access to, and consider, the management fee proposed by the offerors; and

2385 ~~[(ii)]~~ (iv) except as provided in Subsection (7), may not know or have access to any
2386 other information relating to the cost of construction submitted by the offerors, until after the
2387 evaluation committee submits its final recommended scores on all other criteria to the issuing
2388 procurement unit.

2389 (7) (a) The deliberations of an evaluation committee may be held in private.

2390 (b) If the evaluation committee is a public body, as defined in Section [52-4-103](#), the
2391 evaluation committee shall comply with Section [52-4-205](#) in closing a meeting for its

2392 deliberations.

2393 ~~[(7)]~~ (8) An issuing procurement unit is not required to comply with Subsection (5) if[;
2394 before opening the responses to the request for proposals,] the head of the issuing procurement
2395 unit or a person designated by rule made by the applicable rulemaking authority:

2396 (a) signs a written statement:

2397 (i) indicating that, due to the nature of the proposal or other circumstances, it is in the
2398 best interest of the procurement unit to waive compliance with Subsection (5); and

2399 (ii) describing the nature of the proposal and the other circumstances relied upon to
2400 waive compliance with Subsection (5); and

2401 (b) makes the written statement available to the public, upon request.

2402 ~~[(8) The evaluation committee shall award scores to each responsive and responsible
2403 proposal that has not been disqualified from consideration under the provisions of this chapter.]~~

2404 Section 42. Section ~~63G-6a-707.5~~, which is renumbered from Section 63G-6a-705 is
2405 renumbered and amended to read:

2406 ~~[63G-6a-705].~~ **63G-6a-707.5. Best and final offers.**

2407 ~~[(1) After proposals are received and opened, the issuing procurement unit may
2408 conduct discussions with the offerors and allow the offerors to make best and final offers after
2409 the discussions.]~~

2410 (1) At any time during the evaluation process, the evaluation committee, with the
2411 approval of the director or head of the issuing procurement unit, may:

2412 (a) request best and final offers from responsible and responsive offerors; and

2413 (b) evaluate those offers.

2414 (2) ~~[The issuing procurement unit]~~ In requesting and evaluating best and final offers
2415 under Subsection (1), the evaluation committee shall:

2416 (a) ensure that each offeror receives fair and equal treatment with respect to the other
2417 offerors;

2418 (b) establish a schedule and procedures for conducting discussions;

2419 (c) ensure that information in each proposal and information gathered during
2420 discussions is not shared with other offerors until the contract is awarded;

2421 (d) ensure that auction tactics are not used in the discussion process, including
2422 discussing and comparing the costs and features of other proposals; and

2423 (e) set a common date and time for the submission of best and final offers.

2424 (3) If an offeror chooses not to participate in a discussion or does not make a timely
2425 best and final offer, the offer submitted by the ~~[offerors]~~ offeror before the conduct of
2426 discussions shall be treated as the offeror's best and final offer.

2427 Section 43. Section **63G-6a-708** is amended to read:

2428 **63G-6a-708. Justification statement -- Cost-benefit analysis.**

2429 (1) (a) In determining which proposal provides the best value to the procurement unit,
2430 the evaluation committee and the conducting procurement unit shall prepare a written
2431 justification statement that:

2432 (i) explains the score assigned to each evaluation category;

2433 (ii) explains how the proposal with the highest total combined score provides the best
2434 value to the procurement unit in comparison to the other proposals;

2435 (iii) if applicable, includes the cost-benefit analysis described in Subsection (2) and
2436 how the cost-benefit analysis relates to the best value to the procurement unit; and

2437 (iv) if applicable, includes the written determination described in Subsection (5).

2438 (b) An explanation under Subsection (1)(a)(i) need not address each criterion within
2439 each category.

2440 ~~[(1)]~~ (2) If, in determining the best value to the procurement unit, the evaluation
2441 committee awards the highest score ~~[awarded by the evaluation committee]~~, including the score
2442 for cost, ~~[is awarded]~~ to a proposal other than the lowest cost proposal, and the difference
2443 between the cost of the highest scored proposal and the lowest cost proposal exceeds the
2444 greater of \$10,000 or 5% of the lowest cost proposal, the ~~[issuing procurement unit shall make]~~
2445 evaluation committee and the conducting procurement unit shall prepare an informal written
2446 cost-benefit analysis that:

2447 (a) explains, in general terms, the advantage to the procurement unit of awarding the
2448 contract to the higher cost offeror; and

2449 (b) ~~[includes;]~~ except as provided in Subsection ~~[(1)(c);]~~ (5):

2450 (i) includes the estimated added financial value to the procurement unit of each
2451 ~~[criteria]~~ criterion that justifies awarding the contract to the higher cost offeror; and

2452 ~~[(c) includes, to the extent that assigning a financial value to a particular criteria is not~~
2453 ~~practicable, a statement describing:]~~

2454 ~~[(i) why it is not practicable to assign a financial value to the criteria; and]~~
2455 ~~[(ii) in nonfinancial terms, the advantage to the procurement unit, based on the~~
2456 ~~particular criteria, of awarding the contract to the higher cost offeror;]~~
2457 ~~[(d)]~~ (ii) demonstrates that the value of the advantage to the procurement unit of
2458 awarding the contract to the higher cost offeror exceeds the value of the difference between the
2459 cost of the higher cost proposal and the cost of the lower cost proposals~~[- and].~~
2460 ~~[(e) includes any other information required by rule made by the applicable rulemaking~~
2461 ~~authority.]~~
2462 ~~[(2)]~~ (3) If the informal cost-benefit analysis described in Subsection ~~[(1)]~~ (2) does not
2463 justify ~~[award of]~~ awarding the contract to the offeror that received the highest score, the
2464 issuing procurement unit:
2465 (a) may not award the contract to the offeror that received the highest score; and
2466 (b) may award the contract to the offeror that received the next highest score, unless:
2467 (i) an informal cost-benefit analysis is required, because the difference between the
2468 cost proposed by the offeror that received the next highest score and the lowest cost proposal
2469 exceeds the greater of \$10,000 or 5% of the lowest cost proposal; and
2470 (ii) the informal cost-benefit analysis does not justify award of the contract to the
2471 offeror that received the next highest score.
2472 ~~[(3)]~~ (4) If the informal cost-benefit analysis described in Subsection ~~[(1)]~~ (2) does not
2473 justify award of the contract to the offeror, described in Subsection ~~[(2)]~~ (3), that received the
2474 next highest score, the issuing procurement unit:
2475 (a) may not award the contract to the offeror that received the next highest score; and
2476 (b) shall continue with the process described in Subsection ~~[(2)]~~ (3) for each offeror
2477 that received the next highest score, until the issuing procurement unit:
2478 (i) awards the contract in accordance with the provisions of this section; or
2479 (ii) cancels the request for proposals.
2480 (5) (a) The evaluation committee, with the issuing procurement unit's approval, may
2481 waive, in whole or in part, a requirement under Subsection (2)(b) if the evaluation committee
2482 determines in writing that assigning a financial value to a particular procurement item or
2483 evaluation criterion is not practicable.
2484 (b) A written determination under Subsection (5)(a):

2485 (i) shall explain:

2486 (A) why it is not practicable to assign a financial value to the procurement item or
 2487 evaluation criterion; and

2488 (B) in nonfinancial terms, why awarding the contract to the higher cost offeror
 2489 provides the best value to the procurement unit; and

2490 (ii) may be included as part of the justification statement.

2491 ~~[(4)]~~ (6) (a) An issuing procurement unit is not required to make the cost-benefit
 2492 analysis described in this section for a contract with a construction manager/general contractor
 2493 if the contract is awarded based solely on the qualifications of the construction
 2494 manager/general contractor and the management fee described in Subsection ~~[63G-6a-706]~~
 2495 63G-6a-707(6).

2496 (b) The applicable rulemaking authority shall make rules that establish procedures and
 2497 criteria for awarding a contract described in Subsection ~~[(4)]~~ (6)(a) to ensure that:

2498 (i) a competitive process is maintained; and

2499 (ii) the contract awarded is in the best interest of the procurement unit.

2500 Section 44. Section **63G-6a-709** is amended to read:

2501 **63G-6a-709. Award of contract -- Cancellation -- Disqualification.**

2502 (1) After the completion of the evaluation and scoring of proposals ~~[is completed, the~~
 2503 ~~issuing procurement unit shall:]~~ and the justification statement, including any required
 2504 cost-benefit analysis, the evaluation committee shall submit the proposals, evaluation scores,
 2505 and justification statement to the head of the procurement unit or designee for review and final
 2506 determination of contract award.

2507 (2) After reviewing the proposals, evaluation scores, and justification statement,
 2508 including any required cost-benefit analysis, the head of the issuing procurement unit or
 2509 designee shall:

2510 (a) ~~[except as provided in Section 63G-6a-708,]~~ award the contract as soon as
 2511 practicable to:

2512 (i) the responsive and responsible offeror with the highest total score; or

2513 (ii) if, in accordance with Subsection ~~[(2)]~~ (3), the procurement officer or the head of
 2514 the issuing procurement unit disqualifies the offeror described in Subsection ~~[(1)]~~ (2)(a)(i), the
 2515 responsive and responsible offeror with the next highest total score; or

2516 (b) cancel the request for proposals without awarding a contract.
2517 ~~[(2)]~~ (3) In accordance with Subsection ~~[(3)]~~ (4), the procurement officer or the head of
2518 the issuing procurement unit may disqualify an offeror for:

- 2519 (a) a violation of this chapter;
- 2520 (b) not being responsive or responsible;
- 2521 ~~[(b)]~~ (c) a violation of a requirement of the request for proposals;
- 2522 ~~[(c)]~~ (d) unlawful or unethical conduct; or
- 2523 ~~[(d)]~~ (e) a change in circumstance that, had the change been known at the time the
2524 proposal was submitted, would have caused the proposal to not have the highest score.

2525 ~~[(3)]~~ (4) A procurement officer or head of an issuing procurement unit who disqualifies
2526 an offeror under Subsection ~~[(2)]~~ (3) shall:

- 2527 (a) make a written finding, stating the reasons for disqualification; and
- 2528 (b) provide a copy of the written finding to the disqualified offeror.

2529 ~~[(4)]~~ (5) If an issuing procurement unit cancels a request for proposals without
2530 awarding a contract, the issuing procurement unit shall make available for public inspection a
2531 written justification for the cancellation.

2532 Section 45. Section **63G-6a-709.5** is amended to read:

2533 **63G-6a-709.5. Publication of award and scores.**

2534 (1) The issuing procurement unit shall, on the next business day ~~[on which]~~ after the
2535 award of a contract is announced, make available to each offeror and to the public a written
2536 statement that includes:

2537 ~~[(1)]~~ (a) the name of the offeror to which the contract is awarded and the total score
2538 awarded by the evaluation committee to that offeror;

2539 (b) the justification statement under Section [63G-6a-708](#), including any required
2540 cost-benefit analysis; and

2541 ~~[(2)]~~ (c) the total score awarded by the evaluation committee to each offeror to which
2542 the contract is not awarded, without identifying which offeror received which score~~[-and]~~.

2543 ~~[(3) any cost-benefit analysis made, under Section [63G-6a-708](#), in relation to the~~
2544 ~~request for proposals.]~~

2545 (2) Subsection (1)(a) does not prevent the issuing procurement unit from using codes
2546 or another method in a statement under Subsection (1) to distinguish offerors to which the

2547 contract is not awarded and to indicate their scores, as long as an offeror cannot be matched
2548 with the score awarded to that offeror.

2549 Section 46. Section **63G-6a-802** is amended to read:

2550 **63G-6a-802. Award of contract without competition -- Notice -- Extension of**
2551 **contract without engaging in standard procurement process.**

2552 (1) As used in this section:

2553 (a) "Transitional costs" mean the costs of changing from an existing provider of, or
2554 type of, a procurement item to another provider of, or type of, procurement item.

2555 (b) "Transitional costs" include:

2556 (i) training costs;

2557 (ii) conversion costs;

2558 (iii) compatibility costs;

2559 (iv) system downtime;

2560 (v) disruption of service;

2561 (vi) staff time necessary to put the transition into effect;

2562 (vii) installation costs; and

2563 (viii) ancillary software, hardware, equipment, or construction costs.

2564 (c) "Transitional costs" do not include:

2565 (i) the costs of preparing for or engaging in a procurement process; or

2566 (ii) contract negotiation or contract drafting costs.

2567 (d) "Trial use contract" means a contract between a procurement unit and a vendor for
2568 a procurement item that the procurement unit acquires for trial use or testing to determine
2569 whether the procurement item will benefit the procurement unit.

2570 (2) The division or a procurement unit with independent procurement authority may
2571 award a contract for a procurement item without competition if the procurement officer, the
2572 head of the procurement unit, or a designee of either who is senior to the procurement officer
2573 or the head of the procurement unit, determines in writing that:

2574 (a) there is only one source for the procurement item; [or]

2575 (b) the award to a specific supplier, service provider, or contractor is a condition of a
2576 donation that will fund the full cost of the supply, service, or construction item[-]; or

2577 (c) the procurement item is needed for trial use or testing to determine whether the

2578 procurement item will benefit the procurement unit.

2579 (3) Circumstances under which there is only one source for a procurement item may
2580 include:

2581 (a) where the most important consideration in obtaining a procurement item is the
2582 compatibility of equipment, technology, software, accessories, replacement parts, or service;

2583 [~~(b)~~ where a procurement item is needed for trial use or testing;]

2584 [~~(c)~~] (b) where transitional costs are unreasonable or cost prohibitive; or

2585 [~~(d)~~] (c) procurement of public utility services.

2586 (4) (a) [~~The~~] Subject to Subsection (4)(b), the applicable rulemaking authority shall
2587 make rules regarding the publication of notice for a sole source procurement that, at a
2588 minimum, require publication of notice of a sole source procurement, in accordance with
2589 Section 63G-6a-406, if the cost of the procurement exceeds \$50,000.

