

## SB0179S03 compared with SB0179S02

~~{deleted text}~~ shows text that was in SB0179S02 but was deleted in SB0179S03.

inserted text shows text that was not in SB0179S02 but was inserted into SB0179S03.

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~~{Senator Scott K. Jenkins}~~Representative Gage Froerer proposes the following substitute bill:

### PROCUREMENT REVISIONS

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Scott K. Jenkins**

House Sponsor: ~~{~~ Gage Froerer

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#### 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;

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

### **Money Appropriated in this Bill:**

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None

### **Other Special Clauses:**

This bill provides an immediate effective date.

### **Utah Code Sections Affected:**

#### **AMENDS:**

- 11-13-315**, as enacted by Laws of Utah 2013, Chapter 230
- 11-39-103**, as last amended by Laws of Utah 2011, Chapter 387
- 11-39-107**, as last amended by Laws of Utah 2013, Chapter 448
- 52-4-205**, as last amended by Laws of Utah 2013, Chapters 238 and 426
- 63B-2-102**, as last amended by Laws of Utah 2012, Chapter 347
- 63B-3-102**, as last amended by Laws of Utah 2012, Chapter 347
- 63B-4-102**, as last amended by Laws of Utah 2012, Chapter 347
- 63B-5-102**, as last amended by Laws of Utah 2013, Chapter 465
- 63B-6-102**, as last amended by Laws of Utah 2012, Chapter 347
- 63B-6-402**, as last amended by Laws of Utah 2012, Chapter 347
- 63B-7-102**, as last amended by Laws of Utah 2012, Chapter 347
- 63B-7-402**, as last amended by Laws of Utah 2012, Chapter 347
- 63B-8-102**, as last amended by Laws of Utah 2012, Chapter 347
- 63B-8-402**, as last amended by Laws of Utah 2012, Chapter 347
- 63B-9-103**, as last amended by Laws of Utah 2012, Chapter 347
- 63B-11-202**, as last amended by Laws of Utah 2012, Chapter 347
- 63F-1-205**, as last amended by Laws of Utah 2012, Chapter 347
- 63G-6a-102**, as renumbered and amended by Laws of Utah 2012, Chapter 347
- 63G-6a-103**, as last amended by Laws of Utah 2013, Chapter 445
- 63G-6a-104**, as repealed and reenacted by Laws of Utah 2013, Chapter 445
- 63G-6a-106**, as last amended by Laws of Utah 2013, Chapter 445
- 63G-6a-107**, as last amended by Laws of Utah 2013, Chapter 445
- 63G-6a-108**, as last amended by Laws of Utah 2013, Chapter 445
- 63G-6a-204**, as last amended by Laws of Utah 2013, Chapter 445
- 63G-6a-303**, as last amended by Laws of Utah 2013, Chapter 445
- 63G-6a-402**, as last amended by Laws of Utah 2013, Chapter 445

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**63G-6a-403**, as last amended by Laws of Utah 2013, Chapter 445  
**63G-6a-404**, as last amended by Laws of Utah 2013, Chapter 445  
**63G-6a-406**, as last amended by Laws of Utah 2013, Chapter 445  
**63G-6a-408**, as last amended by Laws of Utah 2013, Chapter 445  
**63G-6a-603**, as last amended by Laws of Utah 2013, Chapter 445  
**63G-6a-606**, as last amended by Laws of Utah 2013, Chapter 445  
**63G-6a-607**, as last amended by Laws of Utah 2013, Chapter 445  
**63G-6a-609**, as last amended by Laws of Utah 2013, Chapter 445  
**63G-6a-611**, as last amended by Laws of Utah 2013, Chapter 445  
**63G-6a-612**, as last amended by Laws of Utah 2013, Chapter 445  
**63G-6a-702**, as last amended by Laws of Utah 2013, Chapter 445  
**63G-6a-703**, as last amended by Laws of Utah 2013, Chapter 445  
**63G-6a-704**, as last amended by Laws of Utah 2013, Chapter 445  
**63G-6a-707**, as last amended by Laws of Utah 2013, Chapter 445  
**63G-6a-708**, as last amended by Laws of Utah 2013, Chapter 445  
**63G-6a-709**, as last amended by Laws of Utah 2013, Chapter 445  
**63G-6a-709.5**, as enacted by Laws of Utah 2013, Chapter 445  
**63G-6a-802**, as last amended by Laws of Utah 2013, Chapter 445  
**63G-6a-904**, as last amended by Laws of Utah 2013, Chapter 445  
**63G-6a-1103**, as last amended by Laws of Utah 2013, Chapter 445  
**63G-6a-1105**, as renumbered and amended by Laws of Utah 2012, Chapter 347  
**63G-6a-1204**, as last amended by Laws of Utah 2013, Chapter 445  
**63G-6a-1205**, as last amended by Laws of Utah 2013, Chapter 445  
**63G-6a-1206**, as last amended by Laws of Utah 2013, Chapter 445  
**63G-6a-1402**, as last amended by Laws of Utah 2012, Chapter 330 and renumbered and amended by Laws of Utah 2012, Chapter 347  
**63G-6a-1502**, as last amended by Laws of Utah 2013, Chapter 445  
**63G-6a-1503**, as last amended by Laws of Utah 2013, Chapter 445  
**63G-6a-1505**, as renumbered and amended by Laws of Utah 2012, Chapter 347  
**63G-6a-1602**, as last amended by Laws of Utah 2012, Chapter 91 and renumbered and amended by Laws of Utah 2012, Chapter 347 and last amended by Coordination

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Clause, Laws of Utah 2012, Chapter 347

**63G-6a-1603**, as last amended by Laws of Utah 2013, Chapter 445

**63G-6a-1702**, as last amended by Laws of Utah 2013, Chapter 445

**63G-6a-1703**, as last amended by Laws of Utah 2013, Chapter 445

**63G-6a-1706**, as enacted by Laws of Utah 2012, Chapter 347 and last amended by  
Coordination Clause, Laws of Utah 2012, Chapter 347

**63G-6a-1802**, as last amended by Laws of Utah 2013, Chapter 445

**63G-6a-1902**, as last amended by Laws of Utah 2013, Chapter 445

**63G-6a-1903**, as last amended by Laws of Utah 2013, Chapter 445

**63G-6a-1904**, as last amended by Laws of Utah 2013, Chapter 445

**63G-6a-1906**, as last amended by Laws of Utah 2012, Chapter 91 and renumbered and  
amended by Laws of Utah 2012, Chapter 347 and last amended by Coordination  
Clause, Laws of Utah 2012, Chapter 347

**63G-6a-1907**, as last amended by Laws of Utah 2012, Chapter 91 and renumbered and  
amended by Laws of Utah 2012, Chapter 347 and last amended by Coordination  
Clause, Laws of Utah 2012, Chapter 347

**63G-6a-1910**, as last amended by Laws of Utah 2013, Chapter 445

**63G-6a-2103**, as last amended by Laws of Utah 2013, Chapter 445

**63G-6a-2105**, as last amended by Laws of Utah 2013, Chapter 445

**67-16-4**, as last amended by Laws of Utah 2013, Chapter 445

**67-16-5**, as last amended by Laws of Utah 2013, Chapter 445

**67-16-5.3**, as last amended by Laws of Utah 2013, Chapter 445

**67-16-5.6**, as last amended by Laws of Utah 2013, Chapter 445

**67-16-6**, as last amended by Laws of Utah 2013, Chapter 445

ENACTS:

**63G-6a-109**, Utah Code Annotated 1953

**63G-6a-2401**, Utah Code Annotated 1953

**63G-6a-2402**, Utah Code Annotated 1953

**63G-6a-2403**, Utah Code Annotated 1953

**63G-6a-2404**, Utah Code Annotated 1953

**63G-6a-2405**, Utah Code Annotated 1953

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**63G-6a-2406**, Utah Code Annotated 1953

**63G-6a-2407**, Utah Code Annotated 1953

### REPEALS AND REENACTS:

**63G-6a-1202**, as last amended by Laws of Utah 2013, Chapter 445

### RENUMBERS AND AMENDS:

**63G-6a-707.5**, (Renumbered from 63G-6a-705, as last amended by Laws of Utah 2013, Chapter 445)

### REPEALS:

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

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

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

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

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

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

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

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

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

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

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

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

(1) As used in this section:

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

(b) "Public asset" means:

(i) an asset used by a public entity;

(ii) tax revenue;

(iii) state funds; or

(iv) public funds.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Notwithstanding any other provision of law, a taxed interlocal entity's governing

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body, as described in Section 11-13-206, shall determine and direct the use of an asset by the taxed interlocal entity.

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

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

(7) (a) A taxed interlocal entity is not a participating local entity as defined in Section 63A-3-401.

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

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

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

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

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

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

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

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

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

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



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

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

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

(1) If the estimated cost of the building improvement or public works project exceeds the bid limit, the local entity shall, if it determines to proceed with the building improvement or public works project:

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

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

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

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

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

(i) the lowest responsive responsible bidder; or

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

(A) offers design-build services; and

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

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

(b) (i) The cost of a building improvement or public works project may not be divided

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to avoid:

- (A) exceeding the bid limit; and
- (B) subjecting the local entity to the requirements of this section.

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

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

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

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

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

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

(1) This chapter may not be construed to:

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

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

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

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

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

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

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contract with the local entity.

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

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

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

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

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

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

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

(d) The county or municipal legislative body shall:

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

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

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

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

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

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

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

(b) strategy sessions to discuss collective bargaining;

(c) strategy sessions to discuss pending or reasonably imminent litigation;

(d) strategy sessions to discuss the purchase, exchange, or lease of real property, including any form of a water right or water shares, if public discussion of the transaction would:

(i) disclose the appraisal or estimated value of the property under consideration; or

(ii) prevent the public body from completing the transaction on the best possible terms;

(e) strategy sessions to discuss the sale of real property, including any form of a water right or water shares, if:

(i) public discussion of the transaction would:

(A) disclose the appraisal or estimated value of the property under consideration; or

(B) prevent the public body from completing the transaction on the best possible terms;

(ii) the public body previously gave public notice that the property would be offered for sale; and

(iii) the terms of the sale are publicly disclosed before the public body approves the sale;

(f) discussion regarding deployment of security personnel, devices, or systems;

(g) investigative proceedings regarding allegations of criminal misconduct;

(h) as relates to the Independent Legislative Ethics Commission, conducting business relating to the receipt or review of ethics complaints;

(i) as relates to an ethics committee of the Legislature, a purpose permitted under Subsection 52-4-204(1)(a)(iii)(C);

(j) as relates to the Independent Executive Branch Ethics Commission created in Section 63A-14-202, conducting business relating to an ethics complaint;

(k) as relates to a county legislative body, discussing commercial information as

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defined in Section 59-1-404;

(l) as relates to the Utah Higher Education Assistance Authority and its appointed board of directors, discussing fiduciary or commercial information as defined in Section 53B-12-102; ~~[or]~~

(m) deliberations, not including any information gathering activities, of a public body acting in the capacity of:

(i) an evaluation committee under Title 63G, Chapter 6a, Utah Procurement Code, during the process of evaluating responses to a solicitation, as defined in Section 63G-6a-103;

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

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

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

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

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

(ii) the public body needs to review or discuss the information in order to properly fulfill its role and responsibilities in the procurement process; or

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

(2) The following meetings shall be closed:

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

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

(i) review a fatality review report described in Subsection 62A-16-301(1)(a), and the

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responses to the report described in Subsections 62A-16-301(2) and (4); or

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

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

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

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

(b) discuss filling a midterm vacancy or temporary absence governed by Title 20A, Chapter 1, Part 5, Candidate Vacancy and Vacancy and Temporary Absence in Elected Office;  
or

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

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

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

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

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

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

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

#### CAPITAL IMPROVEMENTS

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

CAPITAL FACILITIES CONSTRUCTION

PROJECT PRIORITY	PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATIONS AND MAINTENANCE COSTS
1	Corrections - Northern Utah Community Corrections Center Phase II	\$2,729,700	\$158,000
2	University of Utah Marriot Library Phase II	\$10,200,000	\$881,600
3	Ogden Courts Building Phase II	\$12,096,000	\$340,000
4	Utah National Guard - Southeast Utah Armory Phase II	\$397,800	\$70,500
5	Southern Utah University Library Phase II	\$7,004,400	\$427,000
6	Utah Valley Special Events Center Phase II	\$11,845,300	\$536,900
7	Salt Lake Community College - Land	\$1,300,000	\$0
8	Tax Commission Building	\$14,224,000	\$812,000
9	Dixie College Business Building	\$2,823,300	\$187,800
10	Salt Lake Community College South City 3rd Floor and Boiler	\$4,009,500	\$257,600
11	Public Education - Deaf and Blind Classrooms	\$3,456,100	\$124,800
	TOTAL CONSTRUCTION	\$70,086,100	
	TOTAL IMPROVEMENTS AND CONSTRUCTION	\$78,500,000	

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

(i) are estimates only;

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

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

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

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

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

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

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

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

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

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

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

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

(d) It is also the intent of the Legislature that this authorization to the division does not



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bind future Legislatures to fund projects initiated from this authorization.

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

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

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

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

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

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

CAPITAL IMPROVEMENTS

1	Alterations, Repairs, and Improvements	\$5,000,000
TOTAL IMPROVEMENTS		\$5,000,000

CAPITAL AND ECONOMIC DEVELOPMENT

			ESTIMATED OPERATIONS AND MAINTENANCE COSTS
PRIORITY PROJECT	PROJECT DESCRIPTION	AMOUNT FUNDED	
1	University of Utah Marriott Library Phase III (Final)	\$13,811,500	\$881,600
2	Bridgerland Applied Technology Center Utah State University Space	\$2,400,000	\$0
3	Weber State University - Heat Plant	\$2,332,100	\$9,600

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4	Department of Human Services - Division of Youth Corrections renamed in 2003 to the Division of Juvenile Justice Services	\$4,180,000	\$400,000
5	Snow College - Administrative Services/Student Center	\$3,885,100	\$224,500
6	Ogden Weber Applied Technology Center - Metal Trades Building Design and Equipment Purchase	\$750,000	\$0
7	Department of Corrections B-Block Remodel	\$1,237,100	\$72,000
8	Utah State University - Old Main Phase III Design	\$550,000	\$0
9	Department of Corrections - 144 bed Uintah Expansion	\$6,700,000	\$168,800
10	Southern Utah University Administrative Services/Student Center	\$5,630,400	\$314,200
11	Anasazi Museum	\$760,200	\$8,500
12	Hill Air Force Base - Easements Purchase	\$9,500,000	\$0
13	Signetics Building Remodel	\$2,000,000	\$0
14	Antelope Island Visitors Center	\$750,000	\$30,000
15	State Fair Park - Master Study	\$150,000	\$0
16	Utah National Guard - Draper Land	\$380,800	\$0
17	Davis Applied Technology Center - Design	\$325,000	\$0
18	Palisade State Park - Land and Park Development	\$800,000	\$0

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19	Department of Human Services - Cedar City Land	\$80,000	\$0
20	Department of Human Services - Clearfield Land	\$163,400	\$0
21	Electronic technology, equipment, and hardware	\$2,500,000	\$0
TOTAL CAPITAL AND ECONOMIC DEVELOPMENT		\$58,885,600	
TOTAL IMPROVEMENTS AND CAPITAL AND ECONOMIC DEVELOPMENT		\$63,885,600	

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

(i) are estimates only;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### CAPITAL IMPROVEMENTS

Alterations, Repairs, and Improvements	\$7,200,000
<b>TOTAL IMPROVEMENTS</b>	<b>\$7,200,000</b>

#### CAPITAL AND ECONOMIC DEVELOPMENT

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PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATIONS AND MAINTENANCE COSTS
Corrections - Uinta IVA	\$11,300,000	\$212,800
Utah County Youth Correctional Facility	\$6,650,000	\$245,000
Ogden Weber Applied Technology Center - Metal Trades	\$5,161,000	\$176,000
Project Reserve Fund	\$3,500,000	None
Weber State University - Browning Center Remodel	\$3,300,000	None
Heber Wells Building Remodel	\$2,000,000	None
Higher Education Davis County - Land Purchase	\$1,600,000	None
National Guard -- Provo Armory	\$1,500,000	\$128,000
Department of Natural Resources - Pioneer Trails Visitor Center	\$900,000	\$65,000
Higher Education Design Projects	\$800,000	Varies depending upon projects selected
Salt Lake Community College - South Valley Planning	\$300,000	None
Division of Youth Corrections renamed in 2003 to the Division of Juvenile Justice Services - Logan Land Purchase	\$120,000	None
<b>TOTAL CAPITAL AND ECONOMIC DEVELOPMENT</b>		<b>\$37,131,000</b>
<b>TOTAL IMPROVEMENTS AND CAPITAL AND ECONOMIC DEVELOPMENT</b>		<b>\$44,331,000</b>

- (d) For purposes of this section, operations and maintenance costs:
- (i) are estimates only;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CAPITAL IMPROVEMENTS

Alterations, Repairs, and Improvements	\$7,600,000
TOTAL IMPROVEMENTS	\$7,600,000

CAPITAL AND ECONOMIC DEVELOPMENT

PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATIONS AND MAINTENANCE COSTS
Corrections - Gunnison (192 Beds)	\$13,970,000	\$210,000
University of Utah -- Gardner Hall	\$7,361,000	\$203,900
Weber State University Davis Campus -- Land Purchase	\$771,000	None
Department of Workforce Services Cedar City -- Land Purchase	\$148,000	None
Utah State University Eastern Durrant School -- Land Purchase	\$400,000	None
State Hospital - Forensic Design (200 beds)	\$750,000	\$575,000

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TOTAL CAPITAL AND ECONOMIC DEVELOPMENT	\$23,400,000
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TOTAL IMPROVEMENTS AND CAPITAL AND ECONOMIC DEVELOPMENT	\$31,000,000
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(d) For purposes of this section, operations and maintenance costs:

(i) are estimates only;

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

CAPITAL AND ECONOMIC DEVELOPMENT

PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATIONS AND MAINTENANCE
Youth Corrections - Carbon / Emery (18 beds)	\$2,298,100	\$70,000
State Hospital - 100 bed Forensic Facility	\$13,800,700	\$320,600
Utah State University - Widtsoe Hall	\$23,986,700	\$750,200
Davis Applied Technology Center - Medical/Health Tech Addition	\$6,344,900	\$144,000
Southern Utah University -- Physical Education Building (Design)	\$1,100,000	\$456,100

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Salt Lake Community College -- High Technology Building, 90th So. Campus (Design)	\$1,165,000	\$718,500
Department of Natural Resources - Antelope Island Road	\$3,600,000	None
Youth Corrections - Region 1 72 Secured Bed Facility	\$1,500,000	None
Department of Natural Resources - Dead Horse Point Visitors Center	\$1,350,000	\$5,700
<b>TOTAL CAPITAL AND ECONOMIC DEVELOPMENT</b>	<b>\$55,145,400</b>	

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

(i) are estimates only;

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

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

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

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

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

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

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

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

(d) The commission may, by resolution, make any statement of intent relating to that

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reimbursement that is necessary or desirable to comply with federal tax law.

