

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

LONG TITLE

General Description:

This bill modifies the Utah Procurement Code and related provisions.

Highlighted Provisions:

This bill:

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



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

49 **Money Appropriated in this Bill:**

50 None

51 **Other Special Clauses:**

52 This bill provides an immediate effective date.

53 **Utah Code Sections Affected:**

54 AMENDS:

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

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

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

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

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

136 ENACTS:

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

145 REPEALS AND REENACTS:

- 146 **63G-6a-1202**, as last amended by Laws of Utah 2013, Chapter 445

147 RENUMBERS AND AMENDS:

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

150 REPEALS:

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

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

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

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

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

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

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

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

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



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

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

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

166 (1) As used in this section:

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

168 (b) "Public asset" means:

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

170 (ii) tax revenue;

171 (iii) state funds; or

172 (iv) public funds.

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

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

175 Project Entity Provisions;

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

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

181 revenue.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

212 63A-3-401.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

257 (i) the lowest responsive responsible bidder; or

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

260 (A) offers design-build services; and

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

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

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

268 (A) exceeding the bid limit; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

305 ~~design-build:]~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

335 (b) strategy sessions to discuss collective bargaining;

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

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

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

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

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

376 (o) the purpose of discussing information provided to the public body during the
377 procurement process under Title 63G, Chapter 6a, Utah Procurement Code, if, at the time of
378 the meeting:

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

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

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

384 (2) The following meetings shall be closed:

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

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

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

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

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

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

- 398 (a) interview a person applying to fill an elected position;
- 399 (b) discuss filling a midterm vacancy or temporary absence governed by Title 20A,
- 400 Chapter 1, Part 5, Candidate Vacancy and Vacancy and Temporary Absence in Elected Office;
- 401 or
- 402 (c) discuss the character, professional competence, or physical or mental health of the
- 403 person whose name was submitted for consideration to fill a midterm vacancy or temporary
- 404 absence governed by Title 20A, Chapter 1, Part 5, Candidate Vacancy and Vacancy and
- 405 Temporary Absence in Elected Office.

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

407 **63B-2-102. Maximum amount -- Projects authorized.**

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

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

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

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

419 CAPITAL IMPROVEMENTS

420	1	Alterations, Repairs, and Improvements	\$8,413,900
421		TOTAL IMPROVEMENTS	\$8,413,900

422 CAPITAL FACILITIES CONSTRUCTION

423				ESTIMATED OPERATIONS AND MAINTENANCE COSTS
	PROJECT PRIORITY	PROJECT DESCRIPTION	AMOUNT FUNDED	
424	1	Corrections - Northern Utah Community Corrections Center Phase II	\$2,729,700	\$158,000
425	2	University of Utah Marriot Library Phase II	\$10,200,000	\$881,600
426	3	Ogden Courts Building Phase II	\$12,096,000	\$340,000
427	4	Utah National Guard - Southeast Utah Armory Phase II	\$397,800	\$70,500
428	5	Southern Utah University Library Phase II	\$7,004,400	\$427,000
429	6	Utah Valley Special Events Center Phase II	\$11,845,300	\$536,900
430	7	Salt Lake Community College - Land	\$1,300,000	\$0
431	8	Tax Commission Building	\$14,224,000	\$812,000
432	9	Dixie College Business Building	\$2,823,300	\$187,800
433	10	Salt Lake Community College South City 3rd Floor and Boiler	\$4,009,500	\$257,600
434	11	Public Education - Deaf and Blind Classrooms	\$3,456,100	\$124,800
435		TOTAL CONSTRUCTION	\$70,086,100	
436		TOTAL IMPROVEMENTS AND CONSTRUCTION	\$78,500,000	

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

438 (i) are estimates only;

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

440 agency budgets; and

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

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

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

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

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

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

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

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

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

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

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

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

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

470 **63B-3-102. Maximum amount -- Projects authorized.**

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

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

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

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

482 CAPITAL IMPROVEMENTS

483	1	Alterations, Repairs, and Improvements	\$5,000,000
484		TOTAL IMPROVEMENTS	\$5,000,000

485 CAPITAL AND ECONOMIC DEVELOPMENT

486			ESTIMATED OPERATIONS AND MAINTENANCE COSTS
	PRIORITY PROJECT	PROJECT DESCRIPTION	AMOUNT FUNDED
487	1	University of Utah Marriott Library Phase III (Final)	\$13,811,500 \$881,600
488	2	Bridgerland Applied Technology Center Utah State University Space	\$2,400,000 \$0
489	3	Weber State University - Heat Plant	\$2,332,100 \$9,600