2590 (b) Publication of notice under Section 63G-6a-406 is not required for:

2591 (i) the procurement of public utility services pursuant to a sole source contract; or

2592 (ii) other sole source procurements provided by rule.

2593 (5) The division or a procurement unit with independent procurement authority who
2594 awards a sole source contract on behalf of another procurement unit shall negotiate with the
2595 contractor to ensure that the terms of the contract, including price and delivery, are in the best
2596 interest of the procurement unit.

2597 (6) (a) The period of trial use or testing of a procurement item under a trial use contract
2598 may not exceed 18 months, unless the procurement officer provides a written exception
2599 documenting the reason for a longer period.

2600 (b) A trial use contract shall:

2601 (i) state that the purpose of the contract is strictly for the purpose of the trial use or
2602 testing of a procurement item;

2603 (ii) state that the contract terminates upon completion of the trial use or testing period;

2604 (iii) state that, after the trial use or testing period, the procurement unit is not obligated
2605 to purchase or enter into a contract for the procurement item, regardless of the trial use or
2606 testing result;

2607 (iv) state that any purchase of the procurement item beyond the terms of the trial use
2608 contract will be made in accordance with this chapter; and

- 2609 (v) include, as applicable:
- 2610 (A) test schedules;
- 2611 (B) deadlines and a termination date;
- 2612 (C) measures that will be used to evaluate the performance of the procurement item;
- 2613 (D) any fees and associated expenses or an explanation of the circumstances
- 2614 warranting a waiver of those fees and expenses;
- 2615 (E) the obligations of the procurement unit and vendor;
- 2616 (F) provisions regarding the ownership of the procurement item during and after the
- 2617 trial use or testing period;
- 2618 (G) an explanation of the grounds upon which the contract may be terminated;
- 2619 (H) a limitation of liability;
- 2620 (I) a consequential damage waiver provision;
- 2621 (J) a statement regarding the confidentiality or nondisclosure of information;
- 2622 (K) a provision relating to any required bond or security deposit; and
- 2623 (L) other requirements unique to the procurement item for trial use or testing.
- 2624 (c) Publication of notice under Section [63G-6a-406](#) is not required for a procurement
- 2625 pursuant to a trial use contract.
- 2626 ~~[(6)]~~ (7) The division or a procurement unit with independent procurement authority
- 2627 may extend a contract for a reasonable period of time without engaging in a standard
- 2628 procurement process, if:
- 2629 (a) the award of a new contract for the procurement item is delayed due to a protest or
- 2630 appeal;
- 2631 (b) the standard procurement process is delayed due to unintentional error;
- 2632 (c) changes in industry standards require significant changes to specifications for the
- 2633 procurement item;
- 2634 (d) the extension is necessary to prevent the loss of federal funds;
- 2635 (e) the extension is necessary to address a circumstance where the appropriation of
- 2636 state or federal funds has been delayed; ~~[or]~~
- 2637 (f) the extension covers the period of time during which contract negotiations with a
- 2638 new provider are being conducted~~[.];~~ or
- 2639 (g) the extension is necessary to avoid a lapse in critical governmental services that

2640 may negatively impact public health, safety, or welfare.

2641 Section 47. Section **63G-6a-904** is amended to read:

2642 **63G-6a-904. Debarment from consideration for award of contracts -- Causes for**
2643 **debarment.**

2644 (1) ~~(a) [After reasonable notice to the person involved and reasonable opportunity for~~
2645 ~~that person to be heard] Subject to Subsection (1)(b), the chief procurement officer[; a~~
2646 ~~procurement officer,] or the head of a procurement unit with independent procurement~~
2647 ~~authority may[; after consultation with the procurement unit involved in the matter for which~~
2648 ~~debarment is sought and, if the procurement unit is in the state executive branch, the attorney~~
2649 ~~general]:~~

2650 ~~[(a)] (i) debar a person for cause from consideration for award of contracts for a period~~
2651 ~~not to exceed three years; or~~

2652 ~~[(b)] (ii) suspend a person from consideration for award of contracts if there is~~
2653 ~~probable cause to believe that the person has engaged in any activity that might lead to~~
2654 ~~debarment.~~

2655 (b) Before debarring or suspending a person under Subsection (1)(a), the chief
2656 procurement officer or head of a procurement unit with independent procurement authority
2657 shall:

2658 (i) consult with:

2659 (A) the procurement unit involved in the matter for which debarment or suspension is
2660 sought; and

2661 (B) the attorney general, if the procurement unit is in the state executive branch, or the
2662 procurement unit's attorney, if the procurement unit is not in the state executive branch;

2663 (ii) give the person at least 10 days' prior written notice of:

2664 (A) the reasons for which debarment or suspension is being considered; and

2665 (B) the hearing under Subsection (1)(b)(iii); and

2666 (iii) hold a hearing in accordance with Subsection (1)(c).

2667 (c) (i) At a hearing under Subsection (1)(b)(iii), the chief procurement officer or head
2668 of a procurement unit with independent procurement authority may:

2669 (A) subpoena witnesses and compel their attendance at the hearing;

2670 (B) subpoena documents for production at the hearing;

- 2671 (C) obtain additional factual information; and
- 2672 (D) obtain testimony from experts, the person who is the subject of the proposed
- 2673 debarment or suspension, representatives of the procurement unit, or others to assist the chief
- 2674 procurement officer or head of a procurement unit with independent procurement authority to
- 2675 make a decision on the proposed debarment or suspension.
- 2676 (ii) The Rules of Evidence do not apply to a hearing under Subsection (1)(b)(iii).
- 2677 (iii) The chief procurement officer or head of a procurement unit with independent
- 2678 procurement authority shall:
- 2679 (A) record a hearing under Subsection (1)(b)(iii);
- 2680 (B) preserve all records and other evidence relied upon in reaching a decision until the
- 2681 decision becomes final;
- 2682 (C) for an appeal of a debarment or suspension by a procurement unit other than a
- 2683 legislative procurement unit, a judicial procurement unit, a local government procurement unit,
- 2684 or a public transit district, submit to the procurement policy board chair a copy of the written
- 2685 decision and all records and other evidence relied upon in reaching the decision, within seven
- 2686 days after receiving a notice that an appeal of a debarment or suspension has been filed under
- 2687 Section [63G-6a-1702](#) or after receiving a request from the procurement policy board chair; and
- 2688 (D) for an appeal of a debarment or suspension by a legislative procurement unit, a
- 2689 judicial procurement unit, a local government procurement unit, or a public transit district,
- 2690 submit to the Utah Court of Appeals a copy of the written decision and all records and other
- 2691 evidence relied upon in reaching the decision, within seven days after receiving a notice that an
- 2692 appeal of a debarment or suspension has been filed under Section [63G-6a-1802](#).
- 2693 (iv) The holding of a hearing under Subsection (1)(b)(iii) or the issuing of a decision
- 2694 under Subsection (1)(b)(v) does not affect a person's right to later question or challenge the
- 2695 jurisdiction of the chief procurement officer or head of a procurement unit with independent
- 2696 procurement authority to hold a hearing or issue a decision.
- 2697 (v) The chief procurement officer or head of a procurement unit with independent
- 2698 procurement authority shall:
- 2699 (A) promptly issue a written decision regarding a proposed debarment or suspension,
- 2700 unless the matter is settled by mutual agreement; and
- 2701 (B) mail, email, or otherwise immediately furnish a copy of the decision to the person

2702 who is the subject of the decision.

2703 (vi) A written decision under Subsection (1)(b)(v) shall:

2704 (A) state the reasons for the debarment or suspension, if debarment or suspension is
2705 ordered;

2706 (B) inform the person who is debarred or suspended of the right to judicial or
2707 administrative review as provided in this chapter; and

2708 (C) indicate the amount of the security deposit or bond required under Section
2709 63G-6a-1703 and how that amount was calculated.

2710 (vi) (A) A decision of debarment or suspension issued by a procurement unit other than
2711 a legislative procurement unit, a judicial procurement unit, a local government procurement
2712 unit, or a public transit district is final and conclusive unless the person who is debarred or
2713 suspended files an appeal of the decision under Section 63G-6a-1702.

2714 (B) A decision of debarment or suspension issued by a legislative procurement unit, a
2715 judicial procurement unit, a local government procurement unit, or a public transit district is
2716 final and conclusive unless the person who is debarred or suspended files an appeal of the
2717 decision under Section 63G-6a-1802.

2718 (2) A suspension [~~described in Subsection (1)(b)] under this section~~ may not be for a
2719 period exceeding three months, unless an indictment has been issued for an offense which
2720 would be a cause for debarment under Subsection (3), in which case the suspension shall, at the
2721 request of the attorney general, if the procurement unit is in the state executive branch, or the
2722 procurement unit's attorney, if the procurement unit is not in the state executive branch, remain
2723 in effect until after the trial of the suspended person.

2724 (3) The causes for debarment include the following:

2725 (a) conviction of a criminal offense as an incident to obtaining or attempting to obtain a
2726 public or private contract or subcontract or in the performance of a public or private contract or
2727 subcontract;

2728 (b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery,
2729 falsification or destruction of records, receiving stolen property, or any other offense indicating
2730 a lack of business integrity or business honesty which currently, seriously, and directly affects
2731 responsibility as a [state] contractor for the procurement unit;

2732 (c) conviction under state or federal antitrust statutes;

2733 (d) failure without good cause to perform in accordance with the terms of the contract;
 2734 (e) a violation of this chapter; or
 2735 (f) any other cause that the chief procurement officer~~[, the procurement officer,]~~ or the
 2736 head of a procurement unit with independent procurement authority determines to be so serious
 2737 and compelling as to affect responsibility as a [state] contractor for the procurement unit,
 2738 including debarment by another governmental entity.

2739 (4) A person who is debarred or suspended under this section may appeal the
 2740 debarment or suspension:

2741 (a) as provided in Section 63G-6a-1702, if the debarment or suspension is by a
 2742 procurement unit other than a legislative procurement unit, a judicial procurement unit, a local
 2743 government procurement unit, or a public transit district; or

2744 (b) as provided in Section 63G-6a-1802, if the debarment or suspension is by a
 2745 legislative procurement unit, a judicial procurement unit, a local government procurement unit,
 2746 or a public transit district.

2747 (5) A procurement unit may consider a cause for debarment under Subsection (3) as the
 2748 basis for determining that a person responding to a solicitation is not responsible:

2749 (a) independent of any effort or proceeding under this section to debar or suspend the
 2750 person; and

2751 (b) even if the procurement unit does not choose to seek debarment or suspension.

2752 Section 48. Section **63G-6a-1103** is amended to read:

2753 **63G-6a-1103. Bonds necessary when contract is awarded -- Waiver -- Action --**
 2754 **Attorney fees.**

2755 (1) When a construction contract is awarded under this chapter, the contractor to whom
 2756 the contract is awarded shall deliver the following bonds or security to the [state] procurement
 2757 unit, which shall become binding on the parties upon the execution of the contract:

2758 (a) a performance bond satisfactory to the [state] procurement unit that is in an amount
 2759 equal to 100% of the price specified in the contract and is executed by a surety company
 2760 authorized to do business in [this] the state or any other form satisfactory to the [state]
 2761 procurement unit; and

2762 (b) a payment bond satisfactory to the [state] procurement unit that is in an amount
 2763 equal to 100% of the price specified in the contract and is executed by a surety company

2764 authorized to do business in [this] the state or any other form satisfactory to the [state]
2765 procurement unit, which is for the protection of each person supplying labor, service,
2766 equipment, or material for the performance of the work provided for in the contract.

2767 (2) (a) When a construction contract is awarded under this chapter, the procurement
2768 officer or the head of the issuing procurement unit responsible for carrying out the construction
2769 project may not require a contractor to whom a contract is awarded to obtain a bond of the
2770 types referred to in Subsection (1) from a specific insurance or surety company, producer,
2771 agent, or broker.

2772 (b) A person who violates Subsection (2)(a) is guilty of an infraction.

2773 (3) Rules of the applicable rulemaking authority may provide for waiver of the
2774 requirement of a bid, performance, or payment bond for circumstances in which the
2775 procurement officer considers any or all of the bonds to be unnecessary to protect the
2776 procurement unit.

2777 (4) A person shall have a right of action on a payment bond under this section for any
2778 unpaid amount due to the person if:

2779 (a) the person has furnished labor, service, equipment, or material for the work
2780 provided for in the contract for which the payment bond is furnished under this section; and

2781 (b) the person has not been paid in full within 90 days after the last day on which the
2782 person performed the labor or service or supplied the equipment or material for which the
2783 claim is made.

2784 (5) An action upon a payment bond may only be brought in a court of competent
2785 jurisdiction in a county where the construction contract was to be performed. The action is
2786 barred if not commenced within one year after the last day on which the claimant performed
2787 the labor or service or supplied the equipment or material on which the claim is based. The
2788 obligee named in the bond need not be joined as a party to the action.

2789 (6) In any suit upon a payment bond, the court shall award reasonable attorney fees to
2790 the prevailing party, which fees shall be taxed as costs in the action.

2791 Section 49. Section **63G-6a-1105** is amended to read:

2792 **63G-6a-1105. Form of bonds -- Effect of certified copy.**

2793 (1) The form of the bonds required by this part shall be established by rule made by the
2794 applicable rulemaking authority.

2795 (2) Any person may obtain from the [state] procurement unit a certified copy of a bond
2796 upon payment of the cost of reproduction of the bond and postage, if any.

2797 (3) A certified copy of a bond [~~shall be~~] is prima facie evidence of the contents,
2798 execution, and delivery of the original.

2799 Section 50. Section **63G-6a-1202** is repealed and reenacted to read:

2800 **63G-6a-1202. Standard contract clauses encouraged.**

2801 A procurement unit is encouraged to establish standard contract clauses to assist the
2802 procurement unit and to help contractors and potential contractors to understand applicable
2803 requirements.