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

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

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

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

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

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

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

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

(b) These costs may include:

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

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

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

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

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

(3) The commission, by resolution may decline to issue bonds if the project could be

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construed to violate state law or federal law or regulation.

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

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

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

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

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

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

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

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

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

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

PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATIONS AND MAINTENANCE
Southern Utah University Land Purchase	\$4,600,000	\$0
Salt Lake Community College High Tech Center - Jordan Campus	\$3,980,700	\$507,900

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Children's Special Health Care Needs Clinic	\$755,400	\$247,600
Youth Corrections - 2 @ 32 beds (Vernal / Logan)	\$419,500	\$276,000
Corrections - Gunnison 288 bed and Lagoon Expansion	\$8,425,600	\$0
University of Utah - Cowles Building	\$445,500	\$101,700
Utah Valley State College - Technical Building	\$1,166,300	\$391,000
Sevier Valley Applied Technology Center - Shop Expansion	\$3,014,300	\$443,300
Division of Parks and Recreation Statewide Restrooms	\$1,000,000	\$22,700
Murray Highway Patrol Office	\$2,300,000	\$81,000
Department of Workforce Services - Davis County Employment Center	\$2,780,000	\$128,100
State Hospital - Rampton II	\$1,600,000	\$462,000
Courts - 4th District Land - Provo	\$1,368,000	\$0
Dixie College - Land	\$1,000,000	\$0
<b>TOTAL CAPITAL AND ECONOMIC DEVELOPMENT</b>	<b>\$32,855,300</b>	

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

(i) are estimates only;

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

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

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

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

(c) The commission, by resolution and in consultation with the board, may delete one

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) These costs may include:

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

(ii) interest estimated to accrue on these bonds during the period to be covered by that

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development and conversion, plus a period of six months following the completion of the development and conversion; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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construction period, and all related engineering, architectural, and legal fees.

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

PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATIONS AND MAINTENANCE
Southern Utah University - Physical Education Building	\$2,493,200	\$447,744
Utah Valley State College - Information Sciences Building	\$29,000,000	\$721,875
University of Utah - Cowles Building Renovation	\$7,268,500	\$140,217
Vernal District Court	\$4,539,500	\$149,989
Salt Lake Community College - Applied Education Center	\$4,200,000	\$281,784
<b>TOTAL CAPITAL AND ECONOMIC DEVELOPMENT</b>	<b>\$47,501,200</b>	

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

(i) are estimates only;

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

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

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

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

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

(4) (a) The division may enter into agreements related to these projects before the



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receipt of proceeds of bonds issued under this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) are estimates only;

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

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

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

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

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

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

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

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

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

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

(b) For those phased projects, the division may enter into contracts for amounts not to

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **SB0179S03 compared with SB0179S02**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(14) (a) It is the intent of the Legislature that, because only partial funding is provided for the Heat Plant/Infrastructure Project at Utah State University, the balance necessary to

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complete this project be addressed by future Legislatures, either through appropriations or through the issuance of bonds.

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

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

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

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

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

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

(b) When Utah State University certifies to the commission that the university has obtained reliable commitments, convertible to cash, of \$5,000,000 or more in nonstate funds to construct an addition to the new engineering building and demolish the existing engineering classroom building, the commission may issue and sell general obligation bonds in a total amount not to exceed \$6,100,000.

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

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

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

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

**SB0179S03 compared with SB0179S02**

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

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

(i) are estimates only;

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

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

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

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

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

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

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

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

(d) The commission may, by resolution, make any statement of intent relating to that

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reimbursement that is necessary or desirable to comply with federal tax law.

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

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

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

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

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

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

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

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

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

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

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



## **SB0179S03 compared with SB0179S02**

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

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

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

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

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

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

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

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

(i) the executive branch strategic plan;

(ii) the applicable agency information technology plan;

(iii) the budget for the executive branch agency or department as adopted by the Legislature; and

(iv) Title 63G, Chapter 6a, Utah Procurement Code; and

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

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

(i) at the request of the chief information officer; and

(ii) related to the executive branch agency's acquisition of any item listed in Subsection

## SB0179S03 compared with SB0179S02

(1).

(b) Beginning July 1, 2006 and in accordance with administrative rules established by the department under Section 63F-1-206, no new technology projects may be initiated by an executive branch agency or the department unless the technology project is described in a formal project plan and the business case analysis has been approved by the chief information officer and agency head. The project plan and business case analysis required by this Subsection (4) shall be in the form required by the chief information officer, and shall include:

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

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

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

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

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

The underlying purposes and policies of this chapter are:

- (1) to simplify, clarify, and modernize the law governing procurement [~~by this~~] in the state;
- (2) to ensure the fair and equitable treatment of all persons who deal with the procurement system [~~of this state~~];
- (3) to provide increased economy in state procurement activities; and
- (4) to foster effective broad-based competition within the free enterprise system.

## SB0179S03 compared with SB0179S02

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

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

As used in this chapter:

(1) "Architect-engineer services" means:

(a) professional services within the scope of the practice of architecture as defined in

Section 58-3a-102; ~~[or]~~

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

(c) master planning and programming services.

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

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

(4) "Change order" means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract, upon mutual agreement of the parties to the contract.

(5) "Chief procurement officer" means the chief procurement officer appointed under Subsection 63G-6a-302(1).

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

(a) except:

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

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

(b) including:

(i) preparing any solicitation document;

(ii) appointing an evaluation committee;

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

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

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

(vi) administering a contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

~~[(15)]~~ (16) "Design-build" means the procurement of architect-engineer services and

## SB0179S03 compared with SB0179S02

construction by the use of a single contract with the design-build provider.

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

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

- (a) is regularly maintained by a manufacturer or contractor;
- (b) is either published or otherwise available for inspection by customers; and
- (c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

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

- (a) the contract provides, under circumstances specified in the contract, for an adjustment in price that is not based on cost to the contractor; or
- (b) an adjustment is required by law.

~~[(19)]~~ (20) "Fixed price contract with price adjustment" means a fixed price contract that provides for an upward or downward revision of price, precisely described in the contract, that:

- (a) is based on the consumer price index or another commercially acceptable index, source, or formula; and
- (b) is not based on a percentage of the cost to the contractor.

~~[(20)]~~ (21) (a) "Grant" means furnishing, by a public entity or by any other public or private source, financial or other assistance to a person to support a program authorized by law.

- (b) "Grant" does not include:
  - (i) an award whose primary purpose is to procure an end product or procurement item;or
  - (ii) a contract that is awarded as a result of a procurement or a procurement process.

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

- (a) as it relates to a legislative procurement unit, any person designated by rule made by the applicable rulemaking authority;
- (b) as it relates to an executive branch procurement unit:

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- (i) the director of a division; or
  - (ii) any other person designated by the board, by rule;
  - (c) as it relates to a judicial procurement unit:
    - (i) the Judicial Council; or
    - (ii) any other person designated by the Judicial Council, by rule;
  - (d) as it relates to a local government procurement unit:
    - (i) the legislative body of the local government procurement unit; or
    - (ii) any other person designated by the local government procurement unit;
  - (e) as it relates to a local district, the board of trustees of the local district or a designee of the board of trustees;
  - (f) as it relates to a special service district, the governing body of the special service district or a designee of the governing body;
  - (g) as it relates to a local building authority, the board of directors of the local building authority or a designee of the board of directors;
  - (h) as it relates to a conservation district, the board of supervisors of the conservation district or a designee of the board of supervisors;
  - (i) as it relates to a public corporation, the board of directors of the public corporation or a designee of the board of directors;
  - (j) as it relates to a school district or any school or entity within a school district, the board of the school district, or the board's designee;
  - (k) as it relates to a charter school, the individual or body with executive authority over the charter school, or the individual's or body's designee;
  - (l) as it relates to an institution of higher education of the state, the president of the institution of higher education, or the president's designee; or
  - (m) as it relates to a public transit district, the board of trustees or a designee of the board of trustees.
- ~~[(22)]~~ (23) "Indefinite quantity contract" means a fixed price contract that:
- (a) is for an indefinite amount of procurement items to be supplied as ordered by a procurement unit; and
  - (b) (i) does not require a minimum purchase amount; or
  - (ii) provides a maximum purchase limit.

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

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

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

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

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

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

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

(c) negotiates the terms and conditions of a contract.

~~[(26)]~~ (27) "Labor hour contract" is a contract where:

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

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

~~[(27)]~~ (28) "Multiple award contracts" means the award of a contract for an indefinite quantity of a procurement item to more than one bidder or offeror.

~~[(28)]~~ (29) "Multiyear contract" means a contract that extends beyond a one-year period, including a contract that permits renewal of the contract, without competition, beyond the first year of the contract.

~~[(29)]~~ (30) "Municipality" means a city or a town.

~~[(30)]~~ (31) "Offeror" means a person who responds to a request for proposals.

~~[(31)]~~ (32) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference under the requirements of this chapter.

~~[(32)]~~ (33) (a) "Procure" or "procurement" means buying, purchasing, renting, leasing, leasing with an option to purchase, or otherwise acquiring a procurement item.

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

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- (i) the description of requirements;
- (ii) the selection process;
- (iii) solicitation of sources;
- (iv) the preparation for soliciting a procurement item; and
- (v) the award of a contract[~~;~~ and].

~~[(vi) all phases of contract administration.]~~

~~[(33)]~~ (34) "Procurement item" means a supply, a service, construction, or technology.

~~[(34)]~~ (35) "Procurement officer" means:

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

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

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

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

- (a) legal services;
- (b) consultation services;
- (c) architectural services;
- (d) engineering;
- (e) design;
- (f) underwriting;
- (g) bond counsel;
- (h) financial advice;
- (i) construction management;
- (j) medical services;
- (k) psychiatric services; or
- (l) counseling services.

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

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



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- (i) the head of the procurement unit;
  - (ii) a designee of the head of the procurement unit; or
  - (iii) a person designated by rule made by the applicable rulemaking authority; or
- (b) as it relates to a procurement unit without independent procurement authority, the chief procurement officer or the chief procurement officer's designee.

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

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

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

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

- (a) where a contractor agrees to provide a procurement unit's entire requirements for certain procurement items at prices specified in the contract during the contract period; and
- (b) that:
  - (i) does not require a minimum purchase amount; or
  - (ii) provides a maximum purchase limit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

As used in this chapter:

(1) "Applicable rulemaking authority" means:

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

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

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

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

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

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

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general by statute;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) a school district;
- (b) a public school, including a local school board or a charter school;
- (c) Utah Schools for the Deaf and Blind;
- (d) the Utah Education Network; or
- (e) an institution of higher education of the state.

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

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

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

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

(9) "Judicial procurement unit" means:

- (a) the Utah Supreme Court;
- (b) the Utah Court of Appeals;
- (c) the Judicial Council;
- (d) a state judicial district; or
- (e) each office, committee, subcommittee, or other organization within the state

judicial branch.

(10) "Legislative procurement unit" means:

- (a) the Legislature;
- (b) the Senate;
- (c) the House of Representatives;
- (d) a staff office of an entity described in Subsection (10)(a), (b), or (c); or
- (e) each office, committee, subcommittee, or other organization within the state

legislative branch.

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

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

(13) "Local government procurement unit" means:

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

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

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

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

- (i) a legislative procurement unit;
- (ii) an executive branch procurement unit;
- (iii) a judicial procurement unit;
- (iv) an educational procurement unit;
- (v) a local government procurement unit;
- (vi) a local district;
- (vii) a special service district;
- (viii) a local building authority;
- (ix) a conservation district;
- (x) a public corporation; or
- (xi) a public transit district.

(b) "Procurement unit" does not include a political subdivision created under Title 11, Chapter 13, Interlocal Cooperation Act.

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

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

- (a) a procurement unit;
- (b) a municipality or county, regardless of whether the municipality or county has adopted this chapter or any part of this chapter; and
- (c) any other government entity located in Utah that expends public funds.

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

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

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Section 21. Section **63G-6a-106** is amended to read:

### **63G-6a-106. Specific statutory authority -- Limitations on authority of chief procurement officer and division.**

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

(1) A procurement unit with procurement authority under the following provisions has independent procurement authority to the extent of the applicable provisions and for the procurement items specified in the applicable provisions:

- (a) Title 53B, State System of Higher Education;
- (b) Title 63A, Chapter 5, State Building Board - Division of Facilities Construction and Management;
- (c) Title 67, Chapter 5, Attorney General;
- (d) Title 72, Transportation Code; and
- (e) Title 78A, Chapter 5, District ~~[Courts]~~ Court.

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

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

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

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

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

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

(4) (a) A procurement unit listed in Subsection (4)(b) may, without the supervision, interference, oversight, control, or involvement of the division or the chief procurement officer,

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but in accordance with the requirements of this chapter:

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

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

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

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

(i) a legislative procurement unit;

(ii) a judicial procurement unit;

(iii) an educational procurement unit;

(iv) a local government procurement unit;

(v) a conservation district;

(vi) a local building authority;

(vii) a local district;

(viii) a public corporation;

(ix) a special service district;

(x) a public transit district; and

(xi) a procurement unit referred to in Subsection (1), to the extent authorized in Subsection (1).

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

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

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

~~[(a)]~~ (i) retain outside counsel; or

~~[(b)]~~ (ii) procure litigation support services, including retaining an expert witness.

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

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



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~~[(a)]~~ (i) retain outside counsel; or

~~[(b)]~~ (ii) procure litigation support services, including retaining an expert witness.

~~[(8)]~~ ~~[(b)]~~ 6. The state auditor's office may, in accordance with the provisions of this chapter, but without involvement by the division or the chief procurement officer, procure audit services.

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

(a) deposit and investment services; and

(b) services related to issuing bonds.

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

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

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

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

(b) grants awarded by the state or contracts between the state and any of the following:

(i) an educational procurement unit;

(ii) a conservation district;

(iii) a local building authority;

(iv) a local district;

(v) a public corporation;

(vi) a special service district;

(vii) a public transit district; or

(viii) two or more of the entities described in Subsections (1)(b)(i) through (vii), acting under legislation that authorizes intergovernmental cooperation;

(c) medical supplies or medical equipment, including service agreements for medical equipment, obtained through a purchasing consortium by the Utah State Hospital, the Utah State Developmental Center, the University of Utah Hospital, or any other hospital owned by the state or a political subdivision of the state, if:

(i) the consortium uses a competitive procurement process; and

(ii) the chief administrative officer of the hospital makes a written finding that the

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prices for purchasing medical supplies and medical equipment through the consortium are competitive with market prices; or

(d) goods purchased for resale ~~[; or]~~ to the public.

~~[(e) any action taken by a majority of both houses of the Legislature.]~~

~~[(2)(a) Notwithstanding Subsection (1), the provisions of Part 23, Unlawful Conduct and Penalties, are not applicable to an entity described in Subsection (1)(b)(ii), (iii), (iv), (vi), (vii), or (viii).]~~

~~[(b)]~~ (2) This chapter does not prevent a procurement unit from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

(3) This chapter does not apply to any action taken by a majority of both houses of the Legislature.

~~[(3)]~~ (4) Notwithstanding any conflicting provision of this chapter, when a procurement involves the expenditure of federal assistance, federal contract funds, local matching funds, or federal financial participation funds, the procurement unit shall comply with mandatory applicable federal law and regulations not reflected in this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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has rulemaking authority.

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

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

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

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

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

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

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

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

~~[(2)]~~ (b) procure or supervise each procurement over which the chief procurement officer has authority;

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

~~[(4)]~~ (d) prepare statistical data concerning each procurement and procurement usage of a state procurement unit;

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

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

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

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

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(g) if the chief procurement officer determines that a procurement over which the chief procurement officer has authority is out of compliance with this chapter or board rules:

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

(ii) cancel the procurement, if:

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

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

(h) if the chief procurement officer determines that a contract over which the chief procurement officer has authority is out of compliance with this chapter or board rules, correct or amend the contract to bring it into compliance or cancel the contract:

(i) if the chief procurement officer determines that correcting, amending, or canceling the contract is in the best interest of the state; and

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

(2) The chief procurement officer may:

(a) correct, amend, or cancel a procurement as provided in Subsection (1)(g) at any stage of the procurement process; and

(b) correct, amend, or cancel a contract as provided in Subsection (1)(h) at any time during the term of the contract.

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

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

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

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

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

(ii) complies with:

(A) the requirements of this chapter; and

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

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

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

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

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

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

(ii) uses a standard procurement process; and

(iii) complies with:

(A) the requirements of this chapter; and

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

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

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

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

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

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

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

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### 63G-6a-403. Prequalification of potential vendors.