490	4	Department of Human Services - Division of Youth Corrections renamed in 2003 to the Division of Juvenile Justice Services	\$4,180,000	\$400,000
491	5	Snow College - Administrative Services/Student Center	\$3,885,100	\$224,500
492	6	Ogden Weber Applied Technology Center - Metal Trades Building Design and Equipment Purchase	\$750,000	\$0
493	7	Department of Corrections B-Block Remodel	\$1,237,100	\$72,000
494	8	Utah State University - Old Main Phase III Design	\$550,000	\$0
495	9	Department of Corrections - 144 bed Uintah Expansion	\$6,700,000	\$168,800
496	10	Southern Utah University Administrative Services/Student Center	\$5,630,400	\$314,200
497	11	Anasazi Museum	\$760,200	\$8,500
498	12	Hill Air Force Base - Easements Purchase	\$9,500,000	\$0
499	13	Signetics Building Remodel	\$2,000,000	\$0
500	14	Antelope Island Visitors Center	\$750,000	\$30,000
501	15	State Fair Park - Master Study	\$150,000	\$0
502	16	Utah National Guard - Draper Land	\$380,800	\$0
503	17	Davis Applied Technology Center - Design	\$325,000	\$0
504	18	Palisade State Park - Land and Park Development	\$800,000	\$0

505	19	Department of Human Services - Cedar City Land	\$80,000	\$0
506	20	Department of Human Services - Clearfield Land	\$163,400	\$0
507	21	Electronic technology, equipment, and hardware	\$2,500,000	\$0
508		TOTAL CAPITAL AND ECONOMIC DEVELOPMENT	\$58,885,600	
509		TOTAL IMPROVEMENTS AND CAPITAL AND ECONOMIC DEVELOPMENT	\$63,885,600	

- 510 (d) For purposes of this section, operations and maintenance costs:
- 511 (i) are estimates only;
- 512 (ii) may include any operations and maintenance costs already funded in existing
- 513 agency budgets; and
- 514 (iii) are not commitments by this Legislature or future Legislatures to fund those
- 515 operations and maintenance costs.
- 516 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
- 517 constitute a limitation on the amount that may be expended for any project.
- 518 (b) The board may revise these estimates and redistribute the amount estimated for a
- 519 project among the projects authorized.
- 520 (c) The commission, by resolution and in consultation with the board, may delete one
- 521 or more projects from this list if the inclusion of that project or those projects in the list could
- 522 be construed to violate state law or federal law or regulation.
- 523 (4) (a) The division may enter into agreements related to these projects before the
- 524 receipt of proceeds of bonds issued under this chapter.
- 525 (b) The division shall make those expenditures from unexpended and unencumbered
- 526 building funds already appropriated to the Capital Projects Fund.
- 527 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
- 528 of bonds issued under this chapter.
- 529 (d) The commission may, by resolution, make any statement of intent relating to that
- 530 reimbursement that is necessary or desirable to comply with federal tax law.

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

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

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

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

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

543 **63B-4-102. Maximum amount -- Projects authorized.**

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

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

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

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

555 CAPITAL IMPROVEMENTS	
556 Alterations, Repairs, and Improvements	\$7,200,000
557 TOTAL IMPROVEMENTS	\$7,200,000

558 CAPITAL AND ECONOMIC DEVELOPMENT

	PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATIONS AND MAINTENANCE COSTS
559			
560	Corrections - Uinta IVA	\$11,300,000	\$212,800
561	Utah County Youth Correctional Facility	\$6,650,000	\$245,000
562	Ogden Weber Applied Technology Center - Metal Trades	\$5,161,000	\$176,000
563	Project Reserve Fund	\$3,500,000	None
564	Weber State University - Browning Center Remodel	\$3,300,000	None
565	Heber Wells Building Remodel	\$2,000,000	None
566	Higher Education Davis County - Land Purchase	\$1,600,000	None
567	National Guard -- Provo Armory	\$1,500,000	\$128,000
568	Department of Natural Resources - Pioneer Trails Visitor Center	\$900,000	\$65,000
569	Higher Education Design Projects	\$800,000	Varies depending upon projects selected
570	Salt Lake Community College - South Valley Planning	\$300,000	None
571	Division of Youth Corrections renamed in 2003 to the Division of Juvenile Justice Services - Logan Land Purchase	\$120,000	None
572	TOTAL CAPITAL AND ECONOMIC DEVELOPMENT		\$37,131,000
573	TOTAL IMPROVEMENTS AND CAPITAL AND ECONOMIC DEVELOPMENT		\$44,331,000