2804 Section 51. Section **63G-6a-1204** is amended to read:

2805 **63G-6a-1204. Multiyear contracts.**

2806 (1) Except as provided in Subsection (7), a procurement unit may enter into a multiyear
2807 contract resulting from an invitation for bids or a request for proposals, if:

2808 (a) the procurement officer determines, in the discretion of the procurement officer,
2809 that entering into a multiyear contract is in the best interest of the procurement unit; and

2810 (b) the invitation for bids or request for proposals:

2811 (i) states the term of the contract, including all possible renewals of the contract;

2812 (ii) states the conditions for renewal of the contract; and

2813 (iii) includes the provisions of Subsections (3) through (5) that are applicable to the
2814 contract.

2815 (2) In making the determination described in Subsection (1)(a), the procurement officer
2816 shall consider whether entering into a multiyear contract will:

2817 (a) result in significant savings to the procurement unit, including:

2818 (i) reduction of the administrative burden in procuring, negotiating, or administering
2819 contracts;

2820 (ii) continuity in operations of the procurement unit; or

2821 (iii) the ability to obtain a volume or term discount;

2822 (b) encourage participation by a person who might not otherwise be willing or able to
2823 compete for a shorter term contract; or

2824 (c) provide an incentive for a bidder or offeror to improve productivity through capital
2825 investment or better technology.

2826 (3) (a) The determination described in Subsection (1)(a) is discretionary and is not
2827 required to be in writing or otherwise recorded.

2828 (b) Except as provided in Subsections (4) and (5), notwithstanding any provision of an
2829 invitation for bids, a request for proposals, or a contract to the contrary, a multiyear contract,
2830 including a contract that was awarded outside of an invitation for bids or request for proposals
2831 process, may not continue or be renewed for any year after the first year of the multiyear
2832 contract if adequate funds are not appropriated or otherwise available to continue or renew the
2833 contract.

2834 (4) A multiyear contract that is funded solely by federal funds may be continued or
2835 renewed for any year after the first year of the multiyear contract if:

2836 (a) adequate funds to continue or renew the contract have not been, but are expected to
2837 be appropriated by, and received from, the federal government;

2838 (b) continuation or renewal of the contract before the money is appropriated or
2839 received is permitted by the federal government; and

2840 (c) the contract states that it may be cancelled or suspended, without penalty, if the
2841 anticipated federal funds are not appropriated or received.

2842 (5) A multiyear contract that is funded in part by federal funds may be continued or
2843 renewed for any year after the first year of the multiyear contract if:

2844 (a) the portion of the contract that is to be funded by funds of a public entity are
2845 appropriated;

2846 (b) adequate federal funds to continue or renew the contract have not been, but are
2847 expected to be, appropriated by, and received from, the federal government;

2848 (c) continuation or renewal of the contract before the federal money is appropriated or
2849 received is permitted by the federal government; and

2850 (d) the contract states that it may be cancelled or suspended, without penalty, if the
2851 anticipated federal funds are not appropriated or received.

2852 (6) A procurement unit may not continue or renew a multiyear contract after the end of
2853 the multiyear contract term or the renewal periods described in the contract, unless the
2854 procurement unit engages in a new standard procurement process or complies with an
2855 exception, described in this chapter, to using a standard procurement process.

2856 (7) A multiyear contract, including any renewal periods, may not exceed a period of

2857 five years, unless:

2858 (a) the procurement officer determines, in writing, that:

2859 (i) a longer period is necessary in order to obtain the procurement item;

2860 (ii) a longer period is customary for industry standards; or

2861 (iii) a longer period is in the best interest of the procurement unit; and

2862 (b) the written determination described in Subsection (7)(a) is included in the file

2863 relating to the procurement.

2864 (8) This section does not apply to a contract for the design or construction of a facility,

2865 a road, a public transit project, or a contract for the financing of equipment.

2866 Section 52. Section **63G-6a-1205** is amended to read:

2867 **63G-6a-1205. Regulation of contract types -- Permitted and prohibited contract**
2868 **types.**

2869 (1) Except as otherwise provided in this section, and subject to rules made under this
2870 section by the applicable rulemaking authority, a procurement unit may use any type of contract
2871 that will promote the best interests of the procurement unit.

2872 (2) An applicable rulemaking authority:

2873 (a) may make rules governing, placing restrictions on, or prohibiting the use of any
2874 type of contract; and

2875 (b) may not make rules that permit the use of a contract:

2876 (i) that is prohibited under this section; or

2877 (ii) in a manner that is prohibited under this section.

2878 (3) A procurement officer, the head of an issuing procurement unit, or a designee of
2879 either, may not use a type of contract, other than a firm fixed price contract, unless the
2880 procurement officer makes a written determination that:

2881 (a) the proposed contractor's accounting system will permit timely development of all
2882 necessary cost data in the form required by the specific contract type contemplated;

2883 (b) the proposed contractor's accounting system is adequate to allocate costs in
2884 accordance with generally accepted accounting principles; and

2885 (c) the use of a specified type of contract, other than a firm fixed price contract, is in
2886 the best interest of the procurement unit, taking into consideration the following criteria:

2887 (i) the type and complexity of the procurement item;

- 2888 (ii) the difficulty of estimating performance costs at the time the contract is entered
2889 into, due to factors that may include:
- 2890 (A) the difficulty of determining definitive specifications;
- 2891 (B) the difficulty of determining the risks, to the contractor, that are inherent in the
2892 nature of the work to be performed; or
- 2893 (C) the difficulty to clearly determine other factors necessary to enter into an accurate
2894 firm fixed price contract;
- 2895 (iii) the administrative costs to the procurement unit and the contractor;
- 2896 (iv) the degree to which the procurement unit is required to provide technical
2897 coordination during performance of the contract;
- 2898 (v) the impact that the choice of contract type may have upon the level of competition
2899 for award of the contract;
- 2900 (vi) the stability of material prices, commodity prices, and wage rates in the applicable
2901 market;
- 2902 (vii) the impact of the contract type on the level of urgency related to obtaining the
2903 procurement item;
- 2904 (viii) the impact of any applicable governmental regulation relating to the contract; and
- 2905 (ix) other criteria that the procurement officer determines may relate to determining the
2906 contract type that is in the best interest of the procurement unit.
- 2907 (4) Contract types that, subject to the provisions of this section and rules made under
2908 this section, may be used by a procurement unit include the following:
- 2909 (a) a fixed price contract;
- 2910 (b) a fixed price contract with price adjustment;
- 2911 (c) a time and materials contract;
- 2912 (d) a labor hour contract;
- 2913 (e) a definite quantity contract;
- 2914 (f) an indefinite quantity contract;
- 2915 (g) a requirements contract; ~~or~~
- 2916 (h) a contract based on a rate table in accordance with industry standards; or
- 2917 ~~(h)~~ (i) a contract that includes one of the following construction delivery methods:
- 2918 (i) design-build;

- 2919 (ii) design-bid-build; or
2920 (iii) construction manager/general contractor.
2921 (5) Except as it applies to a change order, a procurement unit may not enter into a
2922 cost-plus-percentage-of-cost contract, unless:
2923 (a) use of a cost-plus-percentage-of-cost contract is approved by the procurement
2924 officer;
2925 (b) it is standard practice in the industry to obtain the procurement item through a
2926 cost-plus-percentage-of-cost contract; and
2927 (c) the percentage and the method of calculating costs in the contract are in accordance
2928 with industry standards.
2929 (6) A procurement unit may not enter into a cost-reimbursement contract, unless the
2930 procurement officer makes a written determination that:
2931 (a) (i) a cost-reimbursement contract is likely to cost less than any other type of
2932 permitted contract; or
2933 (ii) it is impracticable to obtain the procurement item under any other type of permitted
2934 contract; and
2935 (b) the proposed contractor's accounting system:
2936 (i) will timely develop the cost data in the form necessary for the procurement unit to
2937 timely and accurately make payments under the contract; and
2938 (ii) will allocate costs in accordance with generally accepted accounting principles.
2939 Section 53. Section **63G-6a-1206** is amended to read:
2940 **63G-6a-1206. Rules and regulations to determine allowable incurred costs --**
2941 **Required information -- Auditing of books.**
2942 (1) (a) The applicable rulemaking authority may, by rule, establish the cost principles
2943 to be included in a cost-reimbursement contract to determine incurred costs for the purpose of
2944 calculating a reimbursement.
2945 (b) The cost principles established by rule under Subsection (1)(a) may be modified, by
2946 contract, if the procurement officer or head of the issuing procurement unit approves the
2947 modification.
2948 (2) Except as provided in Subsection (5), a person who seeks to be, or is, a party in a
2949 cost-based contract with a procurement unit shall:

2950 (a) submit cost or pricing data relating to determining the cost or pricing amount; and

2951 (b) certify that, to the best of the contractor's knowledge and belief, the cost or pricing
2952 data submitted is accurate and complete as of the date specified by the procurement unit.

2953 (3) The procurement officer shall ensure that the date specified under Subsection (2)(b)
2954 is before:

2955 (a) the pricing of any contract awarded by a standard procurement process or pursuant
2956 to a sole source procurement, if the total contract price is expected to exceed an amount
2957 established by rule made by the applicable rulemaking authority; or

2958 (b) the pricing of any change order that is expected to exceed an amount established by
2959 rule made by the applicable rulemaking authority.

2960 (4) A contract or change order that requires a certification described in Subsection (2)
2961 shall include a provision that the price to the procurement unit, including profit or fee, shall be
2962 adjusted to exclude any significant sums by which the procurement unit finds that the price was
2963 increased because the contractor provided cost or pricing data that was inaccurate, incomplete,
2964 or not current as of the date specified by the procurement officer.

2965 (5) A procurement unit is not required to comply with Subsection (2) if:

2966 (a) the contract price is based on adequate price competition;

2967 (b) the contract price is based on established catalogue prices or market prices;

2968 (c) the contract price is set by law or rule; or

2969 (d) the procurement states, in writing:

2970 (i) that, in accordance with rules made by the applicable rulemaking authority, the
2971 requirements of Subsection (2) may be waived; and

2972 (ii) the reasons for the waiver.

2973 (6) The procurement officer or audit entity under contract with the procurement unit
2974 may, at reasonable times and places, only to the extent that the books and records relate to the
2975 applicable cost or pricing data, audit the books and records of:

2976 (a) a person who has submitted cost or pricing data pursuant to this section; or

2977 (b) a contractor or subcontractor under a contract or subcontract other than a firm fixed
2978 price contract.

2979 (7) Unless a shorter time is provided for by contract:

2980 (a) a person described in Subsection (6)(a) shall maintain the books and records

2981 described in Subsection (6) for three years after the day on which the fiscal year in which final
2982 payment is made under the contract ends;

2983 (b) a contractor shall maintain the books and records described in Subsection (6) for
2984 three years after the day on which the fiscal year in which final payment under the prime
2985 contract ends; and

2986 (c) a subcontractor shall maintain the books and records described in Subsection (6) for
2987 three years after the day on which the fiscal year in which final payment is made under the
2988 subcontract ends.

2989 Section 54. Section **63G-6a-1402** is amended to read:

2990 **63G-6a-1402. Procurement of design-build transportation project contracts.**

2991 (1) As used in this section:

2992 (a) "Design-build transportation project contract" means the procurement of both the
2993 design and construction of a transportation project in a single contract with a company or
2994 combination of companies capable of providing the necessary engineering services and
2995 construction.

2996 (b) "Transportation agency" means:

2997 (i) the Department of Transportation;

2998 (ii) a county of the first or second class, as defined in Section [17-50-501](#);

2999 (iii) a municipality of the first class, as defined in Section [10-2-301](#);

3000 (iv) a public transit district that has more than 200,000 people residing within its
3001 boundaries; and

3002 (v) a public airport authority.

3003 (2) Except as provided in Subsection (3), a transportation agency may award a
3004 design-build transportation project contract for any transportation project that has an estimated
3005 cost of at least \$50,000,000 by following the requirements of this section.

3006 (3) (a) The Department of Transportation:

3007 (i) may award a design-build transportation project contract for any transportation
3008 project by following the requirements of this section; and

3009 (ii) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative
3010 Rulemaking Act, establishing requirements for the procurement of its design-build
3011 transportation project contracts in addition to those required by this section.

3012 (b) A public transit district that has more than 200,000 people residing within its
3013 boundaries:

3014 (i) may award a design-build transportation project contract for any transportation
3015 project by following the requirements of this section; and

3016 (ii) shall pass ordinances or a resolution establishing requirements for the procurement
3017 of its design-build transportation project contracts in addition to those required by this section.

3018 (c) A design-build transportation project contract authorized under this Subsection (3)
3019 is not subject to the estimated cost threshold described in Subsection (2).

3020 (d) A design-build transportation project contract may include provision by the
3021 contractor of operations, maintenance, or financing.

3022 (4) (a) Before entering into a design-build transportation project contract, a
3023 transportation agency may issue a request for qualifications to prequalify potential contractors.

3024 (b) Public notice of the request for qualifications shall be given in accordance with
3025 board rules.

3026 (c) A transportation agency shall require, as part of the qualifications specified in the
3027 request for qualifications, that potential contractors at least demonstrate their:

3028 (i) construction experience;

3029 (ii) design experience;

3030 (iii) financial, manpower, and equipment resources available for the project; and

3031 (iv) experience in other design-build transportation projects with attributes similar to
3032 the project being procured.

3033 (d) The request for qualifications shall identify the number of eligible competing
3034 proposers that the transportation agency will select to submit a proposal, which may not be less
3035 than two.

3036 (5) The transportation agency shall:

3037 (a) evaluate the responses received from the request for qualifications;

3038 (b) select from their number those qualified to submit proposals; and

3039 (c) invite those respondents to submit proposals based upon the transportation agency's
3040 request for proposals.

3041 (6) Except as provided in Subsection (7), if the transportation agency fails to receive at
3042 least two qualified eligible competing proposals, the transportation agency shall readvertise the

3043 project.