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

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

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

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

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

~~(c) "Vendor" means:~~

~~(i) a bidder;~~

~~(ii) an offeror; or~~

~~(iii) a contractor, including an architect or an engineer.~~

~~[(b)] (2) A procurement unit may, in accordance with this section:~~

~~[(+)] (a) using a closed-ended prequalification process or an open-ended prequalification process:~~

~~(i) prequalify potential vendors to provide any procurement item or type of procurement item specified by the procurement unit; ~~[and] or~~~~

~~(ii) rank architects, engineers, or other professional service providers to begin the fee negotiation process, as provided in this chapter; and~~

~~[(+)] (b) limit participation in ~~[an invitation for bids, a request for proposals, or an approved vendor list]~~ a standard procurement process to the prequalified potential vendors for the specified procurement item or type of procurement item.~~

~~[(2)] (3) To prequalify potential vendors ~~[to provide a specified type of procurement item]~~ or rank professional service providers, a procurement unit shall issue a request for statement of qualifications.~~

~~[(3)] (4) A procurement unit that issues a request for statement of qualifications:~~

~~(a) shall:~~

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~~[(a)]~~ (i) publish the request for statement of qualifications in accordance with the requirements of Section ~~[63G-6a-402]~~ 63G-6a-406; and

~~[(b)]~~ (ii) state in the request for statement of qualifications:

~~[(i)]~~ (A) the procurement item or type of procurement item to which the request for statement of qualifications relates;

~~[(ii)]~~ (B) the scope of work to be performed;

~~[(iii)]~~ (C) the instructions and ~~[the]~~ deadline for ~~[providing information in response to the request for]~~ submitting a statement of qualifications;

~~[(iv)]~~ (D) the ~~[minimum]~~ criteria ~~[for prequalification]~~ by which the procurement unit will evaluate statements of qualifications;

(E) whether the prequalification process is a closed-ended prequalification process or an open-ended prequalification process;

~~[(v)]~~ (F) if the prequalification process is a closed-ended prequalification process, the period of time during which the list of prequalified potential vendors will remain in effect, which may not be longer than 18 months after the list of prequalified potential vendors is made available to the public under Subsection ~~[(8)]~~ (11)(b); ~~[and]~~

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

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

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

(i) basic information about the person;

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

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

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

(v) any applicable performance ratings;

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

(vii) any other pertinent information.



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

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

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

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

- (a) shall include the prequalification requirements unique to the procurement;
- (b) may include performance rating criteria; and
- (c) may not be so restrictive that the criteria unreasonably limit competition.

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

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

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

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

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

- (a) the procurement unit shall cancel the request for statement of qualifications; and
- (b) the list may not be used by the procurement unit.

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

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

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and

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

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

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

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

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

(1) (a) As used in this section, "vendor" [is] has the same meaning as defined in [Subsection] Section 63G-6a-403[(1)(a)].

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

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

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

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

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

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

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

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

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

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potential contractor list:

- (i) using a rotation system, organized alphabetically, numerically, or randomly;
- (ii) assigning a potential contractor to a specified geographical area; or
- (iii) classifying each potential contractor based on the potential contractor's field or area of expertise.

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

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

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

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

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

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

- (a) ~~[for an invitation for bids or a request for proposals,]~~ the name of the ~~[issuing]~~ conducting procurement unit;
- (b) the name of the procurement unit acquiring the procurement item;
- (c) ~~[for an invitation for bids or a request for proposals,]~~ information on how to contact the issuing procurement unit ~~[in relation to the invitation for bids or request for proposals];~~
- ~~[(d) for a notice of sole source procurement, contact information and other information relating to contesting, or obtaining additional information in relation to, the sole source procurement;]~~
- ~~[(e) for an invitation for bids or a request for proposals, the date of the opening and closing of the invitation for bids or request for proposals;]~~
- ~~[(f) for a notice of sole source procurement, the earliest date that the procurement unit~~

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~~may make the sole source procurement;~~

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

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

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

~~(g) for a notice of a sole source procurement:~~

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

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

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

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

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

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

~~(A) directly impacted by the procurement; or~~

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

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

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

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

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

(a) at least seven days before the ~~[day on which the procurement unit makes the]~~

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acquisition of the sole source procurement~~[, publish the notice:] item; and~~

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

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

(A) directly impacted by the procurement; or

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

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

~~[(i)]~~ (iii) on the main website for the procurement unit acquiring the procurement item;

or

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

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

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

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

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

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

(c) A procurement unit shall maintain all records in accordance with Part 20, Records.

Section 31. Section **63G-6a-408** is amended to read:

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

(1) As used in this section:

(a) "Annual cumulative threshold" means the maximum total annual amount, established by the applicable rulemaking authority under Subsection (2)(a)(i), that a

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procurement unit may expend to obtain procurement items from the same source under this section.

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

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

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

(a) establishing expenditure thresholds, including:

(i) an annual cumulative threshold;

(ii) an individual procurement threshold; and

(iii) a single procurement aggregate threshold;

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

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

(3) Expenditures made under this section by a procurement unit may not exceed a threshold established by the applicable rulemaking authority, unless the chief procurement officer or the head of a procurement unit with independent procurement authority gives written authorization to exceed the threshold that includes the reasons for exceeding the threshold.

(4) Except as provided in Subsection (5), an executive branch procurement unit may not obtain a procurement item through a small purchase standard procurement process if the procurement item may be obtained through a state cooperative contract or a contract awarded by the chief procurement officer under Subsection 63G-6a-2105(1).

(5) Subsection (4) does not apply if:

(a) the procurement item is obtained for an unanticipated, urgent or unanticipated, emergency condition, including:

(i) an item needed to avoid stopping a public construction project;

(ii) an immediate repair to a facility or equipment; or

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(iii) another emergency condition; or

(b) the chief procurement officer or the head of a procurement unit that is an executive branch procurement unit with independent procurement authority:

(i) determines in writing that it is in the best interest of the procurement unit to obtain an individual procurement item outside of the state contract, comparing:

(A) the contract terms and conditions applicable to the procurement item under the state contract with the contract terms and conditions applicable to the procurement item if the procurement item is obtained outside of the state contract;

(B) the maintenance and service applicable to the procurement item under the state contract with the maintenance and service applicable to the procurement item if the procurement item is obtained outside of the state contract;

(C) the warranties applicable to the procurement item under the state contract with the warranties applicable to the procurement item if the procurement item is obtained outside of the state contract;

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

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

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

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

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

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

(b) shall make its ongoing, continuous, and regularly scheduled procurements that exceed the annual cumulative threshold through a contract awarded through another standard

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procurement process described in this chapter or an applicable exception to another standard procurement process, described in Part 8, Exceptions to Procurement Requirements.

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

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

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

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

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

(i) a second degree felony, if the value of the procurement before being divided is \$1,000,000 or more;

(ii) a third degree felony, if the value of the procurement before being divided is \$250,000 or more but less than \$1,000,000;

(iii) a class A misdemeanor, if the value of the procurement before being divided is \$100,000 or more but less than \$250,000; or

(iv) a class B misdemeanor, if the value of the procurement before being divided is less than \$100,000.

(9) A division of a procurement that is prohibited under Subsection (8) includes doing any of the following with the intent or knowledge described in Subsection (8):

(a) making two or more separate purchases;

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

or

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

(10) A person who violates Subsection (8) is subject to the criminal penalties described in Section ~~[63G-6a-2305]~~ 63G-6a-2405.

(11) The Division of Finance within the Department of Administrative Services may conduct an audit of an executive branch procurement unit to verify compliance with the requirements of this section.



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(12) An executive branch procurement unit may not make a small purchase after January 1, 2014, unless the chief procurement officer certifies that the person responsible for procurements in the procurement unit has satisfactorily completed training on this section and the rules made under this section.

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

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

(1) The bidding standard procurement process begins when the [~~division or a procurement unit with independent procurement authority~~] issuing procurement unit issues an invitation for bids.

(2) An invitation for bids shall:

- (a) state the period of time during which bids will be accepted;
- (b) describe the manner in which a bid shall be submitted;
- (c) state the place where a bid shall be submitted; and
- (d) include, or incorporate by reference:
  - (i) a description of the procurement items sought;
  - (ii) the objective criteria that will be used to evaluate the bids; and
  - (iii) the required contractual terms and conditions.

(3) An issuing procurement unit shall publish an invitation for bids in accordance with the requirements of Section 63G-6a-406.

Section 33. Section **63G-6a-606** is amended to read:

### **63G-6a-606. Evaluation of bids -- Award -- Cancellation -- Disqualification.**

(1) [~~The division or a~~] A procurement unit [~~with independent procurement authority~~] that conducts a procurement using a bidding standard procurement process shall evaluate each bid using the objective criteria described in the invitation for bids, which may include:

- (a) experience;
- (b) performance ratings;
- (c) inspection;
- (d) testing;
- (e) quality;
- (f) workmanship;
- (g) time and manner of delivery;

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- (h) references;
- (i) financial stability;
- (j) cost;
- (k) suitability for a particular purpose; or
- (l) other objective criteria specified in the invitation for bids.

(2) Criteria not described in the invitation for bids may not be used to evaluate a bid.

(3) The conducting procurement unit shall:

(a) award the contract as soon as practicable to:

(i) the lowest responsive and responsible bidder who meets the objective criteria described in the invitation for bids; or

(ii) if, in accordance with Subsection (4), the procurement officer or the head of the conducting procurement unit disqualifies the bidder described in Subsection (3)(a)(i), the next lowest responsive and responsible bidder who meets the objective criteria described in the invitation for bids; or

(b) cancel the invitation for bids without awarding a contract.

(4) In accordance with Subsection (5), the procurement officer or the head of the conducting procurement unit may disqualify a bidder for:

(a) a violation of this chapter;

(b) a violation of a requirement of the invitation for bids;

(c) unlawful or unethical conduct; or

(d) a change in circumstance that, had the change been known at the time the bid was submitted, would have caused the bidder to not be the lowest responsive and responsible bidder who meets the objective criteria described in the invitation for bids.

(5) A procurement officer or head of a conducting procurement unit who disqualifies a bidder under Subsection (4) shall:

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

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

(6) If a conducting procurement unit cancels an invitation for bids without awarding a contract, the conducting procurement unit shall make available for public inspection a written justification for the cancellation.

Section 34. Section **63G-6a-607** is amended to read:

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### **63G-6a-607. Action when all bids are over budget.**

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

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

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

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

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

Section 35. Section **63G-6a-609** is amended to read:

### **63G-6a-609. Multiple stage bidding process.**

(1) [~~The division or a~~ A procurement unit [~~with independent procurement authority~~] that conducts a procurement using a bidding standard procurement process may [~~conduct a bid in~~] use multiple stages[;] to:

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

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

- (a) describe the requirements for, and purpose of, each stage of the process;
- (b) indicate whether the procurement unit intends to award:
  - (i) a single contract; or
  - (ii) multiple contracts for a series of upcoming procurements; and

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(c) state that:

(i) the first stage is for prequalification only;

(ii) a bidder may not submit any pricing information in the first stage of the process;

and

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

(3) During the first stage, the conducting procurement unit:

(a) shall prequalify bidders to participate in subsequent stages, in accordance with Section 63G-6a-403;

(b) shall prohibit the submission of pricing information until the final stage; and

(c) may, before beginning the second stage, request additional information to clarify the qualifications of the bidders who submit timely responses.

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

(5) The [~~division or a~~] conducting procurement unit [~~with independent procurement authority may conduct a bid in~~] may use as many stages as it determines to be appropriate.

(6) Except as otherwise expressly provided in this section, [~~the division or~~] a procurement unit [~~with independent procurement authority shall conduct~~] conducting a multiple stage bidding process [~~in accordance~~] under this section shall ensure compliance with this part.

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

Section 36. Section **63G-6a-611** is amended to read:

**63G-6a-611. Invitation for bids for reverse auction -- Notice contents --  
Agreement to terms and conditions.**

(1) The reverse auction bidding process begins when the [~~division or a~~] issuing procurement unit [~~with independent procurement authority~~] issues an invitation for bids to prequalify bidders to participate in the reverse auction.

(2) The invitation for bids shall:

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

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

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(c) describe the procurement items sought;

(d) describe the minimum requirements to become prequalified;

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

(f) describe the procedure that the [~~division or the~~ conducting procurement unit [~~with independent procurement authority~~] will follow in [~~conducting~~] the reverse auction.

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

(a) the specifications, and contractual terms and conditions, of the procurement; and

(b) be trained in, and abide by, the procedure that the division or the procurement unit with independent procurement authority will follow in conducting the reverse auction.

(4) The division or a procurement unit with independent procurement authority shall publish an invitation for bids for a reverse auction in accordance with the requirements of Section 63G-6a-406.

Section 37. Section **63G-6a-612** is amended to read:

### **63G-6a-612. Conduct of reverse auction.**

(1) [~~When~~] A procurement unit conducting a reverse auction [~~, the division or a procurement unit with independent procurement authority~~]:

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

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

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

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

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

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

(i) bid against each other; and

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

(2) At the end of the reverse auction, the conducting procurement unit shall:

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

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

(3) After the reverse auction is finished, the conducting procurement [~~officer~~] unit shall make publicly available:

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

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

(b) if practicable:

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

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

Section 38. Section **63G-6a-702** is amended to read:

### **63G-6a-702. Contracts awarded by request for proposals.**

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

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

(a) the procurement of professional services;

(b) a design-build procurement;

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

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

(3) The procurement of architect-engineer services is governed by Part 15.

### Architect-Engineer Services.

Section 39. Section **63G-6a-703** is amended to read:

### **63G-6a-703. Request for proposals -- Notice -- Contents.**

(1) The request for proposals standard procurement process begins when the division or a procurement unit with independent procurement authority issues a request for proposals.

(2) A request for proposals shall:

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

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

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

(d) include, or incorporate by reference:

(i) a description of the procurement items sought;

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

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the proposal; and

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

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

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

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

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

(3) The division or a procurement unit with independent procurement authority shall publish a request for proposals in accordance with the requirements of Section 63G-6a-406.

Section 40. Section **63G-6a-704** is amended to read:

### **63G-6a-704. Opening of proposals and acceptance.**

(1) An issuing procurement unit shall ensure that proposals are opened in a manner that avoids disclosing the contents to competing offerors during the evaluation process.

(2) An issuing procurement unit may not accept a proposal[~~-(a)~~] after the time for submission of a proposal has expired[~~;-or~~].

[~~(b) that is not responsive to the request for proposals.~~]

(3) At any time during the request for proposals standard procurement process, a conducting procurement unit may reject a proposal if the conducting procurement unit determines that:

(a) the person submitting the proposal is not responsible; or

(b) the proposal is not responsive or does not meet mandatory minimum requirements stated in the request for proposals.

Section 41. Section **63G-6a-707** is amended to read:

### **63G-6a-707. Evaluation of proposals -- Evaluation committee.**

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(1) ~~[Each proposal shall be evaluated]~~ To determine which proposal provides the best value to the procurement unit, the evaluation committee shall evaluate each responsive and responsible proposal that has not been disqualified from consideration under the provisions of this chapter, using the criteria described in the request for proposals, which may include:

- (a) experience;
- (b) performance ratings;
- (c) inspection;
- (d) testing;
- (e) quality;
- (f) workmanship;
- (g) time, manner, or schedule of delivery;
- (h) references;
- (i) financial ~~[stability]~~ solvency;
- (j) suitability for a particular purpose;
- (k) management plans;
- (l) cost; or
- (m) other subjective or objective criteria specified in the request for proposals.

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

(3) The ~~[issuing]~~ conducting procurement unit shall:

- (a) appoint an evaluation committee consisting of at least three individuals; and
- (b) ensure that the evaluation committee and each member of the evaluation

committee:

- (i) does not have a conflict of interest with any of the offerors;
- (ii) can fairly evaluate each proposal;
- (iii) does not contact or communicate with an offeror ~~[for any reason other than~~

conducting the standard procurement process] concerning the procurement outside the official evaluation committee process; and

(iv) conducts the evaluation in a manner that ensures a fair and competitive process and avoids the appearance of impropriety.

(4) The evaluation committee may with the approval of the head of the conducting



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procurement unit, enter into discussions or conduct interviews with, or [participate in] attend presentations by, the offerors.

(5) (a) Except as provided in [~~Subsection (6) or~~] Subsections (5)(b) and (7), each member of the evaluation committee is prohibited from knowing, or having access to, any information relating to the cost, or the scoring of the cost, of a proposal until after the evaluation committee submits its final recommended scores on all other criteria to the issuing procurement unit.

(b) The issuing procurement unit shall:

(i) if applicable, assign an individual who is not a member of the evaluation committee to calculate scores for cost based on the applicable scoring formula, weighting, and other scoring procedures contained in the request for proposals;

(ii) review the evaluation committee's scores and correct any errors, scoring inconsistencies, and reported noncompliance with this chapter;

(iii) add the scores calculated for cost, if applicable, to the evaluation committee's final recommended scores on criteria other than cost to derive the total combined score for each responsive and responsible proposal; and

(iv) provide to the evaluation committee the total combined score calculated for each responsive and responsible proposal, including any applicable cost formula, weighting, and scoring procedures used to calculate the total combined scores.

(c) The evaluation committee may not:

(i) change its final recommended scores described in Subsection (5)(a) after the evaluation committee has submitted those scores to the issuing procurement unit; or

(ii) change cost scores calculated by the issuing procurement unit.

(6) (a) As used in this Subsection (6), "management fee" includes only the following fees of the construction manager/general contractor:

(i) preconstruction phase services;

(ii) monthly supervision fees for the construction phase; and

(iii) overhead and profit for the construction phase.

(b) When selecting a construction manager/general contractor for a construction project, the evaluation committee:

(i) may score a construction manager/general contractor based upon criteria contained

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in the solicitation, including qualifications, performance ratings, references, management plan, certifications, and other project specific criteria described in the solicitation;

(ii) may, as described in the solicitation, weight and score the management fee as a fixed rate or as a fixed percentage of the estimated contract value;

~~[(+)]~~ (iii) may, at any time after the opening of the responses to the request for proposals, have access to, and consider, the management fee proposed by the offerors; and

~~[(+)]~~ (iv) except as provided in Subsection (7), may not know or have access to any other information relating to the cost of construction submitted by the offerors, until after the evaluation committee submits its final recommended scores on all other criteria to the issuing procurement unit.

(7) (a) The deliberations of an evaluation committee may be held in private.

(b) If the evaluation committee is a public body, as defined in Section 52-4-103, the evaluation committee shall comply with Section 52-4-205 in closing a meeting for its deliberations.