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

575 (i) are estimates only;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

607 **63B-5-102. Maximum amount -- Projects authorized.**

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

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

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

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

619 CAPITAL IMPROVEMENTS

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

622 CAPITAL AND ECONOMIC DEVELOPMENT

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

630 TOTAL CAPITAL AND ECONOMIC \$23,400,000
DEVELOPMENT

631 TOTAL IMPROVEMENTS AND CAPITAL AND \$31,000,000
ECONOMIC DEVELOPMENT

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

633 (i) are estimates only;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

665 **63B-6-102. Maximum amount -- Projects authorized.**

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

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

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

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

677 CAPITAL AND ECONOMIC DEVELOPMENT

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

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

- 689 (d) For purposes of this section, operations and maintenance costs:
- 690 (i) are estimates only;
- 691 (ii) may include any operations and maintenance costs already funded in existing
- 692 agency budgets; and
- 693 (iii) are not commitments by this Legislature or future Legislatures to fund those
- 694 operations and maintenance costs.
- 695 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
- 696 constitute a limitation on the amount that may be expended for any project.
- 697 (b) The board may revise these estimates and redistribute the amount estimated for a
- 698 project among the projects authorized.
- 699 (c) The commission, by resolution and in consultation with the board, may delete one
- 700 or more projects from this list if the inclusion of that project or those projects in the list could
- 701 be construed to violate state law or federal law or regulation.
- 702 (4) (a) The division may enter into agreements related to these projects before the
- 703 receipt of proceeds of bonds issued under this chapter.
- 704 (b) The division shall make those expenditures from unexpended and unencumbered
- 705 building funds already appropriated to the Capital Projects Fund.
- 706 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
- 707 of bonds issued under this chapter.
- 708 (d) The commission may, by resolution, make any statement of intent relating to that

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

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

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

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

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

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

722 **63B-6-402. Maximum amount -- Projects authorized.**

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

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

727 (b) These costs may include:

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

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

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

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

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

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

738 construed to violate state law or federal law or regulation.

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

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

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

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

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

750 **63B-7-102. Maximum amount -- Projects authorized.**

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

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

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

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

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

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

- 778 (d) For purposes of this section, operations and maintenance costs:
- 779 (i) are estimates only;
- 780 (ii) may include any operations and maintenance costs already funded in existing
- 781 agency budgets; and
- 782 (iii) are not commitments by this Legislature or future Legislatures to fund those
- 783 operations and maintenance costs.
- 784 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
- 785 constitute a limitation on the amount that may be expended for any project.
- 786 (b) The board may revise these estimates and redistribute the amount estimated for a
- 787 project among the projects authorized.
- 788 (c) The commission, by resolution and in consultation with the board, may delete one

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

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

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

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

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

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

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

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

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

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

811 **63B-7-402. Maximum amount -- Projects authorized.**

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

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

816 (b) These costs may include:

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

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

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

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

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

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

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

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

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

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

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

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

839 **63B-8-102. Maximum amount -- Projects authorized.**

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

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

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

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

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

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

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

859 (i) are estimates only;

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

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

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

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

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

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

872 receipt of proceeds of bonds issued under this chapter.

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

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

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

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

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

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

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

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

891 **63B-8-402. Maximum amount -- Projects authorized.**

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

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

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

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

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

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

906 (i) are estimates only;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

938 **63B-9-103. Other capital facility authorizations and intent language.**

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

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

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

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

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

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

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

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

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

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

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

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

- 962 (4) It is the intent of the Legislature that:
- 963 (a) the University of Utah use institutional funds to plan, design, and construct an
964 expansion to the bookstore under the direction of the director of the Division of Facilities
965 Construction and Management unless supervisory authority has been delegated;
- 966 (b) no state funds be used for any portion of this project; and
- 967 (c) the university may not request state funds for operations and maintenance.
- 968 (5) It is the intent of the Legislature that:
- 969 (a) the University of Utah use institutional funds to plan, design, and construct a Health
970 Sciences/Basic Sciences Building under the direction of the director of the Division of
971 Facilities Construction and Management unless supervisory authority has been delegated;
- 972 (b) no state funds be used for any portion of this project; and
- 973 (c) the university may request state funds for operations and maintenance to the extent
974 that the university is able to demonstrate to the Board of Regents that the facility meets
975 approved academic and training purposes under Board of Regents policy R710.
- 976 (6) It is the intent of the Legislature that:
- 977 (a) Weber State University use institutional funds to plan, design, and construct an
978 expansion to the stadium under the direction of the director of the Division of Facilities
979 Construction and Management unless supervisory authority has been delegated;
- 980 (b) no state funds be used for any portion of this project; and
- 981 (c) the university may not request state funds for operations and maintenance.
- 982 (7) It is the intent of the Legislature that:
- 983 (a) Utah Valley State College use institutional funds to plan, design, and construct a
984 baseball stadium under the direction of the director of the Division of Facilities Construction
985 and Management unless supervisory authority has been delegated;
- 986 (b) no state funds be used for any portion of this project; and
- 987 (c) the college may not request state funds for operations and maintenance.
- 988 (8) It is the intent of the Legislature that:
- 989 (a) Southern Utah University use institutional funds to plan, design, and construct a
990 weight training room under the direction of the director of the Division of Facilities
991 Construction and Management unless supervisory authority has been delegated;
- 992 (b) no state funds be used for any portion of this project; and