3044 (7) A transportation agency may award a contract for a transportation project that has
3045 an estimated cost of \$5,000,000 or less to a qualified eligible proposer if:

3046 (a) only a single proposal is received; and

3047 (b) the transportation agency determines that:

3048 (i) the proposal is advantageous to the state; and

3049 (ii) the proposal price is reasonable.

3050 (8) The transportation agency shall issue a request for proposals to those qualified
3051 respondents that:

3052 (a) includes a scope of work statement constituting an information for proposal that
3053 may include:

3054 (i) preliminary design concepts;

3055 (ii) design criteria, needs, and objectives;

3056 (iii) warranty and quality control requirements;

3057 (iv) applicable standards;

3058 (v) environmental documents;

3059 (vi) constraints;

3060 (vii) time expectations or limitations;

3061 (viii) incentives or disincentives; and

3062 (ix) other special considerations;

3063 (b) requires submitters to provide:

3064 (i) a sealed cost proposal;

3065 (ii) a critical path matrix schedule, including cash flow requirements;

3066 (iii) proposal security; and

3067 (iv) other items required by the department for the project; and

3068 (c) may include award of a stipulated fee to be paid to offerors who submit
3069 unsuccessful proposals.

3070 (9) The transportation agency shall:

3071 (a) evaluate the submissions received in response to the request for proposals from the
3072 prequalified offerors;

3073 (b) comply with rules relating to discussion of proposals, best and final offers, and

3074 evaluations of the proposals submitted; and

3075 (c) after considering price and other identified factors, award the contract to the
3076 responsive and responsible offeror whose proposal is most advantageous to the transportation
3077 agency or the state.

3078 Section 55. Section **63G-6a-1502** is amended to read:

3079 **63G-6a-1502. Policy regarding architect-engineer services.**

3080 (1) It is the policy of this state to publicly announce all requirements for
3081 architect-engineer services through a request for statement of qualifications and to negotiate
3082 contracts for architect-engineer services on the basis of demonstrated competence and
3083 qualification for the type of services required, and at fair and reasonable prices.

3084 (2) Architect-engineer services shall be procured as provided in this part except as
3085 otherwise provided in Sections **63G-6a-403**, **63G-6a-404**, **63G-6a-408**, **63G-6a-802**, and
3086 **63G-6a-803**.

3087 (3) This part does not affect the authority of, and does not apply to procedures
3088 undertaken by, a procurement unit to obtain the services of architects or engineers in the
3089 capacity of employees of the procurement unit.

3090 Section 56. Section **63G-6a-1503** is amended to read:

3091 **63G-6a-1503. Selection committee for architect-engineer services.**

3092 (1) In the procurement of architect-engineer services, the procurement officer or the
3093 head of an issuing procurement unit shall encourage firms engaged in the lawful practice of
3094 their profession to submit [~~annually~~] a statement of qualifications [~~and performance data~~].

3095 (2) The [~~Building Board shall be the~~] director of the Division of Facilities Construction
3096 and Management shall appoint an evaluation committee for architect-engineer services
3097 contracts under its authority.

3098 (3) An evaluation committee for architect-engineer services contracts not under the
3099 authority of the [~~Building Board~~] Division of Facilities Construction and Management shall be
3100 established in accordance with rules made by the applicable rulemaking authority.

3101 (4) An evaluation committee shall:

3102 (a) evaluate current statements of qualifications and performance data on file with the
3103 [~~state~~] procurement unit, together with those that may be submitted by other firms in response
3104 to the announcement of [~~the~~] a proposed contract;

3105 (b) consider no less than three firms; and

3106 (c) based upon criteria established and published by the issuing procurement unit,
3107 select no less than three of the firms considered to be the most highly qualified to provide the
3108 services required.

3109 Section 57. Section **63G-6a-1505** is amended to read:

3110 **63G-6a-1505. Determination of compensation for architect-engineer services.**

3111 (1) The procurement officer shall award a contract to a qualified firm at compensation
3112 that the procurement officer determines, in writing, to be fair and reasonable to the [state]
3113 procurement unit.

3114 (2) In making the determination described in Subsection (1), the procurement officer
3115 shall take into account the services':

3116 (a) estimated value;

3117 (b) scope;

3118 (c) complexity; and

3119 (d) professional nature.

3120 (3) If the procurement officer is unable to agree to a satisfactory contract with the firm
3121 first selected, at a price the procurement officer determines to be fair and reasonable to the
3122 [state] procurement unit, the procurement officer shall:

3123 (a) formally terminate discussions with that firm; and

3124 (b) undertake discussions with a second qualified firm.

3125 (4) If the procurement officer is unable to agree to a satisfactory contract with the
3126 second firm selected, at a price the procurement officer determines to be fair and reasonable to
3127 the [state] procurement unit, the procurement officer shall:

3128 (a) formally terminate discussions with that firm; and

3129 (b) undertake discussions with a third qualified firm.

3130 (5) If the procurement officer is unable to award a contract at a fair and reasonable
3131 price to any of the selected firms, the procurement officer shall:

3132 (a) select additional firms; and

3133 (b) continue discussions in accordance with this part until an agreement is reached.

3134 Section 58. Section **63G-6a-1602** is amended to read:

3135 **63G-6a-1602. Protest -- Time -- Authority to resolve protest.**

3136 ~~[(1) Except as provided in Subsection (2), a person who is an actual or prospective~~
3137 ~~bidder, offeror, or contractor who is aggrieved in connection with a procurement or award of a~~
3138 ~~contract may protest to the protest officer as follows:]~~

3139 ~~[(a) with respect]~~

3140 (1) (a) A protest may be filed with the protest officer by:

3141 (i) an actual or prospective bidder or offeror who is aggrieved in connection with a
3142 procurement; or

3143 (ii) a prospective contractor who is aggrieved in connection with an award of a
3144 contract.

3145 (b) (i) A protest under Subsection (1)(a) relating to an invitation for bids or a request
3146 for proposals shall be filed:

3147 [(†) (A) before the opening of bids or the closing date for proposals; or

3148 [(††) (B) if the person filing the protest did not know and should not have known of the
3149 facts giving rise to the protest before the bid opening or the closing date for proposals, within
3150 seven days after the day on which the person knows or should have known of the facts giving
3151 rise to the protest[; or].

3152 (ii) A protest under Subsection (1)(a) relating to a form of procurement not described
3153 in Subsection (1)(b)(i) but involving a deadline established for the submission of a price or
3154 response shall be filed:

3155 (A) before the deadline for the submission of a price or response; or

3156 (B) if the person filing the protest did not know and reasonably should not have known
3157 of the facts giving rise to the protest before the deadline for the submission of a price or
3158 response, within seven days after the day on which the person knows or reasonably should have
3159 known of the facts giving rise to the protest.

3160 ~~[(b)]~~ (iii) [if Subsection (1)(a) does not apply,] A protest under Subsection (1)(a)
3161 relating to a form of procurement not described in Subsection (1)(b)(i) or (ii) shall be filed
3162 within seven days after the day on which the person filing the protest knows or should have
3163 known of the facts giving rise to the protest.

3164 ~~[(2) A person who is debarred or suspended under this chapter may protest the~~
3165 ~~debarment or suspension to the protest officer that ordered the debarment, as applicable, within~~
3166 ~~seven days after the day on which the debarment or suspension is ordered.]~~

3167 ~~[(3)]~~ (2) A person who files a protest under this section shall include in the filing
3168 document:

3169 (a) the person's address of record and email address of record; and

3170 (b) a concise statement of the grounds upon which the protest is made.

3171 ~~[(4)]~~ (3) A person described in Subsection (1)~~[-(2), or (3)]~~ who fails to [~~timely~~] file a
3172 protest [~~under this section~~] within the time prescribed in Subsection (1)(b) may not [~~bring a~~]:

3173 (a) protest[;] to the protest officer a solicitation or award of a contract; or

3174 (b) file an action[;] or appeal challenging a solicitation or award of a contract[~~-or a~~
3175 debarment or suspension;] before [~~the protest officer;~~] an appeals panel, a court, or any other
3176 forum.

3177 ~~[(5)]~~ (4) Subject to the applicable requirements of Section 63G-10-403, a protest
3178 officer[;] or the [~~protest officer's designee;~~] head of a procurement unit may enter into a
3179 settlement agreement to resolve a protest.

3180 Section 59. Section 63G-6a-1603 is amended to read:

3181 **63G-6a-1603. Protest officer responsibilities and authority if protest filed --**
3182 **Decisions of protest officer to be in writing -- Effect of no writing.**

3183 (1) After a [~~timely~~] protest is filed [~~in accordance with Section 63G-6a-1602~~], the
3184 protest officer[;] shall determine whether the protest is timely filed and complies fully with the
3185 requirements of Section 63G-6a-1602.

3186 [~~(a) shall consider the protest; and]~~

3187 [~~(b) may hold a hearing on the protest.~~]

3188 (2) If the protest officer determines that the protest is not timely filed or that the protest
3189 does not fully comply with Section 63G-6a-1602, the protest officer shall dismiss the protest.

3190 (3) If the protest officer determines that the protest is timely filed and complies fully
3191 with Section 63G-6a-1602, the protest officer shall:

3192 (a) dismiss the protest if the protest officer determines that the protest alleges facts that,
3193 if true, do not provide an adequate basis for the protest;

3194 (b) uphold the protest without holding a hearing if the protest officer determines that
3195 the undisputed facts of the protest indicate that the protest should be upheld; or

3196 (c) hold a hearing on the protest if there is a genuine issue of material fact that needs to
3197 be resolved in order to determine whether the protest should be upheld.

3198 ~~[(2)]~~ (4) (a) ~~[The]~~ If a hearing is held on a protest, the protest officer may:

3199 (i) subpoena witnesses and compel their attendance at ~~[a]~~ the protest hearing; ~~[or]~~

3200 (ii) subpoena documents for production at ~~[a]~~ the protest hearing~~[-];~~

3201 (iii) obtain additional factual information; and

3202 (iv) obtain testimony from experts, the person filing the protest, representatives of the

3203 procurement unit, or others to assist the protest officer to make a decision on the protest.

3204 (b) The Rules of Evidence do not apply to a protest hearing.

3205 (c) The applicable rulemaking authority shall make rules relating to intervention in a

3206 protest, including designating:

3207 (i) who may intervene; and

3208 (ii) the time and manner of intervention.

3209 ~~[If a hearing on a protest is held under this section, the]~~ A protest officer shall:

3210 (i) record ~~[the]~~ each hearing held on a protest under this section;

3211 ~~[(ii) preserve all evidence presented at the hearing; and]~~

3212 ~~[(iii) preserve all records and other evidence relied upon in reaching the written~~

3213 ~~decision described in this section.]~~

3214 ~~[(e)]~~ (ii) [Regardless] regardless of whether a hearing on a protest is held under this

3215 section, [the protest officer shall] preserve all records and other evidence relied upon in

3216 reaching the protest officer's written decision~~[-(f) The records described in Subsections (2)(d)~~

3217 ~~and (e) may not be destroyed]~~ until the decision, and any appeal of the decision, becomes

3218 final~~[-]; and~~

3219 (iii) submit to the procurement policy board chair a copy of the protest officer's written

3220 decision and all records and other evidence relied upon in reaching the decision, within seven

3221 days after receiving:

3222 (A) notice that an appeal of the protest officer's decision has been filed under Section

3223 63G-6a-1702; or

3224 (B) a request from the chair of the procurement policy board.

3225 ~~[(g)]~~ (e) A protest [officer who holds] officer's holding a hearing, [considers]

3226 considering a protest, or [issues] issuing a written decision under this section does not [waive

3227 the] affect a person's right to~~[-, at a]~~ later ~~[date,]~~ question or challenge the protest officer's

3228 jurisdiction to hold the hearing, consider the protest, or ~~[render]~~ issue the decision.

3229 (5) (a) The deliberations of a protest officer may be held in private.

3230 (b) If the protest officer is a public body, as defined in Section [52-4-103](#), the protest
 3231 officer shall comply with Section [52-4-205](#) in closing a meeting for its deliberations.

3232 ~~[(3)]~~ (6) (a) A protest officer, or the protest officer's designee, shall promptly issue a
 3233 written decision regarding any protest, ~~[debarment, suspension, or contract controversy if it]~~
 3234 unless the protest is ~~[not]~~ settled by mutual agreement.

3235 (b) The decision shall:

3236 (i) state the reasons for the action taken ~~[and]~~;

3237 (ii) inform the protestor~~[-contractor, or prospective contractor]~~ of the right to judicial
 3238 or administrative review as provided in this chapter~~[-]; and~~

3239 (iii) indicate the amount of the security deposit or bond required under Section
 3240 [63G-6a-1703](#).

3241 (c) A person who issues a decision under Subsection (6)(a) shall mail, email, or
 3242 otherwise immediately furnish a copy of the decision to the protestor.

3243 ~~[(4)-(a)]~~ (7) A decision described in this section is effective until stayed or reversed on
 3244 appeal, except to the extent provided in Section [63G-6a-1903](#). ~~[A person who issues a decision~~
 3245 described in Subsection (1) shall mail, email, or otherwise immediately furnish a copy of the
 3246 decision to the protestor, prospective contractor, or contractor.]

3247 ~~[(b)]~~ (8) (a) A decision described in Subsection ~~[(4)]~~ (6)(a) that is issued in relation to a
 3248 procurement unit other than a legislative procurement unit ~~[or]~~, a judicial procurement unit
 3249 ~~[shall be]~~, a local government procurement unit, or a public transit district is final and
 3250 conclusive unless the protestor~~[-prospective contractor, or contractor: (i) for a controversy~~
 3251 described in Section [63G-6a-1905](#), commences an action in district court in accordance with
 3252 Subsection [63G-6a-1802](#)(5); (ii) for a controversy related to a solicitation or the award of a
 3253 contract,] files an appeal under Section [63G-6a-1702](#)~~[-or]~~.