~~[(7)]~~ (8) An issuing procurement unit is not required to comply with Subsection (5) if[; before opening the responses to the request for proposals,] the head of the issuing procurement unit or a person designated by rule made by the applicable rulemaking authority:

(a) signs a written statement:

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

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

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

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

Section 42. Section **63G-6a-707.5**, which is renumbered from Section 63G-6a-705 is renumbered and amended to read:

~~[63G-6a-705].~~        **63G-6a-707.5. Best and final offers.**

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

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(1) At any time during the evaluation process, the evaluation committee, with the approval of the director or head of the issuing procurement unit, may:

- (a) request best and final offers from responsible and responsive offerors; and
- (b) evaluate those offers.

(2) [~~The issuing procurement unit~~] In requesting and evaluating best and final offers under Subsection (1), the evaluation committee shall:

- (a) ensure that each offeror receives fair and equal treatment with respect to the other offerors;
- (b) establish a schedule and procedures for conducting discussions;
- (c) ensure that information in each proposal and information gathered during discussions is not shared with other offerors until the contract is awarded;
- (d) ensure that auction tactics are not used in the discussion process, including discussing and comparing the costs and features of other proposals; and
- (e) set a common date and time for the submission of best and final offers.

(3) If an offeror chooses not to participate in a discussion or does not make a timely best and final offer, the offer submitted by the [~~offerors~~] offeror before the conduct of discussions shall be treated as the offeror's best and final offer.

Section 43. Section **63G-6a-708** is amended to read:

### **63G-6a-708. Justification statement -- Cost-benefit analysis.**

(1) (a) In determining which proposal provides the best value to the procurement unit, the evaluation committee and the conducting procurement unit shall prepare a written justification statement that:

- (i) explains the score assigned to each evaluation category;
- (ii) explains how the proposal with the highest total combined score provides the best value to the procurement unit in comparison to the other proposals;
- (iii) if applicable, includes the cost-benefit analysis described in Subsection (2) and how the cost-benefit analysis relates to the best value to the procurement unit; and
- (iv) if applicable, includes the written determination described in Subsection (5).

(b) An explanation under Subsection (1)(a)(i) need not address each criterion within each category.

[(+)] (2) If, in determining the best value to the procurement unit, the evaluation

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committee awards the highest score [~~awarded by the evaluation committee~~], including the score for cost, [~~is awarded~~] to a proposal other than the lowest cost proposal, and the difference between the cost of the highest scored proposal and the lowest cost proposal exceeds the greater of \$10,000 or 5% of the lowest cost proposal, the [~~issuing procurement unit shall make~~] evaluation committee and the conducting procurement unit shall prepare an informal written cost-benefit analysis that:

(a) explains, in general terms, the advantage to the procurement unit of awarding the contract to the higher cost offeror; and

(b) [~~includes;~~] except as provided in Subsection [~~(1)(c);~~] (5):

(i) includes the estimated added financial value to the procurement unit of each [~~criteria~~] criterion that justifies awarding the contract to the higher cost offeror; and

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

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

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

[~~(d)~~] (ii) demonstrates that the value of the advantage to the procurement unit of awarding the contract to the higher cost offeror exceeds the value of the difference between the cost of the higher cost proposal and the cost of the lower cost proposals[~~, and~~].

[~~(e) includes any other information required by rule made by the applicable rulemaking authority.~~]

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

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

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

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

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

## SB0179S03 compared with SB0179S02

~~[(3)]~~ (4) If the informal cost-benefit analysis described in Subsection ~~[(+)]~~ (2) does not justify award of the contract to the offeror, described in Subsection ~~[(2)]~~ (3), that received the next highest score, the issuing procurement unit:

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

(b) shall continue with the process described in Subsection ~~[(2)]~~ (3) for each offeror that received the next highest score, until the issuing procurement unit:

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

(ii) cancels the request for proposals.

(5) (a) The evaluation committee, with the issuing procurement unit's approval, may waive, in whole or in part, a requirement under Subsection (2)(b) if the evaluation committee determines in writing that assigning a financial value to a particular procurement item or evaluation criterion is not practicable.

(b) A written determination under Subsection (5)(a):

(i) shall explain:

(A) why it is not practicable to assign a financial value to the procurement item or evaluation criterion; and

(B) in nonfinancial terms, why awarding the contract to the higher cost offeror provides the best value to the procurement unit; and

(ii) may be included as part of the justification statement.

~~[(+)]~~ (6) (a) An issuing procurement unit is not required to make the cost-benefit analysis described in this section for a contract with a construction manager/general contractor if the contract is awarded based solely on the qualifications of the construction manager/general contractor and the management fee described in Subsection ~~[63G-6a-706]~~ 63G-6a-707(6).

(b) The applicable rulemaking authority shall make rules that establish procedures and criteria for awarding a contract described in Subsection ~~[(+)]~~ (6)(a) to ensure that:

(i) a competitive process is maintained; and

(ii) the contract awarded is in the best interest of the procurement unit.

Section 44. Section **63G-6a-709** is amended to read:

**63G-6a-709. Award of contract -- Cancellation -- Disqualification.**

(1) After the completion of the evaluation and scoring of proposals ~~[is completed, the~~

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~~issuing procurement unit shall:] and the justification statement, including any required cost-benefit analysis, the evaluation committee shall submit the proposals, evaluation scores, and justification statement to the head of the procurement unit or designee for review and final determination of a contract award.~~

(2) After reviewing the proposals, evaluation scores, and justification statement, including any required cost-benefit analysis, the head of the issuing procurement unit or designee shall:

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

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

(ii) if, in accordance with Subsection ~~[(2)]~~ (3), the procurement officer or the head of the issuing procurement unit disqualifies the offeror described in Subsection ~~[(+)]~~ (2)(a)(i), the responsive and responsible offeror with the next highest total score; or

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

~~[(2)]~~ (3) In accordance with Subsection ~~[(3)]~~ (4), the procurement officer or the head of the issuing procurement unit may disqualify an offeror for:

(a) a violation of this chapter;

(b) not being responsive or responsible;

~~[(b)]~~ (c) a violation of a requirement of the request for proposals;

~~[(c)]~~ (d) unlawful or unethical conduct; or

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

~~[(3)]~~ (4) A procurement officer or head of an issuing procurement unit who disqualifies an offeror under Subsection ~~[(2)]~~ (3) shall:

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

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

~~[(4)]~~ (5) If an issuing procurement unit cancels a request for proposals without awarding a contract, the issuing procurement unit shall make available for public inspection a written justification for the cancellation.

Section 45. Section **63G-6a-709.5** is amended to read:

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

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(1) The issuing procurement unit shall, on the next business day [~~on which~~] after the award of a contract is announced, make available to each offeror and to the public a written statement that includes:

~~[(1)]~~ (a) the name of the offeror to which the contract is awarded and the total score awarded by the evaluation committee to that offeror;

(b) the justification statement under Section 63G-6a-708, including any required cost-benefit analysis; and

~~[(2)]~~ (c) the total score awarded by the evaluation committee to each offeror to which the contract is not awarded, without identifying which offeror received which score~~[-and]~~.

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

(2) Subsection (1)(a) does not prevent the issuing procurement unit from using codes or another method in a statement under Subsection (1) to distinguish offerors to which the contract is not awarded and to indicate their scores, as long as an offeror cannot be matched with the score awarded to that offeror.

Section 46. Section **63G-6a-802** is amended to read:

**63G-6a-802. Award of contract without competition -- Notice -- Extension of contract without engaging in standard procurement process.**

(1) As used in this section:

(a) "Transitional costs" mean the costs of changing from an existing provider of, or type of, a procurement item to another provider of, or type of, procurement item.

(b) "Transitional costs" include:

(i) training costs;

(ii) conversion costs;

(iii) compatibility costs;

(iv) system downtime;

(v) disruption of service;

(vi) staff time necessary to put the transition into effect;

(vii) installation costs; and

(viii) ancillary software, hardware, equipment, or construction costs.

(c) "Transitional costs" do not include:

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(i) the costs of preparing for or engaging in a procurement process; or

(ii) contract negotiation or contract drafting costs.

(d) "Trial use contract" means a contract between a procurement unit and a vendor for a procurement item that the procurement unit acquires for trial use or testing to determine whether the procurement item will benefit the procurement unit.

(2) The division or a procurement unit with independent procurement authority may award a contract for a procurement item without competition if the procurement officer, the head of the procurement unit, or a designee of either who is senior to the procurement officer or the head of the procurement unit, determines in writing that:

(a) there is only one source for the procurement item; ~~[or]~~

(b) the award to a specific supplier, service provider, or contractor is a condition of a donation that will fund the full cost of the supply, service, or construction item~~[-]; or~~

(c) the procurement item is needed for trial use or testing to determine whether the procurement item will benefit the procurement unit.

(3) Circumstances under which there is only one source for a procurement item may include:

(a) where the most important consideration in obtaining a procurement item is the compatibility of equipment, technology, software, accessories, replacement parts, or service;

~~[(b) where a procurement item is needed for trial use or testing;]~~

~~[(c)]~~ (b) where transitional costs are unreasonable or cost prohibitive; or

~~[(d)]~~ (c) procurement of public utility services.

(4) ~~(a) [The]~~ Subject to Subsection (4)(b), the applicable rulemaking authority shall make rules regarding the publication of notice for a sole source procurement that, at a minimum, require publication of notice of a sole source procurement, in accordance with Section 63G-6a-406, if the cost of the procurement exceeds \$50,000.

(b) Publication of notice under Section 63G-6a-406 is not required for:

(i) the procurement of public utility services pursuant to a sole source contract; or

(ii) other sole source procurements provided by rule.

(5) The division or a procurement unit with independent procurement authority who awards a sole source contract on behalf of another procurement unit shall negotiate with the contractor to ensure that the terms of the contract, including price and delivery, are in the best



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interest of the procurement unit.

(6) (a) The period of trial use or testing of a procurement item under a trial use contract may not exceed 18 months, unless the procurement officer provides a written exception documenting the reason for a longer period.

(b) A trial use contract shall:

(i) state that the purpose of the contract is strictly for the purpose of the trial use or testing of a procurement item;

(ii) state that the contract terminates upon completion of the trial use or testing period;

(iii) state that, after the trial use or testing period, the procurement unit is not obligated to purchase or enter into a contract for the procurement item, regardless of the trial use or testing result;

(iv) state that any purchase of the procurement item beyond the terms of the trial use contract will be made in accordance with this chapter; and

(v) include, as applicable:

(A) test schedules;

(B) deadlines and a termination date;

(C) measures that will be used to evaluate the performance of the procurement item;

(D) any fees and associated expenses or an explanation of the circumstances warranting a waiver of those fees and expenses;

(E) the obligations of the procurement unit and vendor;

(F) provisions regarding the ownership of the procurement item during and after the trial use or testing period;

(G) an explanation of the grounds upon which the contract may be terminated;

(H) a limitation of liability;

(I) a consequential damage waiver provision;

(J) a statement regarding the confidentiality or nondisclosure of information;

(K) a provision relating to any required bond or security deposit; and

(L) other requirements unique to the procurement item for trial use or testing.

(c) Publication of notice under Section 63G-6a-406 is not required for a procurement pursuant to a trial use contract.

~~(6)~~ (7) The division or a procurement unit with independent procurement authority

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may extend a contract for a reasonable period of time without engaging in a standard procurement process, if:

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

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

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

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

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

(f) the extension covers the period of time during which contract negotiations with a new provider are being conducted~~[-]; or~~

(g) the extension is necessary to avoid a lapse in critical governmental services that may negatively impact public health, safety, or welfare.

Section 47. Section **63G-6a-904** is amended to read:

**63G-6a-904. Debarment from consideration for award of contracts -- Causes for debarment.**

(1) ~~(a) [After reasonable notice to the person involved and reasonable opportunity for that person to be heard] Subject to Subsection (1)(b), the chief procurement officer[,-a procurement officer,] or the head of a procurement unit with independent procurement authority may[-, after consultation with the procurement unit involved in the matter for which debarment is sought and, if the procurement unit is in the state executive branch, the attorney general]:~~

~~(a)~~ (i) debar a person for cause from consideration for award of contracts for a period not to exceed three years; or

~~(b)~~ (ii) suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity that might lead to debarment.

(b) Before debarring or suspending a person under Subsection (1)(a), the chief procurement officer or head of a procurement unit with independent procurement authority shall:

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(i) consult with:

(A) the procurement unit involved in the matter for which debarment or suspension is sought; and

(B) the attorney general, if the procurement unit is in the state executive branch, or the procurement unit's attorney, if the procurement unit is not in the state executive branch;

(ii) give the person at least 10 days' prior written notice of:

(A) the reasons for which debarment or suspension is being considered; and

(B) the hearing under Subsection (1)(b)(iii); and

(iii) hold a hearing in accordance with Subsection (1)(c).

(c) (i) At a hearing under Subsection (1)(b)(iii), the chief procurement officer or head of a procurement unit with independent procurement authority may:

(A) subpoena witnesses and compel their attendance at the hearing;

(B) subpoena documents for production at the hearing;

(C) obtain additional factual information; and

(D) obtain testimony from experts, the person who is the subject of the proposed debarment or suspension, representatives of the procurement unit, or others to assist the chief procurement officer or head of a procurement unit with independent procurement authority to make a decision on the proposed debarment or suspension.

(ii) The Rules of Evidence do not apply to a hearing under Subsection (1)(b)(iii).

(iii) The chief procurement officer or head of a procurement unit with independent procurement authority shall:

(A) record a hearing under Subsection (1)(b)(iii);

(B) preserve all records and other evidence relied upon in reaching a decision until the decision becomes final;

(C) for an appeal of a debarment or suspension by a procurement unit other than a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district, submit to the procurement policy board chair a copy of the written decision and all records and other evidence relied upon in reaching the decision, within seven days after receiving a notice that an appeal of a debarment or suspension has been filed under Section 63G-6a-1702 or after receiving a request from the procurement policy board chair; and

(D) for an appeal of a debarment or suspension by a legislative procurement unit, a

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judicial procurement unit, a local government procurement unit, or a public transit district, submit to the Utah Court of Appeals a copy of the written decision and all records and other evidence relied upon in reaching the decision, within seven days after receiving a notice that an appeal of a debarment or suspension has been filed under Section 63G-6a-1802.

(iv) The holding of a hearing under Subsection (1)(b)(iii) or the issuing of a decision under Subsection (1)(b)(v) does not affect a person's right to later question or challenge the jurisdiction of the chief procurement officer or head of a procurement unit with independent procurement authority to hold a hearing or issue a decision.

(v) The chief procurement officer or head of a procurement unit with independent procurement authority shall:

(A) promptly issue a written decision regarding a proposed debarment or suspension, unless the matter is settled by mutual agreement; and

(B) mail, email, or otherwise immediately furnish a copy of the decision to the person who is the subject of the decision.

(vi) A written decision under Subsection (1)(b)(v) shall:

(A) state the reasons for the debarment or suspension, if debarment or suspension is ordered;

(B) inform the person who is debarred or suspended of the right to judicial or administrative review as provided in this chapter; and

(C) indicate the amount of the security deposit or bond required under Section 63G-6a-1703 and how that amount was calculated.

~~(vi)~~<sup>vii</sup> (A) A decision of debarment or suspension issued by a procurement unit other than a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district is final and conclusive unless the person who is debarred or suspended files an appeal of the decision under Section 63G-6a-1702.

(B) A decision of debarment or suspension issued by a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district is final and conclusive unless the person who is debarred or suspended files an appeal of the decision under Section 63G-6a-1802.

(2) A suspension [~~described in Subsection (1)(b)~~] under this section may not be for a period exceeding three months, unless an indictment has been issued for an offense which

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would be a cause for debarment under Subsection (3), in which case the suspension shall, at the request of the attorney general, if the procurement unit is in the state executive branch, or the procurement unit's attorney, if the procurement unit is not in the state executive branch, remain in effect until after the trial of the suspended person.

(3) The causes for debarment include the following:

(a) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of a public or private contract or subcontract;

(b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a [state] contractor for the procurement unit;

(c) conviction under state or federal antitrust statutes;

(d) failure without good cause to perform in accordance with the terms of the contract;

(e) a violation of this chapter; or

(f) any other cause that the chief procurement officer~~[, the procurement officer,]~~ or the head of a procurement unit with independent procurement authority determines to be so serious and compelling as to affect responsibility as a [state] contractor for the procurement unit, including debarment by another governmental entity.

(4) A person who is debarred or suspended under this section may appeal the debarment or suspension:

(a) as provided in Section 63G-6a-1702, if the debarment or suspension is by a procurement unit other than a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district; or

(b) as provided in Section 63G-6a-1802, if the debarment or suspension is by a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district.

(5) A procurement unit may consider a cause for debarment under Subsection (3) as the basis for determining that a person responding to a solicitation is not responsible:

(a) independent of any effort or proceeding under this section to debar or suspend the person; and

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(b) even if the procurement unit does not choose to seek debarment or suspension.

Section 48. Section **63G-6a-1103** is amended to read:

**63G-6a-1103. Bonds necessary when contract is awarded -- Waiver -- Action -- Attorney fees.**

(1) When a construction contract is awarded under this chapter, the contractor to whom the contract is awarded shall deliver the following bonds or security to the [state] procurement unit, which shall become binding on the parties upon the execution of the contract:

(a) a performance bond satisfactory to the [state] procurement unit that is in an amount equal to 100% of the price specified in the contract and is executed by a surety company authorized to do business in [this] the state or any other form satisfactory to the [state] procurement unit; and

(b) a payment bond satisfactory to the [state] procurement unit that is in an amount equal to 100% of the price specified in the contract and is executed by a surety company authorized to do business in [this] the state or any other form satisfactory to the [state] procurement unit, which is for the protection of each person supplying labor, service, equipment, or material for the performance of the work provided for in the contract.

(2) (a) When a construction contract is awarded under this chapter, the procurement officer or the head of the issuing procurement unit responsible for carrying out the construction project may not require a contractor to whom a contract is awarded to obtain a bond of the types referred to in Subsection (1) from a specific insurance or surety company, producer, agent, or broker.

(b) A person who violates Subsection (2)(a) is guilty of an infraction.

(3) Rules of the applicable rulemaking authority may provide for waiver of the requirement of a bid, performance, or payment bond for circumstances in which the procurement officer considers any or all of the bonds to be unnecessary to protect the procurement unit.