- 993 (c) the university may not request state funds for operations and maintenance.
- 994 (9) It is the intent of the Legislature that:
- 995 (a) Snow College may lease land at the Snow College Richfield campus to a private
- 996 developer for the construction and operation of student housing;
- 997 (b) the oversight and inspection of the construction comply with Section 63A-5-206;
- 998 (c) no state funds be used for any portion of this project; and
- 999 (d) the college may not request state funds for operations and maintenance.
- 1000 (10) It is the intent of the Legislature that:
- 1001 (a) Salt Lake Community College may lease land at the Jordan campus to Jordan
- 1002 School District for the construction and operation of an Applied Technology Education Center;
- 1003 (b) the oversight and inspection of the construction comply with Section 63A-5-206;
- 1004 (c) no state funds be used for any portion of this project; and
- 1005 (d) the college may not request state funds for operations and maintenance.
- 1006 (11) It is the intent of the Legislature that:
- 1007 (a) the Department of Transportation exchange its maintenance station at Kimball
- 1008 Junction for property located near Highway 40 in Summit County; and
- 1009 (b) the Department of Transportation use federal funds, rent paid by the Salt Lake
- 1010 Organizing Committee for the use of the maintenance station, and any net proceeds resulting
- 1011 from the exchange of property to construct a replacement facility under the direction of the
- 1012 director of the Division of Facilities Construction and Management unless supervisory
- 1013 authority has been delegated.
- 1014 (12) It is the intent of the Legislature that:
- 1015 (a) the Department of Transportation sell surplus property in Utah County;
- 1016 (b) the Department of Transportation use funds from that sale to remodel existing
- 1017 space and add an addition to the Region 3 Complex; and
- 1018 (c) the project cost not exceed the funds received through sale of property.
- 1019 (13) It is the intent of the Legislature that the Department of Workforce Services use
- 1020 proceeds from property sales to purchase additional property adjacent to its state-owned facility
- 1021 in Logan.
- 1022 (14) (a) It is the intent of the Legislature that, because only partial funding is provided
- 1023 for the Heat Plant/Infrastructure Project at Utah State University, the balance necessary to

1024 complete this project be addressed by future Legislatures, either through appropriations or
1025 through the issuance of bonds.

1026 (b) (i) In compliance with Section 63A-5-207, the division may enter into contracts for
1027 amounts not to exceed the anticipated full project funding but may not allow work to be
1028 performed on those contracts in excess of the funding already authorized by the Legislature.

1029 (ii) Those contracts shall contain a provision for termination of the contract for the
1030 convenience of the state [~~as required by Section 63G-6a-1202~~].

1031 (c) It is also the intent of the Legislature that this authorization to the division does not
1032 bind future Legislatures to fund the Heat Plant/Infrastructure Project at Utah State University.

1033 Section 16. Section 63B-11-202 is amended to read:

1034 **63B-11-202. Maximum amount -- Projects authorized.**

1035 (1) (a) The total amount of bonds issued under this part may not exceed \$21,250,000.

1036 (b) When Utah State University certifies to the commission that the university has
1037 obtained reliable commitments, convertible to cash, of \$5,000,000 or more in nonstate funds to
1038 construct an addition to the new engineering building and demolish the existing engineering
1039 classroom building, the commission may issue and sell general obligation bonds in a total
1040 amount not to exceed \$6,100,000.

1041 (c) When the University of Utah certifies to the commission that the university has
1042 obtained reliable commitments, convertible to cash, of \$13,000,000 or more in nonstate funds
1043 to construct a new engineering building, the commission may issue and sell general obligation
1044 bonds in a total amount not to exceed \$15,150,000.

1045 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
1046 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
1047 Subsection (2).

1048 (b) These costs may include the cost of acquiring land, interests in land, easements and
1049 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
1050 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
1051 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
1052 covered by construction of the projects plus a period of six months after the end of the
1053 construction period, and all related engineering, architectural, and legal fees.