3254 ~~[(iii) for a debarment or suspension, files an appeal under Section [63G-6a-1702](#).]~~

3255 ~~[(c)]~~ (b) A decision described in Subsection ~~[(4)]~~ (6)(a) that is issued in relation to a
 3256 legislative procurement unit ~~[or]~~, a judicial procurement unit ~~[shall be]~~, a local government
 3257 procurement unit, or a public transit district is final and conclusive unless the protestor~~[-~~
 3258 prospective contractor, or contractor:] files an appeal under Section [63G-6a-1802](#).

3259 ~~[(i) for a controversy described in Section [63G-6a-1905](#), commences an action in~~

3260 district court in accordance with Subsection ~~63G-6a-1802(5)~~;

3261 [(ii) for a controversy related to a solicitation or the award of a contract, files an appeal
3262 under Subsection ~~63G-6a-1802(1)(b)~~; or]

3263 [(iii) for a debarment or suspension, files an appeal under Subsection
3264 ~~63G-6a-1802(1)(b)~~.]

3265 [(5)] (9) If the protest officer does not issue the written decision regarding a protest or a
3266 contract controversy within 30 calendar days after the day on which a written request for a final
3267 decision is filed with the protest officer, or within a longer period as may be agreed upon by the
3268 parties, the protester, prospective contractor, or contractor may proceed as if an adverse
3269 decision had been received.

3270 [(6) Except for a controversy described in Section ~~63G-6a-1905~~, a]

3271 (10) A determination under this section by the protest officer regarding an issue of fact
3272 may not be overturned on appeal unless the decision is arbitrary and capricious or clearly
3273 erroneous.

3274 Section 60. Section **63G-6a-1702** is amended to read:

3275 **63G-6a-1702. Appeal to Utah State Procurement Policy Board -- Appointment of**
3276 **procurement appeals panel -- Proceedings.**

3277 (1) This part applies to all procurement units other than:

3278 (a) a legislative procurement unit;

3279 (b) a judicial procurement unit;

3280 (c) a [~~county or municipality~~] local government procurement unit; or

3281 (d) a public transit district.

3282 (2) (a) [~~A~~] Subject to Section ~~63G-6a-1703~~, a party to a protest involving a
3283 procurement unit other than a procurement [~~described~~] unit listed in Subsection (1)(a), (b), (c),
3284 or (d) may appeal the protest decision to the board by [~~(a)~~] filing a written notice of appeal
3285 with the chair of the board within seven days after:

3286 (i) the day on which the written decision described in Section ~~63G-6a-1603~~ is:

3287 (A) personally served on the party or the party's representative; or

3288 (B) emailed or mailed to the address or email address of record provided by the party
3289 under Subsection ~~63G-6a-1602(3)~~; or

3290 (ii) the day on which the 30-day period described in Subsection ~~63G-6a-1603(5)~~[(7)]

3291 ends, if a written decision is not issued before the end of the 30-day period[;].

3292 ~~[(b) including in the filing document the person's]~~

3293 (b) A person appealing a debarment or suspension of a procurement unit other than a
 3294 procurement unit listed in Subsection (1)(a), (b), (c), or (d) shall file a written notice of appeal
 3295 with the chair of the board no later than seven days after the debarment or suspension.

3296 (c) A notice of appeal under Subsection (2)(a) or (b) shall:

3297 (i) include the address of record and email address of record of the party filing the
 3298 notice of appeal; and

3299 (ii) be accompanied by a copy of any written protest decision or debarment or
 3300 suspension order.

3301 ~~[(c) at the time that the notice of appeal described in Subsection (2)(a) is filed,~~
 3302 ~~complying with the requirements of Section [63G-6a-1703](#) regarding the posting of a security~~
 3303 ~~deposit or a bond.]~~

3304 (3) A person may not base an appeal of a protest under this section on a ground not
 3305 specified in the person's protest under Section [63G-6a-1602](#).

3306 ~~[(3)]~~ (4) A person may not appeal from a protest described in Section [63G-6a-1602](#),
 3307 unless:

3308 (a) a decision on the protest has been issued; or

3309 (b) a decision is not issued and the 30-day period described in Subsection
 3310 [63G-6a-1603](#)~~[(5)]~~(7), or a longer period agreed to by the parties, has passed.

3311 ~~[(4)]~~ (5) The chair of the board or a designee of the chair who is not employed by the
 3312 procurement unit responsible for the solicitation, contract award, or other action complained of:

3313 (a) shall, within seven days after the day on which the chair receives a timely written
 3314 notice of appeal under Subsection (2), and if all the requirements of Subsection (2) and Section
 3315 [63G-6a-1703](#) have been met, appoint:

3316 (i) a procurement appeals panel to hear and decide the appeal, consisting of at least
 3317 three individuals, each of whom ~~[shall be]~~ is:

3318 (A) a member of the board; or

3319 (B) a designee of a member appointed under Subsection (4)(a)(i)(A), if the designee is
 3320 approved by the chair; and

3321 (ii) one of the members of the procurement appeals panel to be the chair of the panel;

3322 (b) may:
3323 (i) appoint the same procurement appeals panel to hear more than one appeal; or
3324 (ii) appoint a separate procurement appeals panel for each appeal; ~~and~~
3325 (c) may not appoint a person to a procurement appeals panel if the person is employed
3326 by the procurement unit responsible for the solicitation, contract award, or other action
3327 complained of[-]; and

3328 (d) shall, at the time the procurement appeals panel is appointed, provide appeals panel
3329 members with a copy of the protest officer's written decision and all other records and other
3330 evidence that the protest officer relied on in reaching the decision.

3331 ~~[(5)]~~ (6) A procurement appeals panel described in Subsection ~~[(4)]~~ (5) shall:

3332 (a) consist of an odd number of members;
3333 (b) ~~[except as provided in Subsection (6);]~~ conduct an informal proceeding on the
3334 appeal within 60 days after the day on which the procurement appeals panel is appointed[-];

3335 (i) unless all parties stipulate to a later date; and

3336 (ii) subject to Subsection (8);

3337 (c) at least seven days before the proceeding, mail, email, or hand-deliver a written
3338 notice of the proceeding to the parties to the appeal; and

3339 (d) within seven days after the day on which the proceeding ends:

3340 (i) issue a written decision on the appeal; and

3341 (ii) mail, email, or hand-deliver the written decision on the appeal to the parties to the
3342 appeal and to the protest officer.

3343 (7) (a) The deliberations of a procurement appeals panel may be held in private.

3344 (b) If the procurement appeals panel is a public body, as defined in Section 52-4-103,
3345 the procurement appeals panel shall comply with Section 52-4-205 in closing a meeting for its
3346 deliberations.

3347 ~~[(6)]~~ (8) A procurement appeals panel may continue a procurement appeals proceeding
3348 beyond the 60-day period described in Subsection ~~[(5)]~~ (6)(b) if the procurement appeals panel
3349 determines that the continuance is in the interests of justice.

3350 ~~[(7)]~~ (9) A procurement appeals panel:

3351 (a) shall, subject to Subsection (9)(c), consider the appeal based solely on:

3352 (i) the protest decision;

3353 (ii) the record considered by the person who issued the protest decision; and
 3354 (iii) if a protest hearing was held, the record of the protest hearing;
 3355 (b) may not take additional evidence; [~~and~~]
 3356 (c) notwithstanding Subsection (9)(b), may, during an informal hearing, ask questions
 3357 and receive responses regarding the appeal, the protest decision, or the record in order to assist
 3358 the panel to understand the appeal, the protest decision, and the record; and

3359 [~~(c)~~] (d) shall uphold the decision of the protest officer, unless the decision is arbitrary
 3360 and capricious or clearly erroneous.

3361 [~~(8)~~] (10) If a procurement appeals panel determines that the decision of the protest
 3362 officer is arbitrary and capricious or clearly erroneous, the procurement appeals panel:

3363 (a) shall remand the matter to the protest officer, to cure the problem or render a new
 3364 decision;

3365 (b) may recommend action that the protest officer should take; and

3366 (c) may not order that:

3367 (i) a contract be awarded to a certain person;

3368 (ii) a contract or solicitation be cancelled; or

3369 (iii) any other action be taken other than the action described in Subsection [~~(8)~~]

3370 (10)(a).

3371 [~~(9)~~] (11) The board shall make rules relating to the conduct of an appeals proceeding,
 3372 including rules that provide for:

3373 (a) expedited proceedings; and

3374 (b) electronic participation in the proceedings by panel members and participants.

3375 [~~(10)~~] (12) The Rules of Evidence do not apply to an appeals proceeding.

3376 Section 61. Section **63G-6a-1703** is amended to read:

3377 **63G-6a-1703. Requirement to post a security deposit or bond -- Exceptions --**
 3378 **Forfeiture of security deposit or bond.**

3379 (1) Except as provided by rule made under Subsection (2)(a), a person who files [~~an~~] a
 3380 notice of appeal under Section **63G-6a-1702** shall, [~~at the time that the appeal is filed~~] before
 3381 the expiration of the time provided under Subsection **63G-6a-1702**(2) for filing a notice of
 3382 appeal, pay a security deposit or post a bond with the office of the protest officer [~~in an amount~~
 3383 ~~that is the greater of~~].

3384 ~~[(a) for the appeal of a debarment or suspension, \$1,000;]~~
3385 ~~[(b) for any type of procurement, \$1,000;]~~
3386 ~~[(c) for an invitation for bids, 5% of:]~~
3387 (2) The amount of a security deposit or bond required under Subsection (1) is:
3388 (a) for an appeal relating to an invitation for bids or request for proposals and except as
3389 provided in Subsection (2)(b)(ii):
3390 (i) \$20,000, if the total contract value is under \$500,000;
3391 (ii) \$25,000, if the total contract value is \$500,000 or more but less than \$1,000,000;
3392 (iii) \$50,000, if the total contract value is \$1,000,000 or more but less than \$2,000,000;
3393 (iv) \$95,000, if the total contract value is \$2,000,000 or more but less than \$4,000,000;
3394 (v) \$180,000, if the total contract value is \$4,000,000 or more but less than \$8,000,000;
3395 (vi) \$320,000, if the total contract value is \$8,000,000 or more but less than
3396 \$16,000,000;
3397 (vii) \$600,000, if the total contract value is \$16,000,000 or more but less than
3398 \$32,000,000;
3399 (viii) \$1,100,000, if the total contract value is \$32,000,000 or more but less than
3400 \$64,000,000;
3401 (ix) \$1,900,000, if the total contract value is \$64,000,000 or more but less than
3402 \$128,000,000;
3403 (x) \$3,500,000, if the total contract value is \$128,000,000 or more but less than
3404 \$256,000,000;
3405 (xi) \$6,400,000, if the total contract value is \$256,000,000 or more but less than
3406 \$512,000,000; and
3407 (xii) \$10,200,000, if the total contract value is \$512,000,000 or more; or
3408 (b) \$20,000, for an appeal:
3409 (i) relating to any type of procurement process other than an invitation for bids or
3410 request for proposals;
3411 (ii) relating to an invitation for bids or request for proposals, if the estimated total
3412 contract value cannot be determined; or
3413 (iii) of a debarment or suspension.
3414 (3) (a) For an appeal relating to an invitation for bids, the estimated total contract value

3415 shall be based on:

3416 (i) the lowest responsible and responsive bid amount for the entire term of the contract,
3417 excluding any renewal period, if the bid opening has occurred; [~~or~~]

3418 [~~(ii) the estimated contract cost, established in accordance with Subsection (2)(b), if the~~
3419 ~~bid opening has not yet occurred;~~]

3420 [~~(d) for a request for proposals, 5% of;~~]

3421 (ii) the total budget for the procurement item for the entire term of the contract,
3422 excluding any renewal period, if bids are based on unit or rate pricing; or

3423 (iii) if the contract is being rebid, the historical usage and amount spent on the contract
3424 over the life of the contract.

3425 (b) For an appeal relating to a request for proposals, the estimated total contract value
3426 shall be based on:

3427 (i) the lowest cost proposed in a response to a request for proposals, considering the
3428 entire term of the contract, excluding any renewal period, if the opening of proposals has
3429 occurred; [~~or~~]

3430 [~~(ii) the estimated contract cost, established in accordance with Subsection (2)(b), if the~~
3431 ~~opening of proposals has not occurred; or]~~

3432 [~~(e) for a type of procurement other than an invitation for bids or a request for~~
3433 ~~proposals, the amount established in accordance with Subsection (2).]~~

3434 (2) ~~The board shall make rules, in accordance with Title 63G, Chapter 3, Utah~~
3435 ~~Administrative Rulemaking Act, that establish:]~~

3436 (a) ~~circumstances and procedures under which the requirement for paying a security~~
3437 ~~deposit or posting a bond may be waived or reduced on grounds, including:]~~

3438 (i) ~~that the person filing the appeal is impecunious;]~~

3439 (ii) ~~circumstances where certain small purchases are involved; or]~~

3440 (iii) ~~other grounds determined by the Division of Purchasing and General Services to~~
3441 ~~be appropriate; and]~~

3442 (b) ~~the method used to determine:]~~

3443 (i) ~~the estimated contract cost described in Subsections (1)(c)(ii) and (1)(d)(ii), and]~~

3444 (ii) ~~the amount described in Subsection (1)(e).]~~

3445 (3) ~~The chair of the board shall dismiss a protest filed under Section 63G-6a-1702 if~~

3446 the actual or prospective bidder, offeror, or contractor fails to timely pay the security deposit or
3447 post the bond required under Subsection (1).]

3448 (ii) the total budget for the procurement item over the entire term of the contract,
3449 excluding any renewal period, if opened cost proposals are based on unit or rate pricing; or

3450 (iii) if the contract is being reissued, the historical usage and amount spent on the
3451 contract over the life of the contract that is being reissued.