(4) A person shall have a right of action on a payment bond under this section for any unpaid amount due to the person if:

(a) the person has furnished labor, service, equipment, or material for the work provided for in the contract for which the payment bond is furnished under this section; and

(b) the person has not been paid in full within 90 days after the last day on which the

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person performed the labor or service or supplied the equipment or material for which the claim is made.

(5) An action upon a payment bond may only be brought in a court of competent jurisdiction in a county where the construction contract was to be performed. The action is barred if not commenced within one year after the last day on which the claimant performed the labor or service or supplied the equipment or material on which the claim is based. The obligee named in the bond need not be joined as a party to the action.

(6) In any suit upon a payment bond, the court shall award reasonable attorney fees to the prevailing party, which fees shall be taxed as costs in the action.

Section 49. Section **63G-6a-1105** is amended to read:

### **63G-6a-1105. Form of bonds -- Effect of certified copy.**

(1) The form of the bonds required by this part shall be established by rule made by the applicable rulemaking authority.

(2) Any person may obtain from the [~~state~~] procurement unit a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any.

(3) A certified copy of a bond [~~shall be~~] is prima facie evidence of the contents, execution, and delivery of the original.

Section 50. Section **63G-6a-1202** is repealed and reenacted to read:

### **63G-6a-1202. Standard contract clauses encouraged.**

A procurement unit is encouraged to establish standard contract clauses to assist the procurement unit and to help contractors and potential contractors to understand applicable requirements.

Section 51. Section **63G-6a-1204** is amended to read:

### **63G-6a-1204. Multiyear contracts.**

(1) Except as provided in Subsection (7), a procurement unit may enter into a multiyear contract resulting from an invitation for bids or a request for proposals, if:

(a) the procurement officer determines, in the discretion of the procurement officer, that entering into a multiyear contract is in the best interest of the procurement unit; and

(b) the invitation for bids or request for proposals:

(i) states the term of the contract, including all possible renewals of the contract;

(ii) states the conditions for renewal of the contract; and

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(iii) includes the provisions of Subsections (3) through (5) that are applicable to the contract.

(2) In making the determination described in Subsection (1)(a), the procurement officer shall consider whether entering into a multiyear contract will:

(a) result in significant savings to the procurement unit, including:

(i) reduction of the administrative burden in procuring, negotiating, or administering contracts;

(ii) continuity in operations of the procurement unit; or

(iii) the ability to obtain a volume or term discount;

(b) encourage participation by a person who might not otherwise be willing or able to compete for a shorter term contract; or

(c) provide an incentive for a bidder or offeror to improve productivity through capital investment or better technology.

(3) (a) The determination described in Subsection (1)(a) is discretionary and is not required to be in writing or otherwise recorded.

(b) Except as provided in Subsections (4) and (5), notwithstanding any provision of an invitation for bids, a request for proposals, or a contract to the contrary, a multiyear contract, including a contract that was awarded outside of an invitation for bids or request for proposals process, may not continue or be renewed for any year after the first year of the multiyear contract if adequate funds are not appropriated or otherwise available to continue or renew the contract.

(4) A multiyear contract that is funded solely by federal funds may be continued or renewed for any year after the first year of the multiyear contract if:

(a) adequate funds to continue or renew the contract have not been, but are expected to be appropriated by, and received from, the federal government;

(b) continuation or renewal of the contract before the money is appropriated or received is permitted by the federal government; and

(c) the contract states that it may be cancelled or suspended, without penalty, if the anticipated federal funds are not appropriated or received.

(5) A multiyear contract that is funded in part by federal funds may be continued or renewed for any year after the first year of the multiyear contract if:



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(a) the portion of the contract that is to be funded by funds of a public entity are appropriated;

(b) adequate federal funds to continue or renew the contract have not been, but are expected to be, appropriated by, and received from, the federal government;

(c) continuation or renewal of the contract before the federal money is appropriated or received is permitted by the federal government; and

(d) the contract states that it may be cancelled or suspended, without penalty, if the anticipated federal funds are not appropriated or received.

(6) A procurement unit may not continue or renew a multiyear contract after the end of the multiyear contract term or the renewal periods described in the contract, unless the procurement unit engages in a new standard procurement process or complies with an exception, described in this chapter, to using a standard procurement process.

(7) A multiyear contract, including any renewal periods, may not exceed a period of five years, unless:

(a) the procurement officer determines, in writing, that:

(i) a longer period is necessary in order to obtain the procurement item;

(ii) a longer period is customary for industry standards; or

(iii) a longer period is in the best interest of the procurement unit; and

(b) the written determination described in Subsection (7)(a) is included in the file relating to the procurement.

(8) This section does not apply to a contract for the design or construction of a facility, a road, a public transit project, or a contract for the financing of equipment.

Section 52. Section **63G-6a-1205** is amended to read:

**63G-6a-1205. Regulation of contract types -- Permitted and prohibited contract types.**

(1) Except as otherwise provided in this section, and subject to rules made under this section by the applicable rulemaking authority, a procurement unit may use any type of contract that will promote the best interests of the procurement unit.

(2) An applicable rulemaking authority:

(a) may make rules governing, placing restrictions on, or prohibiting the use of any type of contract; and

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(b) may not make rules that permit the use of a contract:

- (i) that is prohibited under this section; or
- (ii) in a manner that is prohibited under this section.

(3) A procurement officer, the head of an issuing procurement unit, or a designee of either, may not use a type of contract, other than a firm fixed price contract, unless the procurement officer makes a written determination that:

(a) the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated;

(b) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles; and

(c) the use of a specified type of contract, other than a firm fixed price contract, is in the best interest of the procurement unit, taking into consideration the following criteria:

(i) the type and complexity of the procurement item;

(ii) the difficulty of estimating performance costs at the time the contract is entered into, due to factors that may include:

(A) the difficulty of determining definitive specifications;

(B) the difficulty of determining the risks, to the contractor, that are inherent in the nature of the work to be performed; or

(C) the difficulty to clearly determine other factors necessary to enter into an accurate firm fixed price contract;

(iii) the administrative costs to the procurement unit and the contractor;

(iv) the degree to which the procurement unit is required to provide technical coordination during performance of the contract;

(v) the impact that the choice of contract type may have upon the level of competition for award of the contract;

(vi) the stability of material prices, commodity prices, and wage rates in the applicable market;

(vii) the impact of the contract type on the level of urgency related to obtaining the procurement item;

(viii) the impact of any applicable governmental regulation relating to the contract; and

(ix) other criteria that the procurement officer determines may relate to determining the

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contract type that is in the best interest of the procurement unit.

(4) Contract types that, subject to the provisions of this section and rules made under this section, may be used by a procurement unit include the following:

- (a) a fixed price contract;
- (b) a fixed price contract with price adjustment;
- (c) a time and materials contract;
- (d) a labor hour contract;
- (e) a definite quantity contract;
- (f) an indefinite quantity contract;
- (g) a requirements contract; [~~or~~]
- (h) a contract based on a rate table in accordance with industry standards; or
- ~~[(h)]~~ (i) a contract that includes one of the following construction delivery methods:
  - (i) design-build;
  - (ii) design-bid-build; or
  - (iii) construction manager/general contractor.

(5) Except as it applies to a change order, a procurement unit may not enter into a cost-plus-percentage-of-cost contract, unless:

- (a) use of a cost-plus-percentage-of-cost contract is approved by the procurement officer;
- (b) it is standard practice in the industry to obtain the procurement item through a cost-plus-percentage-of-cost contract; and
- (c) the percentage and the method of calculating costs in the contract are in accordance with industry standards.

(6) A procurement unit may not enter into a cost-reimbursement contract, unless the procurement officer makes a written determination that:

- (a) (i) a cost-reimbursement contract is likely to cost less than any other type of permitted contract; or
- (ii) it is impracticable to obtain the procurement item under any other type of permitted contract; and
- (b) the proposed contractor's accounting system:
  - (i) will timely develop the cost data in the form necessary for the procurement unit to

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timely and accurately make payments under the contract; and

(ii) will allocate costs in accordance with generally accepted accounting principles.

Section 53. Section **63G-6a-1206** is amended to read:

### **63G-6a-1206. Rules and regulations to determine allowable incurred costs --**

#### **Required information -- Auditing of books.**

(1) (a) The applicable rulemaking authority may, by rule, establish the cost principles to be included in a cost-reimbursement contract to determine incurred costs for the purpose of calculating a reimbursement.

(b) The cost principles established by rule under Subsection (1)(a) may be modified, by contract, if the procurement officer or head of the issuing procurement unit approves the modification.

(2) Except as provided in Subsection (5), a person who seeks to be, or is, a party in a cost-based contract with a procurement unit shall:

(a) submit cost or pricing data relating to determining the cost or pricing amount; and

(b) certify that, to the best of the contractor's knowledge and belief, the cost or pricing data submitted is accurate and complete as of the date specified by the procurement unit.

(3) The procurement officer shall ensure that the date specified under Subsection (2)(b) is before:

(a) the pricing of any contract awarded by a standard procurement process or pursuant to a sole source procurement, if the total contract price is expected to exceed an amount established by rule made by the applicable rulemaking authority; or

(b) the pricing of any change order that is expected to exceed an amount established by rule made by the applicable rulemaking authority.

(4) A contract or change order that requires a certification described in Subsection (2) shall include a provision that the price to the procurement unit, including profit or fee, shall be adjusted to exclude any significant sums by which the procurement unit finds that the price was increased because the contractor provided cost or pricing data that was inaccurate, incomplete, or not current as of the date specified by the procurement officer.

(5) A procurement unit is not required to comply with Subsection (2) if:

(a) the contract price is based on adequate price competition;

(b) the contract price is based on established catalogue prices or market prices;

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(c) the contract price is set by law or rule; or

(d) the procurement states, in writing:

(i) that, in accordance with rules made by the applicable rulemaking authority, the requirements of Subsection (2) may be waived; and

(ii) the reasons for the waiver.

(6) The procurement officer or audit entity under contract with the procurement unit may, at reasonable times and places, only to the extent that the books and records relate to the applicable cost or pricing data, audit the books and records of:

(a) a person who has submitted cost or pricing data pursuant to this section; or

(b) a contractor or subcontractor under a contract or subcontract other than a firm fixed price contract.

(7) Unless a shorter time is provided for by contract:

(a) a person described in Subsection (6)(a) shall maintain the books and records described in Subsection (6) for three years after the day on which the fiscal year in which final payment is made under the contract ends;

(b) a contractor shall maintain the books and records described in Subsection (6) for three years after the day on which the fiscal year in which final payment under the prime contract ends; and

(c) a subcontractor shall maintain the books and records described in Subsection (6) for three years after the day on which the fiscal year in which final payment is made under the subcontract ends.

Section 54. Section **63G-6a-1402** is amended to read:

### **63G-6a-1402. Procurement of design-build transportation project contracts.**

(1) As used in this section:

(a) "Design-build transportation project contract" means the procurement of both the design and construction of a transportation project in a single contract with a company or combination of companies capable of providing the necessary engineering services and construction.

(b) "Transportation agency" means:

(i) the Department of Transportation;

(ii) a county of the first or second class, as defined in Section 17-50-501;

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(iii) a municipality of the first class, as defined in Section 10-2-301;

(iv) a public transit district that has more than 200,000 people residing within its boundaries; and

(v) a public airport authority.

(2) Except as provided in Subsection (3), a transportation agency may award a design-build transportation project contract for any transportation project that has an estimated cost of at least \$50,000,000 by following the requirements of this section.

(3) (a) The Department of Transportation:

(i) may award a design-build transportation project contract for any transportation project by following the requirements of this section; and

(ii) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing requirements for the procurement of its design-build transportation project contracts in addition to those required by this section.

(b) A public transit district that has more than 200,000 people residing within its boundaries:

(i) may award a design-build transportation project contract for any transportation project by following the requirements of this section; and

(ii) shall pass ordinances or a resolution establishing requirements for the procurement of its design-build transportation project contracts in addition to those required by this section.

(c) A design-build transportation project contract authorized under this Subsection (3) is not subject to the estimated cost threshold described in Subsection (2).

(d) A design-build transportation project contract may include provision by the contractor of operations, maintenance, or financing.

(4) (a) Before entering into a design-build transportation project contract, a transportation agency may issue a request for qualifications to prequalify potential contractors.

(b) Public notice of the request for qualifications shall be given in accordance with board rules.

(c) A transportation agency shall require, as part of the qualifications specified in the request for qualifications, that potential contractors at least demonstrate their:

(i) construction experience;

(ii) design experience;

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(iii) financial, manpower, and equipment resources available for the project; and  
(iv) experience in other design-build transportation projects with attributes similar to the project being procured.

(d) The request for qualifications shall identify the number of eligible competing proposers that the transportation agency will select to submit a proposal, which may not be less than two.

(5) The transportation agency shall:

(a) evaluate the responses received from the request for qualifications;  
(b) select from their number those qualified to submit proposals; and  
(c) invite those respondents to submit proposals based upon the transportation agency's request for proposals.

(6) Except as provided in Subsection (7), if the transportation agency fails to receive at least two qualified eligible competing proposals, the transportation agency shall readvertise the project.

(7) A transportation agency may award a contract for a transportation project that has an estimated cost of \$5,000,000 or less to a qualified eligible proposer if:

(a) only a single proposal is received; and  
(b) the transportation agency determines that:  
(i) the proposal is advantageous to the state; and  
(ii) the proposal price is reasonable.

(8) The transportation agency shall issue a request for proposals to those qualified respondents that:

(a) includes a scope of work statement constituting an information for proposal that may include:

(i) preliminary design concepts;  
(ii) design criteria, needs, and objectives;  
(iii) warranty and quality control requirements;  
(iv) applicable standards;  
(v) environmental documents;  
(vi) constraints;  
(vii) time expectations or limitations;

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- (viii) incentives or disincentives; and
- (ix) other special considerations;
- (b) requires submitters to provide:
  - (i) a sealed cost proposal;
  - (ii) a critical path matrix schedule, including cash flow requirements;
  - (iii) proposal security; and
  - (iv) other items required by the department for the project; and
- (c) may include award of a stipulated fee to be paid to offerors who submit

unsuccessful proposals.

(9) The transportation agency shall:

(a) evaluate the submissions received in response to the request for proposals from the prequalified offerors;

(b) comply with rules relating to discussion of proposals, best and final offers, and evaluations of the proposals submitted; and

(c) after considering price and other identified factors, award the contract to the responsive and responsible offeror whose proposal is most advantageous to the transportation agency or the state.

Section 55. Section **63G-6a-1502** is amended to read:

### **63G-6a-1502. Policy regarding architect-engineer services.**

(1) It is the policy of this state to publicly announce all requirements for architect-engineer services through a request for statement of qualifications and to negotiate contracts for architect-engineer services on the basis of demonstrated competence and qualification for the type of services required, and at fair and reasonable prices.

(2) Architect-engineer services shall be procured as provided in this part except as otherwise provided in Sections 63G-6a-403, 63G-6a-404, 63G-6a-408, 63G-6a-802, and 63G-6a-803.

(3) This part does not affect the authority of, and does not apply to procedures undertaken by, a procurement unit to obtain the services of architects or engineers in the capacity of employees of the procurement unit.

Section 56. Section **63G-6a-1503** is amended to read:

### **63G-6a-1503. Selection committee for architect-engineer services.**



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(1) In the procurement of architect-engineer services, the procurement officer or the head of an issuing procurement unit shall encourage firms engaged in the lawful practice of their profession to submit [~~annually~~] a statement of qualifications [~~and performance data~~].

(2) The [~~Building Board shall be the~~] director of the Division of Facilities Construction and Management shall appoint an evaluation committee for architect-engineer services contracts under its authority.

(3) An evaluation committee for architect-engineer services contracts not under the authority of the [~~Building Board~~] Division of Facilities Construction and Management shall be established in accordance with rules made by the applicable rulemaking authority.

(4) An evaluation committee shall:

(a) evaluate current statements of qualifications and performance data on file with the [~~state~~] procurement unit, together with those that may be submitted by other firms in response to the announcement of [~~the~~] a proposed contract;

(b) consider no less than three firms; and

(c) based upon criteria established and published by the issuing procurement unit, select no less than three of the firms considered to be the most highly qualified to provide the services required.

Section 57. Section **63G-6a-1505** is amended to read:

### **63G-6a-1505. Determination of compensation for architect-engineer services.**

(1) The procurement officer shall award a contract to a qualified firm at compensation that the procurement officer determines, in writing, to be fair and reasonable to the [~~state~~] procurement unit.

(2) In making the determination described in Subsection (1), the procurement officer shall take into account the services':

(a) estimated value;

(b) scope;

(c) complexity; and

(d) professional nature.

(3) If the procurement officer is unable to agree to a satisfactory contract with the firm first selected, at a price the procurement officer determines to be fair and reasonable to the [~~state~~] procurement unit, the procurement officer shall:

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- (a) formally terminate discussions with that firm; and
- (b) undertake discussions with a second qualified firm.

(4) If the procurement officer is unable to agree to a satisfactory contract with the second firm selected, at a price the procurement officer determines to be fair and reasonable to the [state] procurement unit, the procurement officer shall:

- (a) formally terminate discussions with that firm; and
- (b) undertake discussions with a third qualified firm.

(5) If the procurement officer is unable to award a contract at a fair and reasonable price to any of the selected firms, the procurement officer shall:

- (a) select additional firms; and
- (b) continue discussions in accordance with this part until an agreement is reached.

Section 58. Section **63G-6a-1602** is amended to read:

### **63G-6a-1602. Protest -- Time -- Authority to resolve protest.**

~~[(1) Except as provided in Subsection (2), a person who is an actual or prospective bidder, offeror, or contractor who is aggrieved in connection with a procurement or award of a contract may protest to the protest officer as follows:]~~

~~[(a) with respect]~~

~~(1) (a) A protest may be filed with the protest officer by:~~

~~(i) an actual or prospective bidder or offeror who is aggrieved in connection with a procurement; or~~

~~(ii) a prospective contractor who is aggrieved in connection with an award of a contract.~~

(b) (i) A protest under Subsection (1)(a) relating to an invitation for bids or a request for proposals shall be filed:

~~[(+)] (A) before the opening of bids or the closing date for proposals; or~~

~~[(+)] (B) if the person filing the protest did not know and should not have known of the facts giving rise to the protest before the bid opening or the closing date for proposals, within seven days after the day on which the person knows or should have known of the facts giving rise to the protest[; or].~~

(ii) A protest under Subsection (1)(a) relating to a form of procurement not described in Subsection (1)(b)(i) but involving a deadline established for the submission of a price or

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response shall be filed:

(A) before the deadline for the submission of a price or response; or

(B) if the person filing the protest did not know and reasonably should not have known of the facts giving rise to the protest before the deadline for the submission of a price or response, within seven days after the day on which the person knows or reasonably should have known of the facts giving rise to the protest.