1054 (c) For the division, proceeds shall be provided for the following:

PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATING AND MAINTENANCE COSTS
1056 1. Utah State University Engineering Building Renovation	\$5,943,500	\$425,000
1057 2. University of Utah New Engineering Building	\$15,000,000	\$489,000
1058 COSTS OF ISSUANCE	\$306,500	
1059 TOTAL CAPITAL AND ECONOMIC DEVELOPMENT		\$21,250,000

- 1060 (d) For purposes of this section, operations and maintenance costs:
- 1061 (i) are estimates only;
- 1062 (ii) may include any operations and maintenance costs already funded in existing
- 1063 agency budgets; and
- 1064 (iii) are not commitments by this Legislature or future Legislatures to fund those
- 1065 operations and maintenance costs.
- 1066 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
- 1067 constitute a limitation on the amount that may be expended for any project.
- 1068 (b) The board may revise these estimates and redistribute the amount estimated for a
- 1069 project among the projects authorized.
- 1070 (c) The commission, by resolution and in consultation with the board, may delete one
- 1071 or more projects from this list if the inclusion of that project or those projects in the list could
- 1072 be construed to violate state law or federal law or regulation.
- 1073 (4) (a) The division may enter into agreements related to these projects before the
- 1074 receipt of proceeds of bonds issued under this chapter.
- 1075 (b) The division shall make those expenditures from unexpended and unencumbered
- 1076 building funds already appropriated to the Capital Projects Fund.
- 1077 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
- 1078 of bonds issued under this chapter.
- 1079 (d) The commission may, by resolution, make any statement of intent relating to that

1080 reimbursement that is necessary or desirable to comply with federal tax law.

1081 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
1082 it is the intent of the Legislature that the balance necessary to complete the projects be
1083 addressed by future Legislatures, either through appropriations or through the issuance or sale
1084 of bonds.

1085 (b) For those phased projects, the division may enter into contracts for amounts not to
1086 exceed the anticipated full project funding but may not allow work to be performed on those
1087 contracts in excess of the funding already authorized by the Legislature.

1088 (c) Those contracts shall contain a provision for termination of the contract for the
1089 convenience of the state [~~as required by Section 63G-6a-1202~~].

1090 (d) It is also the intent of the Legislature that this authorization to the division does not
1091 bind future Legislatures to fund projects initiated from this authorization.

1092 Section 17. Section **63F-1-205** is amended to read:

1093 **63F-1-205. Approval of acquisitions of information technology.**

1094 (1) (a) Except as provided in Title 63M, Chapter 1, Part 26, Government Procurement
1095 Private Proposal Program, in accordance with Subsection (2), the chief information officer
1096 shall approve the acquisition by an executive branch agency of:

1097 (i) information technology equipment;

1098 (ii) telecommunications equipment;

1099 (iii) software;

1100 (iv) services related to the items listed in Subsections (1)(a)(i) through (iii); and

1101 (v) data acquisition.

1102 (b) The chief information officer may negotiate the purchase, lease, or rental of private
1103 or public information technology or telecommunication services or facilities in accordance with
1104 this section.

1105 (c) Where practical, efficient, and economically beneficial, the chief information
1106 officer shall use existing private and public information technology or telecommunication
1107 resources.

1108 (d) Notwithstanding another provision of this section, an acquisition authorized by this
1109 section shall comply with rules made by the applicable rulemaking authority under Title 63G,
1110 Chapter 6a, Utah Procurement Code.

1111 (2) Before negotiating a purchase, lease, or rental under Subsection (1) for an amount
1112 that exceeds the value established by the chief information officer by rule in accordance with
1113 Section 63F-1-206, the chief information officer shall:

1114 (a) conduct an analysis of the needs of executive branch agencies and subscribers of
1115 services and the ability of the proposed information technology or telecommunications services
1116 or supplies to meet those needs; and

1117 (b) for purchases, leases, or rentals not covered by an existing statewide contract,
1118 provide in writing to the chief procurement officer in the Division of Purchasing and General
1119 Services that:

1120 (i) the analysis required in Subsection (2)(a) was completed; and

1121 (ii) based on the analysis, the proposed purchase, lease, rental, or master contract of
1122 services, products, or supplies is practical, efficient, and economically beneficial to the state
1123 and the executive branch agency or subscriber of services.

1124 (3) In approving an acquisition described in Subsections (1) and (2), the chief
1125 information officer shall:

1126 (a) establish by administrative rule, in accordance with Section 63F-1-206, standards
1127 under which an agency must obtain approval from the chief information officer before
1128 acquiring the items listed in Subsections (1) and (2);

1129 (b) for those acquisitions requiring approval, determine whether the acquisition is in
1130 compliance with:

1131 (i) the executive branch strategic plan;

1132 (ii) the applicable agency information technology plan;

1133 (iii) the budget for the executive branch agency or department as adopted by the
1134 Legislature; and

1135 (iv) Title 63G, Chapter 6a, Utah Procurement Code; and

1136 (c) in accordance with Section 63F-1-207, require coordination of acquisitions between
1137 two or more executive branch agencies if it is in the best interests of the state.