3452 (4) The [~~chair of the board~~] protest officer shall:

3453 (a) retain the security deposit or bond until the protest and any appeal of the protest
3454 decision is final;

3455 (b) as it relates to a security deposit:

3456 (i) deposit the security deposit into an interest-bearing account; and

3457 (ii) after any appeal of the protest decision becomes final, return the security deposit
3458 and the interest it accrues to the person who paid the security deposit, unless the security
3459 deposit is forfeited to the General Fund under Subsection (5); and

3460 (c) as it relates to a bond:

3461 (i) retain the bond until the protest and any appeal of the protest decision becomes
3462 final; and

3463 (ii) after the protest and any appeal of the protest decision becomes final, return the
3464 bond to the person who posted the bond, unless the bond is forfeited to the General Fund under
3465 Subsection (5).

3466 (5) A security deposit that is paid, or a bond that is posted, under this section shall
3467 forfeit to the General Fund if:

3468 (a) the person who paid the security deposit or posted the bond fails to ultimately
3469 prevail on appeal; and

3470 (b) the procurement appeals panel finds that the protest or appeal is frivolous or that its
3471 primary purpose is to harass or cause a delay.

3472 Section 62. Section **63G-6a-1706** is amended to read:

3473 **63G-6a-1706. Dismissal of an appeal not filed in compliance with requirements.**

3474 (1) The chair of the board shall dismiss an appeal filed under Section 63G-6a-1702 if
3475 the person filing the appeal fails to comply with any of the requirements of Subsection
3476 63G-6a-1702(2) or Section 63G-6a-1703.

3477 (2) A procurement appeals panel may dismiss an appeal that is assigned to the
3478 procurement appeals panel if the appeal is not filed in accordance with the requirements of this
3479 chapter.

3480 Section 63. Section **63G-6a-1802** is amended to read:

3481 **63G-6a-1802. Appeal to Utah Court of Appeals -- Jurisdiction of district court.**

3482 ~~[(1) (a) Subject to Subsection (2), a person who receives an adverse decision, or a~~
3483 ~~procurement unit, may appeal a decision of a procurement appeals panel to the Utah Court of~~
3484 ~~Appeals within seven days after the day on which the decision is issued.]~~

3485 ~~[(b) A person who receives an adverse decision in a protest relating to a legislative~~
3486 ~~procurement unit, a judicial procurement unit, a local government procurement unit, or a public~~
3487 ~~transit district may appeal the decision to the Utah Court of Appeals within seven days after the~~
3488 ~~day on which the decision is issued.]~~

3489 (1) (a) As provided in this part:

3490 (i) a person may appeal a dismissal of an appeal by the board chair under Subsection
3491 63G-6a-1706(1);

3492 (ii) a person who receives an adverse decision by a procurement appeals panel may
3493 appeal that decision;

3494 (iii) subject to Subsection (2), a procurement unit, other than a legislative procurement
3495 unit, a judicial procurement unit, a local government procurement unit, or a public transit
3496 district, may appeal an adverse decision by a procurement appeals panel;

3497 (iv) a person who receives an adverse decision in a protest relating to a legislative
3498 procurement unit, a judicial procurement unit, a local government procurement unit, or a public
3499 transit district may appeal that decision; and

3500 (v) a person who is debarred or suspended under Section 63G-6a-904 by a legislative
3501 procurement unit, a judicial procurement unit, a local government procurement unit, or a public
3502 transit district may appeal the debarment or suspension.

3503 (b) A person seeking to appeal a dismissal, decision, or debarment or suspension under
3504 Subsection (1)(a) shall file a notice of appeal with the Utah Court of Appeals within seven days
3505 after the dismissal, decision, or debarment or suspension.

3506 (2) A procurement unit may not appeal the decision of a procurement appeals panel,
3507 unless the appeal is:

- 3508 (a) recommended by the protest officer involved; and
- 3509 (b) except for a procurement unit that is not represented by the attorney general's
- 3510 office, approved by the attorney general.

3511 (3) A person appealing a dismissal, decision, protest, debarment, or suspension under
 3512 this section may not base the appeal on a ground not specified in the proceeding from which
 3513 the appeal is taken.

3514 [~~3~~] (4) The Utah Court of Appeals:

- 3515 (a) shall consider the appeal as an appellate court;
- 3516 (b) may not hear the matter as a trial de novo; and
- 3517 (c) may not overturn a finding [~~or~~], dismissal, decision [~~of the protest officer or a~~
 3518 ~~procurement appeals panel~~], or debarment or suspension, unless the finding [~~or~~], dismissal,
 3519 decision, or debarment or suspension is arbitrary and capricious or clearly erroneous.

3520 [~~4~~] (5) The Utah Court of Appeals is encouraged to:

- 3521 (a) give an appeal made under [~~Subsection (1)~~] this section priority; and
- 3522 (b) consider the appeal and render a decision in an expeditious manner.

3523 [~~5~~] ~~The district court shall have original jurisdiction in a cause of action between a~~
 3524 ~~contractor and a procurement unit for any cause of action that arises under, or in relation to, an~~
 3525 ~~existing contract between the contractor and a procurement unit.]~~

3526 Section 64. Section **63G-6a-1902** is amended to read:

3527 **63G-6a-1902. Requirement to exhaust administrative remedies -- Protests and**
 3528 **appeals.**

3529 (1) A person may not challenge a procurement, a procurement process, the award of a
 3530 contract relating to a procurement, a debarment, or a suspension, in a court, before an
 3531 administrative officer or body, or in any other forum other than the forum permitted in this
 3532 chapter.

3533 (2) A person who desires to challenge a procurement, a procurement process, the award
 3534 of a contract relating to a procurement, a debarment, or a suspension, shall bring the challenge,
 3535 in accordance with the requirements of this chapter [~~, by timely filing:~~].

3536 [~~(a) a protest in accordance with Section 63G-6a-1602;~~]

3537 [~~(b) any appeal of the protest decision involving a procurement unit, other than a~~
 3538 ~~legislative procurement unit, a judicial procurement unit, a local government procurement unit,~~

3539 or a public transit district, in accordance with Section ~~63G-6a-1702~~; and]

3540 [(c) any appeal from a procurement appeals panel, or from a protest decision of a
3541 legislative procurement unit, a judicial procurement unit, a local government procurement unit,
3542 or a public transit district, in accordance with Section ~~63G-6a-1802~~.]

3543 [(3) A person who files a protest or appeal under this chapter is limited to protesting or
3544 appealing on the grounds specified in the filing document described in Subsection
3545 ~~63G-6a-1602~~.]

3546 [(4)] (3) In hearing a protest or an appeal under this chapter relating to an expenditure
3547 of federal assistance, federal contract funds, or a federal grant, the person who hears the appeal
3548 shall ensure compliance with federal law and regulations relating to the expenditure.

3549 Section 65. Section ~~63G-6a-1903~~ is amended to read:

3550 **~~63G-6a-1903~~. Effect of timely protest or appeal.**

3551 [In the event of a timely protest under Subsection ~~63G-6a-1602~~(1), or a timely appeal of
3552 the protest under Section ~~63G-6a-1702~~ or ~~63G-6a-1802~~, a]

3553 A procurement unit, other than a legislative procurement unit, a judicial procurement
3554 unit, a local government procurement unit, or a public transit district, may not proceed further
3555 with ~~the~~ a solicitation or with the award of ~~the~~ a contract ~~until~~:

3556 (1) during the pendency of a timely:

3557 (a) protest under Subsection ~~63G-6a-1602~~(1);

3558 (b) appeal of a protest under Section ~~63G-6a-1702~~; or

3559 (c) appeal of a procurement appeals panel decision under Section ~~63G-6a-1802~~; and

3560 (2) until:

3561 [(1)] (a) all administrative and judicial remedies are exhausted;

3562 [(2)] (b) for a protest under Section ~~63G-6a-1602~~ or an appeal under Section
3563 ~~63G-6a-1702~~:

3564 [(a)] (i) the chief procurement officer, after consultation with the attorney general's
3565 office and the head of the using agency, makes a written determination that award of the
3566 contract without delay is ~~[necessary to protect substantial interests]~~ in the best interest of the
3567 procurement unit or the state;

3568 [(b)] (ii) the head of ~~[the purchasing agency]~~ a procurement unit with independent
3569 procurement authority, after consultation with the procurement unit's attorney ~~[general's office]~~,

3570 makes a written determination that award of the contract without delay is [~~necessary to protect~~
3571 ~~substantial interests~~] in the best interest of the procurement unit or the state; or

3572 [~~(c)~~] (iii) for a procurement unit that is not represented by the attorney general's office,
3573 the procurement unit, after consulting with the attorney for the procurement unit, makes a
3574 written determination that award of the contract without delay is [~~necessary to protect~~
3575 ~~substantial interests~~] in the best interest of the procurement unit or the state; or

3576 [(3)] (c) for an appeal under Section 63G-6a-1802, or an appeal to a higher court than
3577 district court:

3578 [(a)] (i) the chief procurement officer, after consultation with the attorney general's
3579 office and the head of the using agency, makes a written determination that award of the
3580 contract without delay is in the best interest of the procurement unit or the state;

3581 [(b)] (ii) the head of [~~the purchasing agency~~] a procurement unit with independent
3582 procurement authority, after consultation with the procurement unit's attorney [~~general's office~~],
3583 makes a written determination that award of the contract without delay is in the best interest of
3584 the procurement unit or the state; or

3585 [(c)] (iii) for a procurement unit that is not represented by the attorney general's office,
3586 the procurement unit, after consulting with the attorney for the procurement unit, makes a
3587 written determination that award of the contract without delay is necessary to protect the best
3588 interest of the procurement unit or the state.

3589 Section 66. Section 63G-6a-1904 is amended to read:

3590 **63G-6a-1904. Costs to or against protestor.**

3591 (1) When a protest is sustained administratively or upon administrative or judicial
3592 review and the protesting bidder or offeror should have been awarded the contract under the
3593 solicitation but is not, the protestor shall be entitled to the following relief as a claim against
3594 the [~~state~~] procurement unit:

3595 (a) the reasonable costs incurred in connection with the solicitation, including bid
3596 preparation and appeal costs; and

3597 (b) any equitable relief determined to be appropriate by the reviewing administrative or
3598 judicial body.

3599 (2) When a protest is not sustained by a procurement appeals panel, the protestor shall
3600 reimburse the issuing procurement unit for expenses incurred in defending the appeal,

3601 including personnel costs, attorney fees, other legal costs, expenses incurred by the attorney
3602 general's office, the per diem and expenses paid by the issuing procurement unit to witnesses or
3603 appeals panel members, and any additional expenses incurred by the staff of the issuing
3604 procurement unit who have provided materials and administrative services to the procurement
3605 appeals panel for that case.

3606 (3) The provisions of Title 63G, Chapter 7, Part 4, Notice of Claim Against a
3607 Governmental Entity or a Government Employee, and Section 63G-7-601 do not apply to
3608 actions brought under this chapter by an aggrieved party for equitable relief or reasonable costs
3609 incurred in preparing or appealing an unsuccessful bid or offer.

3610 Section 67. Section 63G-6a-1906 is amended to read:

3611 **63G-6a-1906. Effect of prior determination by agents of procurement unit.**

3612 In any judicial action under Section 63G-6a-1802, determinations by employees, agents,
3613 or other persons appointed by the [state] procurement unit shall be final and conclusive only as
3614 provided in Sections 63G-6a-1911, 63G-6a-1603, and 63G-6a-1705.

3615 Section 68. Section 63G-6a-1907 is amended to read:

3616 **63G-6a-1907. Effect of violation found after award of contract.**

3617 (1) If after award of a contract it is determined administratively or upon administrative
3618 or judicial review that a procurement or award of a contract is in violation of law:

3619 (a) (i) if the person awarded the contract did not act fraudulently or in bad faith:

3620 (A) the contract may be ratified and affirmed if it is in the best interests of the [state]
3621 procurement unit; or

3622 (B) the contract may be terminated; and

3623 (ii) the person awarded the contract shall be compensated for the actual expenses
3624 reasonably incurred under the contract before the termination, plus a reasonable profit; or

3625 (b) if the person awarded the contract acted fraudulently or in bad faith:

3626 (i) the contract may be declared null and void; or

3627 (ii) the contract may be ratified and affirmed if it is in the best interests of the [state]
3628 procurement unit, without prejudice to the [state's] procurement unit's rights to any appropriate
3629 damages.

3630 (2) Under no circumstances is a person entitled to consequential damages in relation to
3631 a solicitation or award of a contract under this chapter, including consequential damages for

3632 lost profits, loss of business opportunities, or damage to reputation.

3633 Section 69. Section **63G-6a-1910** is amended to read:

3634 **63G-6a-1910. Interest rates.**

3635 (1) In controversies between [~~the state~~] a procurement unit and [~~contractors~~] a
3636 contractor under this chapter, interest on amounts ultimately determined to be due to a
3637 contractor or the [~~state~~] procurement unit are payable at the rate applicable to judgments from
3638 the date the claim arose through the date of decision or judgment, whichever is later.

3639 (2) Unless otherwise specified in a lawful contract between a procurement unit and the
3640 person making a bond claim against the procurement unit, the interest rate applicable to the
3641 bond claim is the rate described in Subsection 15-1-1(2).

3642 (3) This section does not apply to public assistance benefits programs.

3643 Section 70. Section **63G-6a-2103** is amended to read:

3644 **63G-6a-2103. Purchases between procurement units.**

3645 (1) [~~Upon request, a~~] (a) A procurement unit may [~~make services available to~~],
3646 without using a standard procurement process, purchase from another procurement unit[;
3647 ~~including:~~] a procurement item that the other procurement unit itself produces or provides.