~~[(b)]~~ (iii) [if Subsection (1)(a) does not apply,] A protest under Subsection (1)(a) relating to a form of procurement not described in Subsection (1)(b)(i) or (ii) shall be filed within seven days after the day on which the person filing the protest knows or should have known of the facts giving rise to the protest.

~~[(2) A person who is debarred or suspended under this chapter may protest the debarment or suspension to the protest officer that ordered the debarment, as applicable, within seven days after the day on which the debarment or suspension is ordered.]~~

~~[(3)]~~ (2) A person who files a protest under this section shall include in the filing document:

(a) the person's address of record and email address of record; and

(b) a concise statement of the grounds upon which the protest is made.

~~[(4)]~~ (3) A person described in Subsection (1)[, (2), or (3)] who fails to [timely] file a protest [under this section] within the time prescribed in Subsection (1)(b) may not [bring a]:

(a) protest[;] to the protest officer a solicitation or award of a contract; or

(b) file an action[;] or appeal challenging a solicitation or award of a contract[; or a debarment or suspension,] before [the protest officer,] an appeals panel, a court, or any other forum.

~~[(5)]~~ (4) Subject to the applicable requirements of Section 63G-10-403, a protest officer[;] or the [protest officer's designee,] head of a procurement unit may enter into a settlement agreement to resolve a protest.

Section 59. Section **63G-6a-1603** is amended to read:

**63G-6a-1603. Protest officer responsibilities and authority if protest filed -- Decisions of protest officer to be in writing -- Effect of no writing.**

(1) After a [timely] protest is filed [in accordance with Section 63G-6a-1602], the protest officer[;] shall determine whether the protest is timely filed and complies fully with the

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requirements of Section 63G-6a-1602.

~~[(a) shall consider the protest; and]~~

~~[(b) may hold a hearing on the protest.]~~

(2) If the protest officer determines that the protest is not timely filed or that the protest does not fully comply with Section 63G-6a-1602, the protest officer shall dismiss the protest.

(3) If the protest officer determines that the protest is timely filed and complies fully with Section 63G-6a-1602, the protest officer shall:

(a) dismiss the protest if the protest officer determines that the protest alleges facts that, if true, do not provide an adequate basis for the protest;

(b) uphold the protest without holding a hearing if the protest officer determines that the undisputed facts of the protest indicate that the protest should be upheld; or

(c) hold a hearing on the protest if there is a genuine issue of material fact that needs to be resolved in order to determine whether the protest should be upheld.

~~[(2)] (4) (a) [The] If a hearing is held on a protest, the protest officer may:~~

~~(i) subpoena witnesses and compel their attendance at [a] the protest hearing; [or]~~

~~(ii) subpoena documents for production at [a] the protest hearing[-];~~

~~(iii) obtain additional factual information; and~~

~~(iv) obtain testimony from experts, the person filing the protest, representatives of the procurement unit, or others to assist the protest officer to make a decision on the protest.~~

~~(b) The Rules of Evidence do not apply to a protest hearing.~~

~~(c) The applicable rulemaking authority shall make rules relating to intervention in a protest, including designating:~~

~~(i) who may intervene; and~~

~~(ii) the time and manner of intervention.~~

~~(d) [If a hearing on a protest is held under this section, the] A protest officer shall:~~

~~(i) record [the] each hearing held on a protest under this section;~~

~~[(ii) preserve all evidence presented at the hearing; and]~~

~~[(iii) preserve all records and other evidence relied upon in reaching the written decision described in this section.]~~

~~[(e)] (ii) [Regardless] regardless of whether a hearing on a protest is held under this section, [the protest officer shall] preserve all records and other evidence relied upon in~~

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reaching the protest officer's written decision~~[-(f) The records described in Subsections (2)(d) and (e) may not be destroyed]~~ until the decision, and any appeal of the decision, becomes final~~[-]; and~~

(iii) submit to the procurement policy board chair a copy of the protest officer's written decision and all records and other evidence relied upon in reaching the decision, within seven days after receiving:

(A) notice that an appeal of the protest officer's decision has been filed under Section 63G-6a-1702; or

(B) a request from the chair of the procurement policy board.

~~[(g)] (e)~~ A protest ~~[officer who holds]~~ officer's holding a hearing, ~~[considers]~~ considering a protest, or ~~[issues]~~ issuing a written decision under this section does not ~~[waive the]~~ affect a person's right to~~[-, at a]~~ later ~~[date,]~~ question or challenge the protest officer's jurisdiction to hold the hearing, consider the protest, or ~~[render]~~ issue the decision.

(5) (a) The deliberations of a protest officer may be held in private.

(b) If the protest officer is a public body, as defined in Section 52-4-103, the protest officer shall comply with Section 52-4-205 in closing a meeting for its deliberations.

~~[(3)] (6) (a)~~ A protest officer, or the protest officer's designee, shall promptly issue a written decision regarding any protest, ~~[debarment, suspension, or contract controversy if it]~~ unless the protest is ~~[not]~~ settled by mutual agreement.

(b) The decision shall:

(i) state the reasons for the action taken [and];

(ii) inform the protestor~~[-, contractor, or prospective contractor]~~ of the right to judicial or administrative review as provided in this chapter~~[-]; and~~

(iii) indicate the amount of the security deposit or bond required under Section 63G-6a-1703.

(c) A person who issues a decision under Subsection (6)(a) shall mail, email, or otherwise immediately furnish a copy of the decision to the protestor.

~~[(4) (a)] (7)~~ A decision described in this section is effective until stayed or reversed on appeal, except to the extent provided in Section 63G-6a-1903. ~~[A person who issues a decision described in Subsection (1) shall mail, email, or otherwise immediately furnish a copy of the decision to the protestor, prospective contractor, or contractor.]~~

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~~[(b)]~~ (8) (a) A decision described in Subsection ~~[(4)]~~ (6)(a) that is issued in relation to a procurement unit other than a legislative procurement unit ~~[or]~~, a judicial procurement unit ~~[shall be]~~, a local government procurement unit, or a public transit district is final and conclusive unless the protestor~~;~~ prospective contractor, or contractor: (i) for a controversy described in Section 63G-6a-1905, commences an action in district court in accordance with Subsection 63G-6a-1802(5); (ii) for a controversy related to a solicitation or the award of a contract; files an appeal under Section 63G-6a-1702~~;~~or.

~~[(iii) for a debarment or suspension, files an appeal under Section 63G-6a-1702.]~~

~~[(c)]~~ (b) A decision described in Subsection ~~[(4)]~~ (6)(a) that is issued in relation to a legislative procurement unit ~~[or]~~, a judicial procurement unit ~~[shall be]~~, a local government procurement unit, or a public transit district is final and conclusive unless the protestor~~;~~ prospective contractor, or contractor:] files an appeal under Section 63G-6a-1802.

~~[(i) for a controversy described in Section 63G-6a-1905, commences an action in district court in accordance with Subsection 63G-6a-1802(5);]~~

~~[(ii) for a controversy related to a solicitation or the award of a contract, files an appeal under Subsection 63G-6a-1802(1)(b); or]~~

~~[(iii) for a debarment or suspension, files an appeal under Subsection 63G-6a-1802(1)(b).]~~

~~[(5)]~~ (9) If the protest officer does not issue the written decision regarding a protest or a contract controversy within 30 calendar days after the day on which a written request for a final decision is filed with the protest officer, or within a longer period as may be agreed upon by the parties, the protester, prospective contractor, or contractor may proceed as if an adverse decision had been received.

~~[(6) Except for a controversy described in Section 63G-6a-1905, a]~~

(10) A determination under this section by the protest officer regarding an issue of fact may not be overturned on appeal unless the decision is arbitrary and capricious or clearly erroneous.

Section 60. Section **63G-6a-1702** is amended to read:

**63G-6a-1702. Appeal to Utah State Procurement Policy Board -- Appointment of procurement appeals panel -- Proceedings.**

(1) This part applies to all procurement units other than:

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- (a) a legislative procurement unit;
- (b) a judicial procurement unit;
- (c) a ~~[county or municipality]~~ local government procurement unit; or
- (d) a public transit district.

(2) (a) ~~[A]~~ Subject to Section 63G-6a-1703, a party to a protest involving a procurement unit other than a procurement [described] unit listed in Subsection (1)(a), (b), (c), or (d) may appeal the protest decision to the board by~~[-(a)]~~ filing a written notice of appeal with the chair of the board within seven days after:

(i) the day on which the written decision described in Section 63G-6a-1603 is:

(A) personally served on the party or the party's representative; or

(B) emailed or mailed to the address or email address of record provided by the party under Subsection 63G-6a-1602(3); or

(ii) the day on which the 30-day period described in Subsection 63G-6a-1603~~[(5)]~~(7) ends, if a written decision is not issued before the end of the 30-day period~~[;]~~.

~~[(b) including in the filing document the person's]~~

(b) A person appealing a debarment or suspension of a procurement unit other than a procurement unit listed in Subsection (1)(a), (b), (c), or (d) shall file a written notice of appeal with the chair of the board no later than seven days after the debarment or suspension.

(c) A notice of appeal under Subsection (2)(a) or (b) shall:

(i) include the address of record and email address of record of the party filing the notice of appeal; and

(ii) be accompanied by a copy of any written protest decision or debarment or suspension order.

~~[(c) at the time that the notice of appeal described in Subsection (2)(a) is filed, complying with the requirements of Section 63G-6a-1703 regarding the posting of a security deposit or a bond.]~~

(3) A person may not base an appeal of a protest under this section on a ground not specified in the person's protest under Section 63G-6a-1602.

~~[(3)]~~ (4) A person may not appeal from a protest described in Section 63G-6a-1602, unless:

- (a) a decision on the protest has been issued; or

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(b) a decision is not issued and the 30-day period described in Subsection 63G-6a-1603~~[(5)](7)~~, or a longer period agreed to by the parties, has passed.

~~[(4)]~~ (5) The chair of the board or a designee of the chair who is not employed by the procurement unit responsible for the solicitation, contract award, or other action complained of:

(a) shall, within seven days after the day on which the chair receives a timely written notice of appeal under Subsection (2), and if all the requirements of Subsection (2) and Section 63G-6a-1703 have been met, appoint:

(i) a procurement appeals panel to hear and decide the appeal, consisting of at least three individuals, each of whom ~~shall be~~ is:

(A) a member of the board; or

(B) a designee of a member appointed under Subsection (4)(a)(i)(A), if the designee is approved by the chair; and

(ii) one of the members of the procurement appeals panel to be the chair of the panel;

(b) may:

(i) appoint the same procurement appeals panel to hear more than one appeal; or

(ii) appoint a separate procurement appeals panel for each appeal; ~~and~~

(c) may not appoint a person to a procurement appeals panel if the person is employed by the procurement unit responsible for the solicitation, contract award, or other action complained of~~[-]; and~~

(d) shall, at the time the procurement appeals panel is appointed, provide appeals panel members with a copy of the protest officer's written decision and all other records and other evidence that the protest officer relied on in reaching the decision.

~~[(5)]~~ (6) A procurement appeals panel described in Subsection ~~[(4)]~~ (5) shall:

(a) consist of an odd number of members;

(b) ~~[except as provided in Subsection (6),]~~ conduct an informal proceeding on the appeal within 60 days after the day on which the procurement appeals panel is appointed~~[-];~~

(i) unless all parties stipulate to a later date; and

(ii) subject to Subsection (8);

(c) at least seven days before the proceeding, mail, email, or hand-deliver a written notice of the proceeding to the parties to the appeal; and

(d) within seven days after the day on which the proceeding ends:



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- (i) issue a written decision on the appeal; and
- (ii) mail, email, or hand-deliver the written decision on the appeal to the parties to the appeal and to the protest officer.

(7) (a) The deliberations of a procurement appeals panel may be held in private.

(b) If the procurement appeals panel is a public body, as defined in Section 52-4-103, the procurement appeals panel shall comply with Section 52-4-205 in closing a meeting for its deliberations.

~~[(6)]~~ (8) A procurement appeals panel may continue a procurement appeals proceeding beyond the 60-day period described in Subsection ~~[(5)]~~ (6)(b) if the procurement appeals panel determines that the continuance is in the interests of justice.

~~[(7)]~~ (9) A procurement appeals panel:

(a) shall, subject to Subsection (9)(c), consider the appeal based solely on:

- (i) the protest decision;
- (ii) the record considered by the person who issued the protest decision; and
- (iii) if a protest hearing was held, the record of the protest hearing;

(b) may not take additional evidence; ~~[and]~~

(c) notwithstanding Subsection (9)(b), may, during an informal hearing, ask questions and receive responses regarding the appeal, the protest decision, or the record in order to assist the panel to understand the appeal, the protest decision, and the record; and

~~[(6)]~~ (d) shall uphold the decision of the protest officer, unless the decision is arbitrary and capricious or clearly erroneous.

~~[(8)]~~ (10) If a procurement appeals panel determines that the decision of the protest officer is arbitrary and capricious or clearly erroneous, the procurement appeals panel:

(a) shall remand the matter to the protest officer, to cure the problem or render a new decision;

(b) may recommend action that the protest officer should take; and

(c) may not order that:

- (i) a contract be awarded to a certain person;
- (ii) a contract or solicitation be cancelled; or
- (iii) any other action be taken other than the action described in Subsection ~~[(8)]~~

(10)(a).

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~~[(9)]~~ (11) The board shall make rules relating to the conduct of an appeals proceeding, including rules that provide for:

- (a) expedited proceedings; and
- (b) electronic participation in the proceedings by panel members and participants.

~~[(10)]~~ (12) The Rules of Evidence do not apply to an appeals proceeding.

Section 61. Section **63G-6a-1703** is amended to read:

### **63G-6a-1703. Requirement to post a security deposit or bond -- Exceptions -- Forfeiture of security deposit or bond.**

(1) Except as provided by rule made under Subsection (2)(a), a person who files ~~[an]~~ a notice of appeal under Section 63G-6a-1702 shall, ~~[at the time that the appeal is filed]~~ before the expiration of the time provided under Subsection 63G-6a-1702(2) for filing a notice of appeal, pay a security deposit or post a bond with the office of the protest officer ~~[in an amount that is the greater of:]~~.

~~[(a) for the appeal of a debarment or suspension, \$1,000;]~~

~~[(b) for any type of procurement, \$1,000;]~~

~~[(c) for an invitation for bids, 5% of:]~~

(2) The amount of a security deposit or bond required under Subsection (1) is:

(a) for an appeal relating to an invitation for bids or request for proposals and except as provided in Subsection (2)(b)(ii):

(i) \$20,000, if the total contract value is under \$500,000;

(ii) \$25,000, if the total contract value is \$500,000 or more but less than \$1,000,000;

(iii) \$50,000, if the total contract value is \$1,000,000 or more but less than \$2,000,000;

(iv) \$95,000, if the total contract value is \$2,000,000 or more but less than \$4,000,000;

(v) \$180,000, if the total contract value is \$4,000,000 or more but less than \$8,000,000;

(vi) \$320,000, if the total contract value is \$8,000,000 or more but less than

\$16,000,000;

(vii) \$600,000, if the total contract value is \$16,000,000 or more but less than

\$32,000,000;

(viii) \$1,100,000, if the total contract value is \$32,000,000 or more but less than

\$64,000,000;

(ix) \$1,900,000, if the total contract value is \$64,000,000 or more but less than

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\$128,000,000;

(x) \$3,500,000, if the total contract value is \$128,000,000 or more but less than

\$256,000,000;

(xi) \$6,400,000, if the total contract value is \$256,000,000 or more but less than

\$512,000,000; and

(xii) \$10,200,000, if the total contract value is \$512,000,000 or more; or

(b) \$20,000, for an appeal:

(i) relating to any type of procurement process other than an invitation for bids or request for proposals;

(ii) relating to an invitation for bids or request for proposals, if the estimated total contract value cannot be determined; or

(iii) of a debarment or suspension.

(3) (a) For an appeal relating to an invitation for bids, the estimated total contract value shall be based on:

(i) the lowest responsible and responsive bid amount for the entire term of the contract, excluding any renewal period, if the bid opening has occurred; [~~or~~]

~~[(ii) the estimated contract cost, established in accordance with Subsection (2)(b), if the bid opening has not yet occurred;]~~

~~[(d) for a request for proposals, 5% of:]~~

(ii) the total budget for the procurement item for the entire term of the contract, excluding any renewal period, if bids are based on unit or rate pricing; or

(iii) if the contract is being rebid, the historical usage and amount spent on the contract over the life of the contract.

(b) For an appeal relating to a request for proposals, the estimated total contract value shall be based on:

(i) the lowest cost proposed in a response to a request for proposals, considering the entire term of the contract, excluding any renewal period, if the opening of proposals has occurred; [~~or~~]

~~[(ii) the estimated contract cost, established in accordance with Subsection (2)(b), if the opening of proposals has not occurred; or]~~

~~[(e) for a type of procurement other than an invitation for bids or a request for~~

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~~proposals, the amount established in accordance with Subsection (2).]~~

~~[(2) The board shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that establish:]~~

~~[(a) circumstances and procedures under which the requirement for paying a security deposit or posting a bond may be waived or reduced on grounds, including:]~~

~~[(i) that the person filing the appeal is impecunious;]~~

~~[(ii) circumstances where certain small purchases are involved; or]~~

~~[(iii) other grounds determined by the Division of Purchasing and General Services to be appropriate; and]~~

~~[(b) the method used to determine:]~~

~~[(i) the estimated contract cost described in Subsections (1)(c)(ii) and (1)(d)(ii); and]~~

~~[(ii) the amount described in Subsection (1)(e).]~~

~~[(3) The chair of the board shall dismiss a protest filed under Section 63G-6a-1702 if the actual or prospective bidder, offeror, or contractor fails to timely pay the security deposit or post the bond required under Subsection (1).]~~

(ii) the total budget for the procurement item over the entire term of the contract, excluding any renewal period, if opened cost proposals are based on unit or rate pricing; or

(iii) if the contract is being reissued, the historical usage and amount spent on the contract over the life of the contract that is being reissued.