1138 (4) (a) Each executive branch agency shall provide the chief information officer with
1139 complete access to all information technology records, documents, and reports:

1140 (i) at the request of the chief information officer; and

1141 (ii) related to the executive branch agency's acquisition of any item listed in Subsection

1142 (1).

1143 (b) Beginning July 1, 2006 and in accordance with administrative rules established by
1144 the department under Section 63F-1-206, no new technology projects may be initiated by an
1145 executive branch agency or the department unless the technology project is described in a
1146 formal project plan and the business case analysis has been approved by the chief information
1147 officer and agency head. The project plan and business case analysis required by this
1148 Subsection (4) shall be in the form required by the chief information officer, and shall include:

- 1149 (i) a statement of work to be done and existing work to be modified or displaced;
- 1150 (ii) total cost of system development and conversion effort, including system analysis
1151 and programming costs, establishment of master files, testing, documentation, special
1152 equipment cost and all other costs, including overhead;
- 1153 (iii) savings or added operating costs that will result after conversion;
- 1154 (iv) other advantages or reasons that justify the work;
- 1155 (v) source of funding of the work, including ongoing costs;
- 1156 (vi) consistency with budget submissions and planning components of budgets; and
1157 (vii) whether the work is within the scope of projects or initiatives envisioned when the
1158 current fiscal year budget was approved.

1159 (5) (a) The chief information officer and the Division of Purchasing and General
1160 Services shall work cooperatively to establish procedures under which the chief information
1161 officer shall monitor and approve acquisitions as provided in this section.

1162 (b) The procedures established under this section shall include at least the written
1163 certification required by Subsection 63G-6a-303~~(5)~~(1)(e).

1164 Section 18. Section 63G-6a-102 is amended to read:

1165 **63G-6a-102. Purpose of chapter.**

1166 The underlying purposes and policies of this chapter are:

- 1167 (1) to simplify, clarify, and modernize the law governing procurement ~~[by this]~~ in the
1168 state;
- 1169 (2) to ensure the fair and equitable treatment of all persons who deal with the
1170 procurement system ~~[of this state]~~;
- 1171 (3) to provide increased economy in state procurement activities; and
1172 (4) to foster effective broad-based competition within the free enterprise system.

1173 Section 19. Section **63G-6a-103** is amended to read:

1174 **63G-6a-103. Definitions.**

1175 As used in this chapter:

1176 (1) "Architect-engineer services" means:

1177 (a) professional services within the scope of the practice of architecture as defined in

1178 Section [58-3a-102](#); [or]

1179 (b) professional engineering as defined in Section [58-22-102](#)[:]; or

1180 (c) master planning and programming services.

1181 (2) "Bidder" means a person who responds to an invitation for bids.

1182 (3) "Change directive" means a written order signed by the procurement officer that
1183 directs the contractor to suspend work or make changes, as authorized by contract, without the
1184 consent of the contractor.

1185 (4) "Change order" means a written alteration in specifications, delivery point, rate of
1186 delivery, period of performance, price, quantity, or other provisions of a contract, upon mutual
1187 agreement of the parties to the contract.

1188 (5) "Chief procurement officer" means the chief procurement officer appointed under
1189 Subsection [63G-6a-302](#)(1).

1190 (6) "Conducting procurement unit" means a procurement unit that conducts all aspects
1191 of a procurement:

1192 (a) except:

1193 (i) reviewing a solicitation to verify that it is in proper form; and

1194 (ii) causing the publication of a notice of a solicitation; and

1195 (b) including:

1196 (i) preparing any solicitation document;

1197 (ii) appointing an evaluation committee;

1198 (iii) conducting the evaluation process, except as provided in Subsection

1199 [63G-6a-707](#)(5)(b) relating to scores calculated for costs of proposals;

1200 (iv) selecting and recommending the person to be awarded a contract;

1201 (v) negotiating the terms and conditions of a contract, subject to the issuing
1202 procurement unit's approval; and

1203 (vi) administering a contract.

1204 [(6)] (7) (a) "Construction" means the process of building, renovating, altering,
1205 improving, or repairing a public building or public work.

1206 (b) "Construction" does not include the routine operation, routine repair, or routine
1207 maintenance of an existing structure, building, or real property.

1208 [(7)] (8) (a) "Construction manager/general contractor" means a contractor who enters
1209 into a contract for the management of a construction project when the contract allows the
1210 contractor to subcontract for additional labor and materials that are not included in the
1211 contractor's cost proposal submitted at the time of the procurement of the contractor's services.