3648 [~~(a) standard forms;~~]

3649 [~~(b) printed manuals;~~]

3650 [~~(c) qualified products lists;~~]

3651 [~~(d) source information;~~]

3652 [~~(e) common use commodities listings;~~]

3653 [~~(f) supplier prequalification information;~~]

3654 [~~(g) supplier performance ratings;~~]

3655 [~~(h) debarred and suspended bidders lists;~~]

3656 [~~(i) forms for invitation for bids, requests for proposals, instructions to bidders, general
3657 contract provisions, and contract forms; or]~~

3658 [~~(j) contracts or published summaries of contracts, including price and time of delivery
3659 information.]~~

3660 [(2) A procurement unit may provide technical services to another procurement unit,
3661 ~~including:~~]

3662 [~~(a) development of specifications;~~]

3663 ~~[(b) development of quality assurance test methods, including receiving, inspection,~~
 3664 ~~and acceptance procedures;]~~

3665 ~~[(c) use of testing and inspection facilities; or]~~

3666 ~~[(d) use of personnel training programs;]~~

3667 ~~[(3) Procurement units may enter into contractual arrangements and]~~

3668 (b) (i) Subsection (1)(a) does not authorize a procurement unit to obtain a procurement
 3669 item under a contract of another procurement unit.

3670 (ii) Subsection (1)(b)(i) does not affect the authority of a procurement unit relating to a
 3671 cooperative procurement under Subsection [63G-6a-2105](#)(4)(b).

3672 (2) A procurement unit may publish a schedule of costs or fees for [the services
 3673 provided under Subsections (1) and (2)] procurement items available for purchase by another
 3674 procurement unit.

3675 Section 71. Section **63G-6a-2105** is amended to read:

3676 **63G-6a-2105. Participation of a public entity or a procurement unit in**
 3677 **agreements or contracts of procurement units -- Cooperative purchasing -- State**
 3678 **cooperative contracts.**

3679 (1) The chief procurement officer may, in accordance with the requirements of this
 3680 chapter, enter into a cooperative procurement, and a contract that is awarded as a result of a
 3681 cooperative procurement, with:

3682 (a) another state;

3683 ~~[(b) an external procurement unit; or]~~

3684 (b) a cooperative purchasing organization; or

3685 (c) a public entity [in Utah] inside or outside [of Utah] the state.

3686 (2) A public entity, nonprofit organization, or, as permitted under federal law, an
 3687 agency of the federal government, may obtain a procurement item from a state cooperative
 3688 contract or a contract awarded by the chief procurement officer under Subsection (1), without
 3689 signing a participating addendum if the [quote, invitation for bids, or request for proposals
 3690 used] solicitation issued by the chief procurement officer to obtain the contract includes a
 3691 statement indicating that the resulting contract will be issued [on behalf of a] for the benefit of
 3692 public [entity in Utah] entities and, as applicable, nonprofit organizations and agencies of the
 3693 federal government.

3694 (3) Except as provided in Section 63G-6a-408, or as otherwise provided in this chapter,
3695 an executive branch procurement unit may not obtain a procurement item from a source other
3696 than a state cooperative contract or a contract awarded by the chief procurement officer under
3697 Subsection (1), if the procurement item is available under a state cooperative contract or a
3698 contract awarded by the chief procurement officer under Subsection (1).

3699 (4) A Utah procurement unit may:

3700 (a) contract with the federal government without going through a standard procurement
3701 process or an exception to a standard procurement process, described in Part 8, Exceptions to
3702 Procurement Requirements, if the procurement item obtained under the contract is provided:

3703 (i) directly by the federal government and not by a person contracting with the federal
3704 government; or

3705 (ii) by a person under contract with the federal government that obtained the contract in
3706 a manner that substantially complies with the provisions of this chapter;

3707 (b) participate in, sponsor, conduct, or administer a cooperative procurement with
3708 another Utah procurement unit or another public entity in Utah, if:

3709 (i) each party unit involved in the cooperative procurement enters into an agreement
3710 describing the rights and duties of each party;

3711 (ii) the procurement is conducted, and the contract awarded, in accordance with the
3712 requirements of this chapter;

3713 (iii) the [~~request for quotes, the invitation for bids, or the request for proposals~~]
3714 solicitation:

3715 (A) clearly indicates that the procurement is a cooperative procurement; and

3716 (B) identifies each party that may purchase under the resulting contract; and

3717 (iv) each party involved in the cooperative procurement signs a participating addendum
3718 describing its rights and obligations in relation to the resulting contract; or

3719 (c) purchase under, or otherwise participate in, an agreement or contract of [~~an external~~
3720 procurement unit] a cooperative purchasing organization, if:

3721 (i) each party involved in the cooperative procurement enters into an agreement
3722 describing the rights and duties of each party;

3723 (ii) the procurement was conducted in accordance with the requirements of this
3724 chapter;

3725 (iii) the [~~request for quotes, the invitation for bids, or the request for proposals~~]
3726 solicitation:

- 3727 (A) clearly indicates that the procurement is a cooperative procurement; and
- 3728 (B) identifies each party that may purchase under the resulting contract; and
- 3729 (iv) each party involved in the cooperative procurement signs a participating addendum
- 3730 describing its rights and obligations in relation to the resulting contract.

3731 (5) A procurement unit may not obtain a procurement item under a contract that results
3732 from a cooperative procurement described in Subsection (4), if the procurement unit:

- 3733 (a) is not identified under Subsection (4)(b)(iii)(B) or (4)(c)(iii)(B); or
- 3734 (b) does not sign a participating addendum to the contract as required by this section.

3735 (6) A procurement unit, other than a legislative procurement unit or a judicial
3736 procurement unit, may not obtain a procurement item under a contract held by the United
3737 States General Services Administration, unless, based upon documentation provided by the
3738 procurement unit, the Director of the State Division of Purchasing and General Services
3739 determines in writing that the United States General Services Administration procured the
3740 contract in a manner that substantially complies with the provisions of this chapter.

3741 (7) In addition to any other authority under this section, the chief procurement officer
3742 may, in accordance with the requirements of this chapter, award a contract for a procurement
3743 item to be provided within a specific geographical region within the state:

- 3744 (a) despite a state cooperative contract for the same procurement item; and
- 3745 (b) if awarding the contract on a regional basis is practicable.

3746 Section 72. Section **63G-6a-2401** is enacted to read:

3747 **Part 24. Unlawful Conduct and Penalties**

3748 **63G-6a-2401. Title.**

3749 This part is known as "Unlawful Conduct and Penalties."

3750 Section 73. Section **63G-6a-2402** is enacted to read:

3751 **63G-6a-2402. Definitions.**

3752 As used in this part:

3753 (1) "Contract administration professional":

3754 (a) means an individual who:

3755 (i) is:

- 3756 (A) directly under contract with a procurement unit; or
3757 (B) employed by a person under contract with a procurement unit;
3758 (ii) has responsibility in:
3759 (A) developing a solicitation or grant, or ~~H~~→ **[performing some other function in]**
3759a **conducting** ←~~H~~ the
3760 procurement process; or
3761 (B) supervising or overseeing the administration or management of a contract or grant;
3762 and
3763 (b) does not include an employee of the procurement unit.
3764 (2) "Contribution":
3765 (a) means a voluntary gift or donation of money, service, or anything else of value, to a
3766 public entity for the public entity's use and not for the primary use of an individual employed
3767 by the public entity; and
3768 (b) includes:
3769 (i) a philanthropic donation;
3770 (ii) admission to a seminar, vendor fair, charitable event, fundraising event, or similar
3771 event that relates to the function of the public entity;
3772 (iii) the purchase of a booth or other display space at an event sponsored by the public
3773 entity or a group of which the public entity is a member; and
3774 (iv) the sponsorship of an event that is organized by the public entity.
3775 (3) "Family member" means a father, mother, husband, wife, son, daughter, sister,
3776 brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law,
3777 sister-in-law, son-in-law, or daughter-in-law.
3778 (4) "Governing body" means an administrative, advisory, executive, or legislative body
3779 of a public entity.
3780 (5) "Gratuity":
3781 (a) means anything of value given:
3782 (i) without anything provided in exchange; or
3783 (ii) in excess of the market value of that which is provided in exchange;
3784 (b) includes:
3785 (i) a gift or favor;
3786 (ii) money;

- 3787 (iii) a loan at an interest rate below the market rate or with terms that are more
3788 advantageous to the borrower than terms offered generally on the market;
- 3789 (iv) anything of value provided with an award, other than a certificate, plaque, or
3790 trophy;
- 3791 (v) employment;
- 3792 (vi) admission to an event;
- 3793 (vii) a meal, lodging, or travel;
- 3794 (viii) entertainment for which a charge is normally made; and
- 3795 (ix) a raffle, drawing for a prize, or lottery; and
- 3796 (c) does not include:
- 3797 (i) an item, including a meal in association with a training seminar, that is:
- 3798 (A) included in a contract or grant; or
- 3799 (B) provided in the proper performance of a requirement of a contract or grant;
- 3800 (ii) an item requested to evaluate properly the award of a contract or grant;
- 3801 (iii) a rebate, coupon, discount, airline travel award, dividend, or other offering
3802 included in the price of a procurement item;
- 3803 (iv) a meal provided by an organization or association, including a professional or
3804 educational association, an association of vendors, or an association comprised of public
3805 agencies or public entities, that does not, as an organization or association, respond to
3806 solicitations;
- 3807 (v) a product sample submitted to a public entity to assist the public entity to evaluate a
3808 solicitation;
- 3809 (vi) a political campaign contribution;
- 3810 (vii) an item generally available to the public; or
- 3811 (viii) anything of value that one public agency provides to another public agency.
- 3812 (6) "Hospitality gift":
- 3813 (a) means a token gift of minimal value, including a pen, pencil, stationery, toy, pin,
3814 trinket, snack, beverage, or appetizer, given for promotional or hospitality purposes; and
- 3815 (b) does not include money, a meal, admission to an event for which a charge is
3816 normally made, entertainment for which a charge is normally made, travel, or lodging.
- 3817 (7) "Kickback":

3818 (a) means a negotiated bribe provided in connection with a procurement or the
3819 administration of a contract or grant; and

3820 (b) does not include anything listed in Subsection (5)(c).

3821 (8) "Procurement" has the same meaning as defined in Section [63G-6a-103](#), but also
3822 includes the awarding of a grant.

3823 (9) "Procurement professional":

3824 (a) means an individual who is an employee, and not an independent contractor, of a
3825 procurement unit, and who, by title or primary responsibility:

3826 (i) has procurement decision making authority; and
3827 (ii) is assigned to be engaged in, or is engaged in:

3828 (A) the procurement process; or
3829 (B) the process of administering a contract or grant, including enforcing contract or
3830 grant compliance, approving contract or grant payments, or approving contract or grant change
3831 orders or amendments; and

3832 (b) excludes:

3833 (i) any individual who, by title or primary responsibility, does not have procurement
3834 decision making authority;

3835 (ii) an individual holding an elective office;
3836 (iii) a member of a governing body;
3837 (iv) a chief executive of a public entity or a chief assistant or deputy of the chief
3838 executive, if the chief executive, chief assistant, or deputy, respectively, has a variety of duties
3839 and responsibilities beyond the management of the procurement process or the contract or grant
3840 administration process;

3841 (v) the superintendent, business administrator, principal, or vice principal of a school
3842 district or charter school, or the chief assistant or deputy of the superintendent, business
3843 administrator, principal, or vice principal;

3844 (vi) a university or college president, vice president, business administrator, or dean;
3845 (vii) a chief executive of a local district, as defined in Section [17B-1-102](#), a special
3846 service district, as defined in Section [17D-1-102](#), or a political subdivision created under Title
3847 11, Chapter 13, Interlocal Cooperation Act;

3848 (viii) an employee of a public entity with:

- 3849 (A) an annual budget of \$1,000,000 or less; or
3850 (B) no more than four full-time employees; and
3851 (ix) an executive director or director of an executive branch procurement unit who:
3852 (A) by title or primary responsibility, does not have procurement decision making
3853 authority; and
3854 (B) is not assigned to engage in, and is not engaged in, the procurement process.
3855 (10) "Public agency" has the same meaning as defined in Section 11-13-103, but also
3856 includes all officials, employees, and official representatives of a public agency, as defined in
3857 Section 11-13-103.

3858 Section 74. Section **63G-6a-2403** is enacted to read:

3859 **63G-6a-2403. Applicability.**

- 3860 (1) This part applies to each public entity.
3861 (2) A procurement professional is subject to this part at all times during:
3862 (a) the procurement process; and
3863 (b) the administration of a contract or grant.
3864 (3) A contract administration professional is subject to this part at all times during the
3865 period the contract administration professional is:
3866 (a) under contract with a procurement unit; and
3867 (b) involved in:
3868 (i) the procurement process; or
3869 (ii) the administration of a contract or grant.
3870 (4) This part does not apply to:
3871 (a) an individual described in Subsection 63G-6a-2402(9)(b); or
3872 (b) any individual other than a procurement professional or contract administration
3873 professional.
3874 (5) The other subsections of this section do not affect the applicability or effect of any
3875 other ethics, bribery, or other law.

3876 Section 75. Section **63G-6a-2404** is enacted to read:

3877 **63G-6a-2404. Unlawful conduct -- Exceptions -- Classification of offenses.**

- 3878 (1) (a) It is unlawful for a person who has or is seeking a contract with or a grant from
3879 a public entity knowingly to give, or offer, promise, or pledge to give, a gratuity or kickback to:

3880 (i) the public entity;
3881 (ii) a procurement professional or contract administration professional; or
3882 (iii) an individual who the person knows is a family member of an individual described
3883 in Subsection (1)(a)(ii).
3884 (b) Notwithstanding Subsection (1)(a), it is not unlawful for a public agency to make a
3885 contribution to another public agency.
3886 (c) A person is not guilty of unlawful conduct under Subsection (1)(a) for:
3887 (i) giving or offering, promising, or pledging to give a contribution to a public entity,
3888 unless done with the intent to induce the public entity, in exchange, to:
3889 (A) award a contract or grant;
3890 (B) make a procurement decision; or
3891 (C) take an action relating to the administration of a contract or grant; or
3892 (ii) giving or offering, promising, or pledging to give something of value to an
3893 organization to which a procurement professional or contract administration professional
3894 belongs, unless done with the intent to induce a public entity, in exchange, to:
3895 (A) award a contract or grant;
3896 (B) make a procurement decision; or
3897 (C) take an action relating to the administration of a contract or grant.
3898 (2) (a) It is unlawful for a procurement professional or contract administration
3899 professional, or a family member of either, knowingly to receive or accept, offer or agree to
3900 receive or accept, or ask for a promise or pledge of, a gratuity or kickback from a person who
3901 has or is seeking a contract with or a grant from a public entity.
3902 (b) An individual is not guilty of unlawful conduct under Subsection (2)(a) for
3903 receiving or accepting, offering or agreeing to receive or accept, or asking for a promise or
3904 pledge of a contribution on behalf of a public entity, unless done with the intent that the public
3905 entity, in exchange:
3906 (i) award a contract or grant;
3907 (ii) make a procurement decision; or
3908 (iii) take an action relating to the administration of a contract or grant.
3909 (3) Notwithstanding Subsections (1) and (2), it is not unlawful for a person to give or
3910 receive, offer to give or receive, or promise or pledge to give or ask for a promise or pledge of,

3911 a hospitality gift, if:

3912 (a) the total value of the hospitality gift is less than \$10; and

3913 (b) the aggregate value of all hospitality gifts from the person to the recipient in a
3914 calendar year is less than \$50.