(4) The ~~[chair of the board]~~ protest officer shall:

(a) retain the security deposit or bond until the protest and any appeal of the protest decision is final;

(b) as it relates to a security deposit:

(i) deposit the security deposit into an interest-bearing account; and

(ii) after any appeal of the protest decision becomes final, return the security deposit and the interest it accrues to the person who paid the security deposit, unless the security deposit is forfeited to the General Fund under Subsection (5); and

(c) as it relates to a bond:

(i) retain the bond until the protest and any appeal of the protest decision becomes final; and

(ii) after the protest and any appeal of the protest decision becomes final, return the

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bond to the person who posted the bond, unless the bond is forfeited to the General Fund under Subsection (5).

(5) A security deposit that is paid, or a bond that is posted, under this section shall forfeit to the General Fund if:

(a) the person who paid the security deposit or posted the bond fails to ultimately prevail on appeal; and

(b) the procurement appeals panel finds that the protest or appeal is frivolous or that its primary purpose is to harass or cause a delay.

Section 62. Section **63G-6a-1706** is amended to read:

**63G-6a-1706. Dismissal of an appeal not filed in compliance with requirements.**

(1) The chair of the board shall dismiss an appeal filed under Section 63G-6a-1702 if the person filing the appeal fails to comply with any of the requirements of Subsection 63G-6a-1702(2) or Section 63G-6a-1703.

(2) A procurement appeals panel may dismiss an appeal that is assigned to the procurement appeals panel if the appeal is not filed in accordance with the requirements of this chapter.

Section 63. Section **63G-6a-1802** is amended to read:

**63G-6a-1802. Appeal to Utah Court of Appeals -- Jurisdiction of district court.**

~~[(1)(a) Subject to Subsection (2), a person who receives an adverse decision, or a procurement unit, may appeal a decision of a procurement appeals panel to the Utah Court of Appeals within seven days after the day on which the decision is issued.]~~

~~[(b) A person who receives an adverse decision in a protest relating to a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district may appeal the decision to the Utah Court of Appeals within seven days after the day on which the decision is issued.]~~

(1) (a) As provided in this part:

(i) a person may appeal a dismissal of an appeal by the board chair under Subsection 63G-6a-1706(1);

(ii) a person who receives an adverse decision by a procurement appeals panel may appeal that decision;

(iii) subject to Subsection (2), a procurement unit, other than a legislative procurement

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unit, a judicial procurement unit, a local government procurement unit, or a public transit district, may appeal an adverse decision by a procurement appeals panel;

(iv) a person who receives an adverse decision in a protest relating to a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district may appeal that decision; and

(v) a person who is debarred or suspended under Section 63G-6a-904 by a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district may appeal the debarment or suspension.

(b) A person seeking to appeal a dismissal, decision, or debarment or suspension under Subsection (1)(a) shall file a notice of appeal with the Utah Court of Appeals within seven days after the dismissal, decision, or debarment or suspension.

(2) A procurement unit may not appeal the decision of a procurement appeals panel, unless the appeal is:

(a) recommended by the protest officer involved; and

(b) except for a procurement unit that is not represented by the attorney general's office, approved by the attorney general.

(3) A person appealing a dismissal, decision, protest, debarment, or suspension under this section may not base the appeal on a ground not specified in the proceeding from which the appeal is taken.

~~[(3)]~~ (4) The Utah Court of Appeals:

(a) shall consider the appeal as an appellate court;

(b) may not hear the matter as a trial de novo; and

(c) may not overturn a finding ~~[or], dismissal,~~ decision ~~[of the protest officer or a procurement appeals panel], or debarment or suspension,~~ unless the finding ~~[or], dismissal,~~ decision, or debarment or suspension is arbitrary and capricious or clearly erroneous.

~~[(4)]~~ (5) The Utah Court of Appeals is encouraged to:

(a) give an appeal made under ~~[Subsection (1)]~~ this section priority; and

(b) consider the appeal and render a decision in an expeditious manner.

~~[(5) The district court shall have original jurisdiction in a cause of action between a contractor and a procurement unit for any cause of action that arises under, or in relation to, an existing contract between the contractor and a procurement unit.]~~

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Section 64. Section **63G-6a-1902** is amended to read:

### **63G-6a-1902. Requirement to exhaust administrative remedies -- Protests and appeals.**

(1) A person may not challenge a procurement, a procurement process, the award of a contract relating to a procurement, a debarment, or a suspension, in a court, before an administrative officer or body, or in any other forum other than the forum permitted in this chapter.

(2) A person who desires to challenge a procurement, a procurement process, the award of a contract relating to a procurement, a debarment, or a suspension, shall bring the challenge, in accordance with the requirements of this chapter~~[, by timely filing:].~~

~~[(a) a protest in accordance with Section 63G-6a-1602;]~~

~~[(b) any appeal of the protest decision involving a procurement unit, other than a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district, in accordance with Section 63G-6a-1702; and]~~

~~[(c) any appeal from a procurement appeals panel, or from a protest decision of a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district, in accordance with Section 63G-6a-1802.]~~

~~[(3) A person who files a protest or appeal under this chapter is limited to protesting or appealing on the grounds specified in the filing document described in Subsection 63G-6a-1602.]~~

~~[(4)]~~ (3) In hearing a protest or an appeal under this chapter relating to an expenditure of federal assistance, federal contract funds, or a federal grant, the person who hears the appeal shall ensure compliance with federal law and regulations relating to the expenditure.

Section 65. Section **63G-6a-1903** is amended to read:

### **63G-6a-1903. Effect of timely protest or appeal.**

~~[In the event of a timely protest under Subsection 63G-6a-1602(1), or a timely appeal of the protest under Section 63G-6a-1702 or 63G-6a-1802, a]~~

A procurement unit, other than a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district, may not proceed further with ~~[the]~~ a solicitation or with the award of ~~[the]~~ a contract ~~[until]:~~

(1) during the pendency of a timely:

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(a) protest under Subsection 63G-6a-1602(1);

(b) appeal of a protest under Section 63G-6a-1702; or

(c) appeal of a procurement appeals panel decision under Section 63G-6a-1802; and

(2) until:

~~(+)~~ (a) all administrative and judicial remedies are exhausted;

~~(2)~~ (b) for a protest under Section 63G-6a-1602 or an appeal under Section 63G-6a-1702:

~~(a)~~ (i) the chief procurement officer, after consultation with the attorney general's office and the head of the using agency, makes a written determination that award of the contract without delay is ~~[necessary to protect substantial interests]~~ in the best interest of the procurement unit or the state;

~~(b)~~ (ii) the head of ~~[the purchasing agency]~~ a procurement unit with independent procurement authority, after consultation with the procurement unit's attorney ~~[general's office]~~, makes a written determination that award of the contract without delay is ~~[necessary to protect substantial interests]~~ in the best interest of the procurement unit or the state; or

~~(c)~~ (iii) for a procurement unit that is not represented by the attorney general's office, the procurement unit, after consulting with the attorney for the procurement unit, makes a written determination that award of the contract without delay is ~~[necessary to protect substantial interests]~~ in the best interest of the procurement unit or the state; or

~~(3)~~ (c) for an appeal under Section 63G-6a-1802, or an appeal to a higher court than district court:

~~(a)~~ (i) the chief procurement officer, after consultation with the attorney general's office and the head of the using agency, makes a written determination that award of the contract without delay is in the best interest of the procurement unit or the state;

~~(b)~~ (ii) the head of ~~[the purchasing agency]~~ a procurement unit with independent procurement authority, after consultation with the procurement unit's attorney ~~[general's office]~~, makes a written determination that award of the contract without delay is in the best interest of the procurement unit or the state; or

~~(c)~~ (iii) for a procurement unit that is not represented by the attorney general's office, the procurement unit, after consulting with the attorney for the procurement unit, makes a written determination that award of the contract without delay is necessary to protect the best



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interest of the procurement unit or the state.

Section 66. Section **63G-6a-1904** is amended to read:

### **63G-6a-1904. Costs to or against protestor.**

(1) When a protest is sustained administratively or upon administrative or judicial review and the protesting bidder or offeror should have been awarded the contract under the solicitation but is not, the protestor shall be entitled to the following relief as a claim against the [state] procurement unit:

(a) the reasonable costs incurred in connection with the solicitation, including bid preparation and appeal costs; and

(b) any equitable relief determined to be appropriate by the reviewing administrative or judicial body.

(2) When a protest is not sustained by a procurement appeals panel, the protestor shall reimburse the issuing procurement unit for expenses incurred in defending the appeal, including personnel costs, attorney fees, other legal costs, expenses incurred by the attorney general's office, the per diem and expenses paid by the issuing procurement unit to witnesses or appeals panel members, and any additional expenses incurred by the staff of the issuing procurement unit who have provided materials and administrative services to the procurement appeals panel for that case.

(3) The provisions of Title 63G, Chapter 7, Part 4, Notice of Claim Against a Governmental Entity or a Government Employee, and Section 63G-7-601 do not apply to actions brought under this chapter by an aggrieved party for equitable relief or reasonable costs incurred in preparing or appealing an unsuccessful bid or offer.

Section 67. Section **63G-6a-1906** is amended to read:

### **63G-6a-1906. Effect of prior determination by agents of procurement unit.**

In any judicial action under Section 63G-6a-1802, determinations by employees, agents, or other persons appointed by the [state] procurement unit shall be final and conclusive only as provided in Sections 63G-6a-1911, 63G-6a-1603, and 63G-6a-1705.

Section 68. Section **63G-6a-1907** is amended to read:

### **63G-6a-1907. Effect of violation found after award of contract.**

(1) If after award of a contract it is determined administratively or upon administrative or judicial review that a procurement or award of a contract is in violation of law:

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(a) (i) if the person awarded the contract did not act fraudulently or in bad faith:

(A) the contract may be ratified and affirmed if it is in the best interests of the [state] procurement unit; or

(B) the contract may be terminated; and

(ii) the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract before the termination, plus a reasonable profit; or

(b) if the person awarded the contract acted fraudulently or in bad faith:

(i) the contract may be declared null and void; or

(ii) the contract may be ratified and affirmed if it is in the best interests of the [state] procurement unit, without prejudice to the [state's] procurement unit's rights to any appropriate damages.

(2) Under no circumstances is a person entitled to consequential damages in relation to a solicitation or award of a contract under this chapter, including consequential damages for lost profits, loss of business opportunities, or damage to reputation.

Section 69. Section **63G-6a-1910** is amended to read:

### **63G-6a-1910. Interest rates.**

(1) In controversies between [the state] a procurement unit and [~~contractors~~] a contractor under this chapter, interest on amounts ultimately determined to be due to a contractor or the [state] procurement unit are payable at the rate applicable to judgments from the date the claim arose through the date of decision or judgment, whichever is later.

(2) Unless otherwise specified in a lawful contract between a procurement unit and the person making a bond claim against the procurement unit, the interest rate applicable to the bond claim is the rate described in Subsection 15-1-1(2).

(3) This section does not apply to public assistance benefits programs.

Section 70. Section **63G-6a-2103** is amended to read:

### **63G-6a-2103. Purchases between procurement units.**

(1) [~~Upon request, a~~] (a) A procurement unit may [make services available to], without using a standard procurement process, purchase from another procurement unit[; including:] a procurement item that the other procurement unit itself produces or provides.

~~[(a) standard forms;]~~

~~[(b) printed manuals;]~~

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~~[(c) qualified products lists;]~~

~~[(d) source information;]~~

~~[(e) common use commodities listings;]~~

~~[(f) supplier prequalification information;]~~

~~[(g) supplier performance ratings;]~~

~~[(h) debarred and suspended bidders lists;]~~

~~[(i) forms for invitation for bids, requests for proposals, instructions to bidders, general contract provisions, and contract forms; or]~~

~~[(j) contracts or published summaries of contracts, including price and time of delivery information;]~~

~~[(2) A procurement unit may provide technical services to another procurement unit, including:]~~

~~[(a) development of specifications;]~~

~~[(b) development of quality assurance test methods, including receiving, inspection, and acceptance procedures;]~~

~~[(c) use of testing and inspection facilities; or]~~

~~[(d) use of personnel training programs;]~~

~~[(3) Procurement units may enter into contractual arrangements and]~~

(b) (i) Subsection (1)(a) does not authorize a procurement unit to obtain a procurement item under a contract of another procurement unit.

(ii) Subsection (1)(b)(i) does not affect the authority of a procurement unit relating to a cooperative procurement under Subsection 63G-6a-2105(4)(b).

(2) A procurement unit may publish a schedule of costs or fees for [the services provided under Subsections (1) and (2)] procurement items available for purchase by another procurement unit.

Section 71. Section **63G-6a-2105** is amended to read:

**63G-6a-2105. Participation of a public entity or a procurement unit in agreements or contracts of procurement units -- Cooperative purchasing -- State cooperative contracts.**

(1) The chief procurement officer may, in accordance with the requirements of this chapter, enter into a cooperative procurement, and a contract that is awarded as a result of a

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cooperative procurement, with:

(a) another state;

~~[(b) an external procurement unit; or]~~

(b) a cooperative purchasing organization; or

(c) a public entity ~~[in Utah]~~ inside or outside ~~[of Utah]~~ the state.

(2) A public entity, nonprofit organization, or, as permitted under federal law, an agency of the federal government, may obtain a procurement item from a state cooperative contract or a contract awarded by the chief procurement officer under Subsection (1), without signing a participating addendum if the ~~[quote, invitation for bids, or request for proposals used]~~ solicitation issued by the chief procurement officer to obtain the contract includes a statement indicating that the resulting contract will be issued ~~[on behalf of a]~~ for the benefit of public [entity in Utah] entities and, as applicable, nonprofit organizations and agencies of the federal government.

(3) Except as provided in Section 63G-6a-408, or as otherwise provided in this chapter, an executive branch procurement unit may not obtain a procurement item from a source other than a state cooperative contract or a contract awarded by the chief procurement officer under Subsection (1), if the procurement item is available under a state cooperative contract or a contract awarded by the chief procurement officer under Subsection (1).

(4) A Utah procurement unit may:

(a) contract with the federal government without going through a standard procurement process or an exception to a standard procurement process, described in Part 8, Exceptions to Procurement Requirements, if the procurement item obtained under the contract is provided:

(i) directly by the federal government and not by a person contracting with the federal government; or

(ii) by a person under contract with the federal government that obtained the contract in a manner that substantially complies with the provisions of this chapter;

(b) participate in, sponsor, conduct, or administer a cooperative procurement with another Utah procurement unit or another public entity in Utah, if:

(i) each party unit involved in the cooperative procurement enters into an agreement describing the rights and duties of each party;

(ii) the procurement is conducted, and the contract awarded, in accordance with the

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requirements of this chapter;

(iii) the [~~request for quotes, the invitation for bids, or the request for proposals~~] solicitation:

(A) clearly indicates that the procurement is a cooperative procurement; and

(B) identifies each party that may purchase under the resulting contract; and

(iv) each party involved in the cooperative procurement signs a participating addendum describing its rights and obligations in relation to the resulting contract; or

(c) purchase under, or otherwise participate in, an agreement or contract of [~~an external procurement unit~~] a cooperative purchasing organization, if:

(i) each party involved in the cooperative procurement enters into an agreement describing the rights and duties of each party;

(ii) the procurement was conducted in accordance with the requirements of this chapter;

(iii) the [~~request for quotes, the invitation for bids, or the request for proposals~~] solicitation:

(A) clearly indicates that the procurement is a cooperative procurement; and

(B) identifies each party that may purchase under the resulting contract; and

(iv) each party involved in the cooperative procurement signs a participating addendum describing its rights and obligations in relation to the resulting contract.

(5) A procurement unit may not obtain a procurement item under a contract that results from a cooperative procurement described in Subsection (4), if the procurement unit:

(a) is not identified under Subsection (4)(b)(iii)(B) or (4)(c)(iii)(B); or

(b) does not sign a participating addendum to the contract as required by this section.

(6) A procurement unit, other than a legislative procurement unit or a judicial procurement unit, may not obtain a procurement item under a contract held by the United States General Services Administration, unless, based upon documentation provided by the procurement unit, the Director of the State Division of Purchasing and General Services determines in writing that the United States General Services Administration procured the contract in a manner that substantially complies with the provisions of this chapter.

(7) (a) As used in this Subsection (7), "regional solicitation" means a solicitation issued by the chief procurement officer for the procurement of a procurement item within a specified

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geographical region of the state.

(b) In addition to any other ~~duty or~~ authority under this section, the chief procurement officer ~~may~~ shall:

(i) after considering board recommendations, develop a plan for issuing regional solicitations;

(ii) present the plan to the Government Operations Interim Committee by September 1, 2014; and

(iii) after developing a plan, issue regional solicitations for procurement items in accordance with the ~~requirements of this chapter, award a contract for a~~ plan and this chapter.

(c) A plan under Subsection (7)(b) shall:

(i) define the proposed regional boundaries for regional solicitations;

(ii) specify the types of procurement items for which a regional solicitation may be issued; and

(iii) identify the regional solicitations that the chief procurement officer plans to issue.

(d) A regional solicitation shall require that a person responding to the solicitation offer similar warranties and submit to similar obligations as are standard under other state cooperative contracts.

(e) A procurement item ~~to be provided within a specific geographical region within the state:~~

~~(a) despite~~ that is available under a state cooperative contract ~~for the same procurement item; and~~

~~(b) if awarding the contract on a regional basis is practicable~~ may not be provided under a contract pursuant to a regional solicitation until after the expiration of the state cooperative contract.

Section 72. Section **63G-6a-2401** is enacted to read:

### **Part 24. Unlawful Conduct and Penalties**

#### **63G-6a-2401. Title.**

This part is known as "Unlawful Conduct and Penalties."