1212 (b) "Construction manager/general contractor" does not include a contractor whose
1213 only subcontract work not included in the contractor's cost proposal submitted as part of the
1214 procurement of the contractor's services is to meet subcontracted portions of change orders
1215 approved within the scope of the project.

1216 [(8)] (9) "Contract" means an agreement for the procurement or disposal of a
1217 procurement item.

1218 [(9)] (10) "Contractor" means a person who is awarded a contract with a procurement
1219 unit.

1220 [(10)] (11) "Cooperative procurement" means procurement conducted by, or on behalf
1221 of[;];

1222 (a) more than one procurement unit[;]; or [by]

1223 (b) a procurement unit [~~and an external procurement unit.~~] and a cooperative
1224 purchasing organization.

1225 [(11)] (12) "Cost-plus-a-percentage-of-cost contract" means a contract where the
1226 contractor is paid a percentage over and above the contractor's actual expenses or costs.

1227 [(12)] (13) "Cost-reimbursement contract" means a contract under which a contractor
1228 is reimbursed for costs which are allowed and allocated in accordance with the contract terms
1229 and the provisions of this chapter, and a fee, if any.

1230 [(13)] (14) "Days" means calendar days, unless expressly provided otherwise.

1231 [(14)] (15) "Definite quantity contract" means a fixed price contract that provides for
1232 the supply of a specified amount of goods over a specified period, with deliveries scheduled
1233 according to a specified schedule.

1234 [(15)] (16) "Design-build" means the procurement of architect-engineer services and

1235 construction by the use of a single contract with the design-build provider.

1236 [~~(16)~~] (17) "Director" means the director of the division.

1237 [~~(17)~~] (18) "Established catalogue price" means the price included in a catalogue, price
1238 list, schedule, or other form that:

1239 (a) is regularly maintained by a manufacturer or contractor;

1240 (b) is either published or otherwise available for inspection by customers; and

1241 (c) states prices at which sales are currently or were last made to a significant number
1242 of any category of buyers or buyers constituting the general buying public for the supplies or
1243 services involved.

1244 [~~(18)~~] (19) "Fixed price contract" means a contract that provides a price, for each
1245 procurement item obtained under the contract, that is not subject to adjustment except to the
1246 extent that:

1247 (a) the contract provides, under circumstances specified in the contract, for an
1248 adjustment in price that is not based on cost to the contractor; or

1249 (b) an adjustment is required by law.

1250 [~~(19)~~] (20) "Fixed price contract with price adjustment" means a fixed price contract
1251 that provides for an upward or downward revision of price, precisely described in the contract,
1252 that:

1253 (a) is based on the consumer price index or another commercially acceptable index,
1254 source, or formula; and

1255 (b) is not based on a percentage of the cost to the contractor.

1256 [~~(20)~~] (21) (a) "Grant" means furnishing, by a public entity or by any other public or
1257 private source, financial or other assistance to a person to support a program authorized by law.

1258 (b) "Grant" does not include:

1259 (i) an award whose primary purpose is to procure an end product or procurement item;

1260 or

1261 (ii) a contract that is awarded as a result of a procurement or a procurement process.

1262 [~~(21)~~] (22) "Head of a procurement unit" means:

1263 (a) as it relates to a legislative procurement unit, any person designated by rule made
1264 by the applicable rulemaking authority;

1265 (b) as it relates to an executive branch procurement unit:

- 1266 (i) the director of a division; or
- 1267 (ii) any other person designated by the board, by rule;
- 1268 (c) as it relates to a judicial procurement unit:
- 1269 (i) the Judicial Council; or
- 1270 (ii) any other person designated by the Judicial Council, by rule;
- 1271 (d) as it relates to a local government procurement unit:
- 1272 (i) the legislative body of the local government procurement unit; or
- 1273 (ii) any other person designated by the local government procurement unit;
- 1274 (e) as it relates to a local district, the board of trustees of the local district or a designee
- 1275 of the board of trustees;
- 1276 (f) as it relates to a special service district, the governing body of the special service
- 1277 district or a designee of the governing body;
- 1278 (g) as it relates to a local building authority, the board of directors of the local building
- 1279 authority or a designee of the board of directors;
- 1280 (h) as it relates to a conservation district, the board of supervisors of the conservation
- 1281 district or a designee of the board of supervisors;
- 1282 (i) as it relates to a public corporation, the board of directors of the public corporation
- 1283 or a designee of the board of directors;
- 1284 (j) as it relates to a school district or any school or entity within a school district, the
- 1285 board of the school district, or the board's designee;
- 1286 (k) as it relates to a charter school, the individual or body with executive authority over
- 1287 the charter school, or the individual's or body's designee;
- 1288 (l) as it relates to an institution of higher education of the state, the president of the
- 1289 institution of higher education, or the president's designee; or
- 1290 (m) as it relates to a public transit district, the board of trustees or a designee of the
- 1291 board of trustees.
- 1292 [~~(22)~~] (23) "Indefinite quantity contract" means a fixed price contract that:
- 1293 (a) is for an indefinite amount of procurement items to be supplied as ordered by a
- 1294 procurement unit; and
- 1295 (b) (i) does not require a minimum purchase amount; or
- 1296 (ii) provides a maximum purchase limit.