3915 (4) A person who engages in the conduct made unlawful under Subsection (1) or (2) is
3916 guilty of:

3917 (a) a second degree felony, if the total value of the gratuity or kickback is \$1,000 or
3918 more;

3919 (b) a third degree felony, if the total value of the gratuity or kickback is \$250 or more
3920 but less than \$1,000;

3921 (c) a class A misdemeanor, if the total value of the gratuity or kickback is \$100 or more
3922 but less than \$250; and

3923 (d) a class B misdemeanor, if the total value of the gratuity or kickback is less than
3924 \$100.

3925 (5) The criminal sanctions described in Subsection (4) do not preclude the imposition
3926 of other penalties for conduct made unlawful under this part, in accordance with other
3927 applicable law, including:

3928 (a) dismissal from employment or other disciplinary action;

3929 (b) for an elected officer listed in Section [77-6-1](#), removal from office as provided in
3930 Title 77, Chapter 6, Removal by Judicial Proceedings;

3931 (c) requiring the public officer or employee to return the value of the unlawful gratuity
3932 or kickback; and

3933 (d) any other civil penalty provided by law.

3934 Section 76. Section **63G-6a-2405** is enacted to read:

3935 **63G-6a-2405. Discretion to declare contract or grant void -- Limitations.**

3936 (1) Subject to Subsection (2), the governing body or chief executive officer of a public
3937 entity that awards a contract or grant to a person who engages in conduct made unlawful under
3938 this part may, in the sole discretion of the governing body or chief executive officer, declare the
3939 contract or grant to be void and unenforceable, unless:

3940 (a) the contract or grant relates to the issuance of a bond or other obligation and the
3941 bond has been issued or obligation incurred; or

3942 (b) a third party has substantially changed its position in reliance upon the contract or
3943 grant.

3944 (2) Declaring a contract or grant void under Subsection (1) does not affect the
3945 obligation of a procurement unit to pay for a contractor's proper performance completed under
3946 the contract or grant or the value the contractor provides to the public entity under the contract
3947 or grant before the contract or grant is declared void.

3948 (3) Subsection (1) applies only to a procurement with respect to which:

3949 (a) public notice is provided on or after July 1, 2014, if public notice of the
3950 procurement is required; or

3951 (b) the initial contact between the public entity and the potential contractor, for
3952 purposes of the procurement, occurs on or after July 1, 2014, if public notice of the
3953 procurement is not required.

3954 Section 77. Section **63G-6a-2406** is enacted to read:

3955 **63G-6a-2406. Authority of conducting procurement unit with respect to**
3956 **evaluation committee.**

3957 Nothing in this part restricts a conducting procurement unit from:

3958 (1) requiring an evaluation committee member to disclose a conflict of interest; or

3959 (2) removing an evaluation committee member for having a conflict of interest.

3960 Section 78. Section **63G-6a-2407** is enacted to read:

3961 **63G-6a-2407. Duty to report unlawful conduct.**

3962 (1) A procurement professional shall notify the attorney general or other appropriate
3963 prosecuting attorney if the procurement professional has actual knowledge that a person has
3964 engaged in:

3965 (a) conduct made unlawful under this part; or

3966 (b) conduct, including bid rigging, improperly steering a contract to a favored vendor,
3967 exercising undue influence on an individual involved in the procurement process, or
3968 participating in collusion or other anticompetitive practices, made unlawful under other
3969 applicable law.

3970 (2) A procurement professional who fails to comply with the requirement of
3971 Subsection (1) is subject to any applicable disciplinary action or civil penalty identified in
3972 Subsection [63G-6a-2404\(5\)](#).

3973 Section 79. Section **67-16-4** is amended to read:

3974 **67-16-4. Improperly disclosing or using private, controlled, or protected**
3975 **information -- Using position to secure privileges or exemptions -- Accepting employment**
3976 **that would impair independence of judgment or ethical performance -- Exception.**

3977 (1) Except as provided in Subsection (3), it is an offense for a public officer, public
3978 employee, or legislator to:

3979 (a) accept employment or engage in any business or professional activity that he might
3980 reasonably expect would require or induce him to improperly disclose controlled information
3981 that he has gained by reason of his official position;

3982 (b) disclose or improperly use controlled, private, or protected information acquired by
3983 reason of his official position or in the course of official duties in order to further substantially
3984 the officer's or employee's personal economic interest or to secure special privileges or
3985 exemptions for himself or others;

3986 (c) use or attempt to use his official position to:

3987 (i) further substantially the officer's or employee's personal economic interest; or

3988 (ii) secure special privileges or exemptions for himself or others;

3989 (d) accept other employment that he might expect would impair his independence of
3990 judgment in the performance of his public duties; or

3991 (e) accept other employment that he might expect would interfere with the ethical
3992 performance of his public duties.

3993 (2) (a) Subsection (1) does not apply to the provision of education-related services to
3994 public school students by public education employees acting outside their regular employment.

3995 (b) The conduct referred to in Subsection (2)(a) is subject to Section [53A-1-402.5](#).

3996 (3) This section does not apply to a public officer, public employee, or legislator who
3997 engages in conduct that constitutes a violation of this section to the extent that the public
3998 officer, public employee, or legislator is chargeable, for the same conduct, under Section
3999 [~~63G-6a-2304.5~~] [63G-6a-2404](#) or Section [76-8-105](#).

4000 Section 80. Section **67-16-5** is amended to read:

4001 **67-16-5. Accepting gift, compensation, or loan -- When prohibited.**

4002 (1) As used in this section, "economic benefit tantamount to a gift" includes:

4003 (a) a loan at an interest rate that is substantially lower than the commercial rate then

4004 currently prevalent for similar loans; and

4005 (b) compensation received for private services rendered at a rate substantially
4006 exceeding the fair market value of the services.

4007 (2) Except as provided in Subsection (4), it is an offense for a public officer or public
4008 employee to knowingly receive, accept, take, seek, or solicit, directly or indirectly for himself
4009 or another a gift of substantial value or a substantial economic benefit tantamount to a gift:

4010 (a) that would tend improperly to influence a reasonable person in the person's position
4011 to depart from the faithful and impartial discharge of the person's public duties;

4012 (b) that the public officer or public employee knows or that a reasonable person in that
4013 position should know under the circumstances is primarily for the purpose of rewarding the
4014 public officer or public employee for official action taken; or

4015 (c) if the public officer or public employee recently has been, is now, or in the near
4016 future may be involved in any governmental action directly affecting the donor or lender,
4017 unless a disclosure of the gift, compensation, or loan and other relevant information has been
4018 made in the manner provided in Section [67-16-6](#).

4019 (3) Subsection (2) does not apply to:

4020 (a) an occasional nonpecuniary gift, having a value of not in excess of \$50;

4021 (b) an award publicly presented in recognition of public services;

4022 (c) any bona fide loan made in the ordinary course of business; or

4023 (d) a political campaign contribution.

4024 (4) This section does not apply to a public officer or public employee who engages in
4025 conduct that constitutes a violation of this section to the extent that the public officer or public
4026 employee is chargeable, for the same conduct, under Section [~~[63G-6a-2304.5](#)~~] [63G-6a-2404](#) or
4027 Section [76-8-105](#).

4028 Section 81. Section [67-16-5.3](#) is amended to read:

4029 **67-16-5.3. Requiring donation, payment, or service to government agency in**
4030 **exchange for approval -- When prohibited.**

4031 (1) Except as provided in Subsection (3), it is an offense for a public officer, public
4032 employee, or legislator to demand from any person as a condition of granting any application or
4033 request for a permit, approval, or other authorization, that the person donate personal property,
4034 money, or services to any agency.

4035 (2) (a) Subsection (1) does not apply to any donation of property, funds, or services to
4036 an agency that is:

4037 (i) expressly required by statute, ordinance, or agency rule;

4038 (ii) mutually agreed to between the applicant and the entity issuing the permit,
4039 approval, or other authorization;

4040 (iii) made voluntarily by the applicant; or

4041 (iv) a condition of a consent decree, settlement agreement, or other binding instrument
4042 entered into to resolve, in whole or in part, an actual or threatened agency enforcement action.

4043 (b) If a person donates property, funds, or services to an agency, the agency shall, as
4044 part of the permit or other written authorization:

4045 (i) identify that a donation has been made;

4046 (ii) describe the donation;

4047 (iii) certify, in writing, that the donation was voluntary; and

4048 (iv) place that information in its files.

4049 (3) This section does not apply to a public officer, public employee, or legislator who
4050 engages in conduct that constitutes a violation of this section to the extent that the public
4051 officer, public employee, or legislator is chargeable, for the same conduct, under Section
4052 [~~63G-6a-2304.5~~] [63G-6a-2404](#) or Section [76-8-105](#).

4053 Section 82. Section **67-16-5.6** is amended to read:

4054 **67-16-5.6. Offering donation, payment, or service to government agency in**
4055 **exchange for approval -- When prohibited.**

4056 (1) Except as provided in Subsection (3), it is an offense for any person to donate or
4057 offer to donate personal property, money, or services to any agency on the condition that the
4058 agency or any other agency approve any application or request for a permit, approval, or other
4059 authorization.

4060 (2) (a) Subsection (1) does not apply to any donation of property, funds, or services to
4061 an agency that is:

4062 (i) otherwise expressly required by statute, ordinance, or agency rule;

4063 (ii) mutually agreed to between the applicant and the entity issuing the permit,
4064 approval, or other authorization;

4065 (iii) a condition of a consent decree, settlement agreement, or other binding instrument

4066 entered into to resolve, in whole or in part, an actual or threatened agency enforcement action;
4067 or

4068 (iv) made without condition.

4069 (b) The person making the donation of property, funds, or services shall include with
4070 the donation a signed written statement certifying that the donation is made without condition.

4071 (c) The agency receiving the donation shall place the signed written statement in its
4072 files.

4073 (3) This section does not apply to a person who engages in conduct that constitutes a
4074 violation of this section to the extent that the person is chargeable, for the same conduct, under
4075 Section [~~63G-6a-2304.5~~] [63G-6a-2404](#) or Section [76-8-105](#).

4076 Section 83. Section **67-16-6** is amended to read:

4077 **67-16-6. Receiving compensation for assistance in transaction involving an**
4078 **agency -- Filing sworn statement.**

4079 (1) Except as provided in Subsection (5), it is an offense for a public officer or public
4080 employee to receive or agree to receive compensation for assisting any person or business
4081 entity in any transaction involving an agency unless the public officer or public employee files
4082 a sworn, written statement containing the information required by Subsection (2) with:

- 4083 (a) the head of the officer or employee's own agency;
- 4084 (b) the agency head of the agency with which the transaction is being conducted; and
- 4085 (c) the state attorney general.

4086 (2) The statement shall contain:

- 4087 (a) the name and address of the public officer or public employee involved;
- 4088 (b) the name of the public officer's or public employee's agency;
- 4089 (c) the name and address of the person or business entity being or to be assisted; and
- 4090 (d) a brief description of:
 - 4091 (i) the transaction as to which service is rendered or is to be rendered; and
 - 4092 (ii) the nature of the service performed or to be performed.

4093 (3) The statement required to be filed under Subsection (1) shall be filed within 10
4094 days after the date of any agreement between the public officer or public employee and the
4095 person or business entity being assisted or the receipt of compensation, whichever is earlier.

4096 (4) The statement is public information and shall be available for examination by the

4097 public.

4098 (5) This section does not apply to a public officer or public employee who engages in
4099 conduct that constitutes a violation of this section to the extent that the public officer or public
4100 employee is chargeable, for the same conduct, under Section [~~63G-6a-2304.5~~] 63G-6a-2404 or
4101 Section 76-8-105.

4102 Section 84. **Repealer.**

4103 This bill repeals:

4104 Section ~~63G-6a-1803~~, **Statutes of limitations.**

4105 Section ~~63G-6a-1905~~, **Authority to resolve controversy between state and**
4106 **contractor.**

4107 Section ~~63G-6a-2301~~, **Title.**

4108 Section ~~63G-6a-2302~~, **Duty to report factual information to attorney general.**

4109 Section ~~63G-6a-2304.5~~, **Gratuities -- Kickbacks -- Unlawful use of position or**
4110 **influence.**

4111 Section ~~63G-6a-2305~~, **Penalties for artificially dividing a purchase.**

4112 Section ~~63G-6a-2306~~, **Penalties.**

4113 Section ~~63G-6a-2307~~, **Contract awarded in relation to criminal conduct void.**

4114 Section ~~63G-6a-2308~~, **Exemption.**

4115 Section 85. **Effective date.**

4116 If approved by two-thirds of all the members elected to each house, this bill takes effect
4117 upon approval by the governor, or the day following the constitutional time limit of Utah
4118 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
4119 the date of veto override.