Section 73. Section **63G-6a-2402** is enacted to read:

#### **63G-6a-2402. Definitions.**

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As used in this part:

(1) "Contract administration professional":

(a) means an individual who:

(i) is:

(A) directly under contract with a procurement unit; or

(B) employed by a person under contract with a procurement unit;

(ii) has responsibility in:

(A) developing a solicitation or grant, or ~~performing some other function~~

~~in~~conducting the procurement process; or

(B) supervising or overseeing the administration or management of a contract or grant;

and

(b) does not include an employee of the procurement unit.

(2) "Contribution":

(a) means a voluntary gift or donation of money, service, or anything else of value, to a public entity for the public entity's use and not for the primary use of an individual employed by the public entity; and

(b) includes:

(i) a philanthropic donation;

(ii) admission to a seminar, vendor fair, charitable event, fundraising event, or similar event that relates to the function of the public entity;

(iii) the purchase of a booth or other display space at an event sponsored by the public entity or a group of which the public entity is a member; and

(iv) the sponsorship of an event that is organized by the public entity.

(3) "Family member" means a father, mother, husband, wife, son, daughter, sister, brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law.

(4) "Governing body" means an administrative, advisory, executive, or legislative body of a public entity.

(5) "Gratuity":

(a) means anything of value given:

(i) without anything provided in exchange; or

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- (ii) in excess of the market value of that which is provided in exchange;
- (b) includes:
  - (i) a gift or favor;
  - (ii) money;
  - (iii) a loan at an interest rate below the market rate or with terms that are more advantageous to the borrower than terms offered generally on the market;
  - (iv) anything of value provided with an award, other than a certificate, plaque, or trophy;
  - (v) employment;
  - (vi) admission to an event;
  - (vii) a meal, lodging, or travel;
  - (viii) entertainment for which a charge is normally made; and
  - (ix) a raffle, drawing for a prize, or lottery; and
- (c) does not include:
  - (i) an item, including a meal in association with a training seminar, that is:
    - (A) included in a contract or grant; or
    - (B) provided in the proper performance of a requirement of a contract or grant;
  - (ii) an item requested to evaluate properly the award of a contract or grant;
  - (iii) a rebate, coupon, discount, airline travel award, dividend, or other offering included in the price of a procurement item;
  - (iv) a meal provided by an organization or association, including a professional or educational association, an association of vendors, or an association ~~comprised~~ composed of public agencies or public entities, that does not, as an organization or association, respond to solicitations;
  - (v) a product sample submitted to a public entity to assist the public entity to evaluate a solicitation;
  - (vi) a political campaign contribution;
  - (vii) an item generally available to the public; or
  - (viii) anything of value that one public agency provides to another public agency.
- (6) "Hospitality gift":
  - (a) means a token gift of minimal value, including a pen, pencil, stationery, toy, pin,



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trinket, snack, beverage, or appetizer, given for promotional or hospitality purposes; and

(b) does not include money, a meal, admission to an event for which a charge is normally made, entertainment for which a charge is normally made, travel, or lodging.

(7) "Kickback":

(a) means a negotiated bribe provided in connection with a procurement or the administration of a contract or grant; and

(b) does not include anything listed in Subsection (5)(c).

(8) "Procurement" has the same meaning as defined in Section 63G-6a-103, but also includes the awarding of a grant.

(9) "Procurement professional":

(a) means an individual who is an employee, and not an independent contractor, of a procurement unit, and who, by title or primary responsibility:

(i) has procurement decision making authority; and

(ii) is assigned to be engaged in, or is engaged in:

(A) the procurement process; or

(B) the process of administering a contract or grant, including enforcing contract or grant compliance, approving contract or grant payments, or approving contract or grant change orders or amendments; and

(b) excludes:

(i) any individual who, by title or primary responsibility, does not have procurement decision making authority;

(ii) an individual holding an elective office;

(iii) a member of a governing body;

(iv) a chief executive of a public entity or a chief assistant or deputy of the chief executive, if the chief executive, chief assistant, or deputy, respectively, has a variety of duties and responsibilities beyond the management of the procurement process or the contract or grant administration process;

(v) the superintendent, business administrator, principal, or vice principal of a school district or charter school, or the chief assistant or deputy of the superintendent, business administrator, principal, or vice principal;

(vi) a university or college president, vice president, business administrator, or dean;

## **SB0179S03 compared with SB0179S02**

(vii) a chief executive of a local district, as defined in Section 17B-1-102, a special service district, as defined in Section 17D-1-102, or a political subdivision created under Title 11, Chapter 13, Interlocal Cooperation Act;

(viii) an employee of a public entity with:

(A) an annual budget of \$1,000,000 or less; or

(B) no more than four full-time employees; and

(ix) an executive director or director of an executive branch procurement unit who:

(A) by title or primary responsibility, does not have procurement decision making authority; and

(B) is not assigned to engage in, and is not engaged in, the procurement process.

(10) "Public agency" has the same meaning as defined in Section 11-13-103, but also includes all officials, employees, and official representatives of a public agency, as defined in Section 11-13-103.

Section 74. Section **63G-6a-2403** is enacted to read:

### **63G-6a-2403. Applicability.**

(1) This part applies to each public entity.

(2) A procurement professional is subject to this part at all times during:

(a) the procurement process; and

(b) the administration of a contract or grant.

(3) A contract administration professional is subject to this part at all times during the period the contract administration professional is:

(a) under contract with a procurement unit; and

(b) involved in:

(i) the procurement process; or

(ii) the administration of a contract or grant.

(4) This part does not apply to:

(a) an individual described in Subsection 63G-6a-2402(9)(b); or

(b) any individual other than a procurement professional or contract administration professional.

(5) The other subsections of this section do not affect the applicability or effect of any other ethics, bribery, or other law.

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Section 75. Section **63G-6a-2404** is enacted to read:

### **63G-6a-2404. Unlawful conduct -- Exceptions -- Classification of offenses.**

(1) (a) It is unlawful for a person who has or is seeking a contract with or a grant from a public entity knowingly to give, or offer, promise, or pledge to give, a gratuity or kickback to:

(i) the public entity;

(ii) a procurement professional or contract administration professional; or

(iii) an individual who the person knows is a family member of an individual described in Subsection (1)(a)(ii).

(b) ~~Notwithstanding Subsection (1)(a), it~~ It is not unlawful for a public agency to ~~make~~ give, offer, promise, or pledge to give a contribution to another public agency.

(c) A person is not guilty of unlawful conduct under Subsection (1)(a) for:

(i) giving or offering, promising, or pledging to give a contribution to a public entity, unless done with the intent to induce the public entity, in exchange, to:

(A) award a contract or grant;

(B) make a procurement decision; or

(C) take an action relating to the administration of a contract or grant; or

(ii) giving or offering, promising, or pledging to give something of value to an organization to which a procurement professional or contract administration professional belongs, unless done with the intent to induce a public entity, in exchange, to:

(A) award a contract or grant;

(B) make a procurement decision; or

(C) take an action relating to the administration of a contract or grant.

(2) (a) It is unlawful for a procurement professional or contract administration professional, or a family member of either, knowingly to receive or accept, offer or agree to receive or accept, or ask for a promise or pledge of, a gratuity or kickback from a person who has or is seeking a contract with or a grant from a public entity.

(b) An individual is not guilty of unlawful conduct under Subsection (2)(a) for receiving or accepting, offering or agreeing to receive or accept, or asking for a promise or pledge of a contribution on behalf of a public entity, unless done with the intent that the public entity, in exchange:

(i) award a contract or grant;

## **SB0179S03 compared with SB0179S02**

(ii) make a procurement decision; or

(iii) take an action relating to the administration of a contract or grant.

(3) Notwithstanding Subsections (1) and (2), it is not unlawful for a person to give or receive, offer to give or receive, or promise or pledge to give or ask for a promise or pledge of, a hospitality gift, if:

(a) the total value of the hospitality gift is less than \$10; and

(b) the aggregate value of all hospitality gifts from the person to the recipient in a calendar year is less than \$50.

(4) A person who engages in the conduct made unlawful under Subsection (1) or (2) is guilty of:

(a) a second degree felony, if the total value of the gratuity or kickback is \$1,000 or more;

(b) a third degree felony, if the total value of the gratuity or kickback is \$250 or more but less than \$1,000;

(c) a class A misdemeanor, if the total value of the gratuity or kickback is \$100 or more but less than \$250; and

(d) a class B misdemeanor, if the total value of the gratuity or kickback is less than \$100.

(5) The criminal sanctions described in Subsection (4) do not preclude the imposition of other penalties for conduct made unlawful under this part, in accordance with other applicable law, including:

(a) dismissal from employment or other disciplinary action;

(b) for an elected officer listed in Section 77-6-1, removal from office as provided in Title 77, Chapter 6, Removal by Judicial Proceedings;

(c) requiring the public officer or employee to return the value of the unlawful gratuity or kickback; and

(d) any other civil penalty provided by law.

Section 76. Section **63G-6a-2405** is enacted to read:

### **63G-6a-2405. Discretion to declare contract or grant void -- Limitations.**

(1) Subject to Subsection (2), the governing body or chief executive officer of a public entity that awards a contract or grant to a person who engages in conduct made unlawful under

## SB0179S03 compared with SB0179S02

this part may, in the sole discretion of the governing body or chief executive officer, declare the contract or grant to be void and unenforceable, unless:

(a) the contract or grant relates to the issuance of a bond or other obligation and the bond has been issued or obligation incurred; or

(b) a third party has substantially changed its position in reliance upon the contract or grant.

(2) Declaring a contract or grant void under Subsection (1) does not affect the obligation of a procurement unit to pay for a contractor's proper performance completed under the contract or grant or the value the contractor provides to the public entity under the contract or grant before the contract or grant is declared void.

(3) Subsection (1) applies only to a procurement with respect to which:

(a) public notice is provided on or after July 1, 2014, if public notice of the procurement is required; or

(b) the initial contact between the public entity and the potential contractor, for purposes of the procurement, occurs on or after July 1, 2014, if public notice of the procurement is not required.

Section 77. Section **63G-6a-2406** is enacted to read:

**63G-6a-2406. Authority of conducting procurement unit with respect to evaluation committee.**

Nothing in this part restricts a conducting procurement unit from:

(1) requiring an evaluation committee member to disclose a conflict of interest; or

(2) removing an evaluation committee member for having a conflict of interest.

Section 78. Section **63G-6a-2407** is enacted to read:

**63G-6a-2407. Duty to report unlawful conduct.**

(1) A procurement professional shall notify the attorney general or other appropriate prosecuting attorney if the procurement professional has actual knowledge that a person has engaged in:

(a) conduct made unlawful under this part; or

(b) conduct, including bid rigging, improperly steering a contract to a favored vendor, exercising undue influence on an individual involved in the procurement process, or participating in collusion or other anticompetitive practices, made unlawful under other

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applicable law.

(2) A procurement professional who fails to comply with the requirement of Subsection (1) is subject to any applicable disciplinary action or civil penalty identified in Subsection 63G-6a-2404(5).

Section 79. Section **67-16-4** is amended to read:

**67-16-4. Improperly disclosing or using private, controlled, or protected information -- Using position to secure privileges or exemptions -- Accepting employment that would impair independence of judgment or ethical performance -- Exception.**

(1) Except as provided in Subsection (3), it is an offense for a public officer, public employee, or legislator to:

(a) accept employment or engage in any business or professional activity that he might reasonably expect would require or induce him to improperly disclose controlled information that he has gained by reason of his official position;

(b) disclose or improperly use controlled, private, or protected information acquired by reason of his official position or in the course of official duties in order to further substantially the officer's or employee's personal economic interest or to secure special privileges or exemptions for himself or others;

(c) use or attempt to use his official position to:

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

(ii) secure special privileges or exemptions for himself or others;

(d) accept other employment that he might expect would impair his independence of judgment in the performance of his public duties; or

(e) accept other employment that he might expect would interfere with the ethical performance of his public duties.

(2) (a) Subsection (1) does not apply to the provision of education-related services to public school students by public education employees acting outside their regular employment.

(b) The conduct referred to in Subsection (2)(a) is subject to Section 53A-1-402.5.

(3) This section does not apply to a public officer, public employee, or legislator who engages in conduct that constitutes a violation of this section to the extent that the public officer, public employee, or legislator is chargeable, for the same conduct, under Section [~~63G-6a-2304.5~~] 63G-6a-2404 or Section 76-8-105.

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Section 80. Section **67-16-5** is amended to read:

### **67-16-5. Accepting gift, compensation, or loan -- When prohibited.**

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

(a) a loan at an interest rate that is substantially lower than the commercial rate then currently prevalent for similar loans; and

(b) compensation received for private services rendered at a rate substantially exceeding the fair market value of the services.

(2) Except as provided in Subsection (4), it is an offense for a public officer or public employee to knowingly receive, accept, take, seek, or solicit, directly or indirectly for himself or another a gift of substantial value or a substantial economic benefit tantamount to a gift:

(a) that would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties;

(b) that the public officer or public employee knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the public officer or public employee for official action taken; or

(c) if the public officer or public employee recently has been, is now, or in the near future may be involved in any governmental action directly affecting the donor or lender, unless a disclosure of the gift, compensation, or loan and other relevant information has been made in the manner provided in Section 67-16-6.

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

(a) an occasional nonpecuniary gift, having a value of not in excess of \$50;

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

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

(d) a political campaign contribution.

(4) This section does not apply to a public officer or public employee who engages in conduct that constitutes a violation of this section to the extent that the public officer or public employee is chargeable, for the same conduct, under Section [~~63G-6a-2304.5~~] 63G-6a-2404 or Section 76-8-105.

Section 81. Section **67-16-5.3** is amended to read:

**67-16-5.3. Requiring donation, payment, or service to government agency in exchange for approval -- When prohibited.**

## **SB0179S03 compared with SB0179S02**

(1) Except as provided in Subsection (3), it is an offense for a public officer, public employee, or legislator to demand from any person as a condition of granting any application or request for a permit, approval, or other authorization, that the person donate personal property, money, or services to any agency.

(2) (a) Subsection (1) does not apply to any donation of property, funds, or services to an agency that is:

- (i) expressly required by statute, ordinance, or agency rule;
- (ii) mutually agreed to between the applicant and the entity issuing the permit, approval, or other authorization;
- (iii) made voluntarily by the applicant; or
- (iv) a condition of a consent decree, settlement agreement, or other binding instrument entered into to resolve, in whole or in part, an actual or threatened agency enforcement action.

(b) If a person donates property, funds, or services to an agency, the agency shall, as part of the permit or other written authorization:

- (i) identify that a donation has been made;
- (ii) describe the donation;
- (iii) certify, in writing, that the donation was voluntary; and
- (iv) place that information in its files.

(3) This section does not apply to a public officer, public employee, or legislator who engages in conduct that constitutes a violation of this section to the extent that the public officer, public employee, or legislator is chargeable, for the same conduct, under Section ~~[63G-6a-2304.5]~~ 63G-6a-2404 or Section 76-8-105.

Section 82. Section **67-16-5.6** is amended to read:

### **67-16-5.6. Offering donation, payment, or service to government agency in exchange for approval -- When prohibited.**

(1) Except as provided in Subsection (3), it is an offense for any person to donate or offer to donate personal property, money, or services to any agency on the condition that the agency or any other agency approve any application or request for a permit, approval, or other authorization.

(2) (a) Subsection (1) does not apply to any donation of property, funds, or services to an agency that is:



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- (i) otherwise expressly required by statute, ordinance, or agency rule;
  - (ii) mutually agreed to between the applicant and the entity issuing the permit, approval, or other authorization;
  - (iii) a condition of a consent decree, settlement agreement, or other binding instrument entered into to resolve, in whole or in part, an actual or threatened agency enforcement action;
- or

(iv) made without condition.

(b) The person making the donation of property, funds, or services shall include with the donation a signed written statement certifying that the donation is made without condition.

(c) The agency receiving the donation shall place the signed written statement in its files.

(3) This section does not apply to a person who engages in conduct that constitutes a violation of this section to the extent that the person is chargeable, for the same conduct, under Section [~~63G-6a-2304.5~~] 63G-6a-2404 or Section 76-8-105.

Section 83. Section **67-16-6** is amended to read:

### **67-16-6. Receiving compensation for assistance in transaction involving an agency -- Filing sworn statement.**

(1) Except as provided in Subsection (5), it is an offense for a public officer or public employee to receive or agree to receive compensation for assisting any person or business entity in any transaction involving an agency unless the public officer or public employee files a sworn, written statement containing the information required by Subsection (2) with:

- (a) the head of the officer or employee's own agency;
- (b) the agency head of the agency with which the transaction is being conducted; and
- (c) the state attorney general.

(2) The statement shall contain:

- (a) the name and address of the public officer or public employee involved;
- (b) the name of the public officer's or public employee's agency;
- (c) the name and address of the person or business entity being or to be assisted; and
- (d) a brief description of:
  - (i) the transaction as to which service is rendered or is to be rendered; and
  - (ii) the nature of the service performed or to be performed.

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(3) The statement required to be filed under Subsection (1) shall be filed within 10 days after the date of any agreement between the public officer or public employee and the person or business entity being assisted or the receipt of compensation, whichever is earlier.

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

(5) This section does not apply to a public officer or public employee who engages in conduct that constitutes a violation of this section to the extent that the public officer or public employee is chargeable, for the same conduct, under Section [~~63G-6a-2304.5~~] 63G-6a-2404 or Section 76-8-105.

### **Section 84. Repealer.**

This bill repeals:

**Section 63G-6a-1803, Statutes of limitations.**

**Section 63G-6a-1905, Authority to resolve controversy between state and contractor.**

**Section 63G-6a-2301, Title.**

**Section 63G-6a-2302, Duty to report factual information to attorney general.**

**Section 63G-6a-2304.5, Gratuities -- Kickbacks -- Unlawful use of position or influence.**

**Section 63G-6a-2305, Penalties for artificially dividing a purchase.**

**Section 63G-6a-2306, Penalties.**

**Section 63G-6a-2307, Contract awarded in relation to criminal conduct void.**

**Section 63G-6a-2308, Exemption.**

**Section 85. Effective date.**

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.