1297 ~~[(23)]~~ (24) "Independent procurement authority" means authority granted to a
1298 procurement unit[;] under Subsection [~~63G-6a-108(2), to engage in a procurement without~~
1299 ~~oversight or control of the division]~~ 63G-6a-106(4)(a).

1300 ~~[(24)]~~ (25) "Invitation for bids" includes all documents, including documents that are
1301 attached or incorporated by reference, used for soliciting bids to provide a procurement item to
1302 a procurement unit.

1303 ~~[(25)]~~ (26) "Issuing procurement unit" means a procurement unit that:

1304 ~~[(a) the division, if the division issues the invitation for bids or the request for~~
1305 ~~proposals; or]~~

1306 ~~[(b) the procurement unit, with independent procurement authority, that issues the~~
1307 ~~invitation for bids or the request for proposals;]~~

1308 (a) reviews a solicitation to verify that it is in proper form;

1309 (b) causes the notice of a solicitation to be published; and

1310 (c) negotiates the terms and conditions of a contract.

1311 ~~[(26)]~~ (27) "Labor hour contract" is a contract where:

1312 (a) the supplies and materials are not provided by, or through, the contractor; and

1313 (b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and
1314 profit for a specified number of labor hours or days.

1315 ~~[(27)]~~ (28) "Multiple award contracts" means the award of a contract for an indefinite
1316 quantity of a procurement item to more than one bidder or offeror.

1317 ~~[(28)]~~ (29) "Multiyear contract" means a contract that extends beyond a one-year
1318 period, including a contract that permits renewal of the contract, without competition, beyond
1319 the first year of the contract.

1320 ~~[(29)]~~ (30) "Municipality" means a city or a town.

1321 ~~[(30)]~~ (31) "Offeror" means a person who responds to a request for proposals.

1322 ~~[(31)]~~ (32) "Preferred bidder" means a bidder that is entitled to receive a reciprocal
1323 preference under the requirements of this chapter.

1324 ~~[(32)]~~ (33) (a) "Procure" or "procurement" means buying, purchasing, renting, leasing,
1325 leasing with an option to purchase, or otherwise acquiring a procurement item.

1326 (b) "Procure" or "procurement" includes all functions that pertain to the obtaining of a
1327 procurement item, including:

- 1328 (i) the description of requirements;
- 1329 (ii) the selection process;
- 1330 (iii) solicitation of sources;
- 1331 (iv) the preparation for soliciting a procurement item; and
- 1332 (v) the award of a contract~~;~~and].
- 1333 [~~(vi) all phases of contract administration.~~]
- 1334 [~~(33)~~] (34) "Procurement item" means a supply, a service, construction, or technology.
- 1335 [~~(34)~~] (35) "Procurement officer" means:
- 1336 (a) as it relates to a procurement unit with independent procurement authority:
- 1337 (i) the head of the procurement unit;
- 1338 (ii) a designee of the head of the procurement unit; or
- 1339 (iii) a person designated by rule made by the applicable rulemaking authority; or
- 1340 (b) as it relates to the division or a procurement unit without independent procurement
- 1341 authority, the chief procurement officer.
- 1342 [~~(35)~~] (36) "Professional service" means a service that requires a high degree of
- 1343 specialized knowledge and discretion in the performance of the service, including:
- 1344 (a) legal services;
- 1345 (b) consultation services;
- 1346 (c) architectural services;
- 1347 (d) engineering;
- 1348 (e) design;
- 1349 (f) underwriting;
- 1350 (g) bond counsel;
- 1351 (h) financial advice;
- 1352 (i) construction management;
- 1353 (j) medical services;
- 1354 (k) psychiatric services; or
- 1355 (l) counseling services.
- 1356 [~~(36)~~] (37) "Protest officer" means:
- 1357 (a) as it relates to the division or a procurement unit with independent procurement
- 1358 authority:

- 1359 (i) the head of the procurement unit;
 1360 (ii) a designee of the head of the procurement unit; or
 1361 (iii) a person designated by rule made by the applicable rulemaking authority; or
 1362 (b) as it relates to a procurement unit without independent procurement authority, the
 1363 chief procurement officer or the chief procurement officer's designee.

1364 ~~[(37)]~~ (38) "Request for information" means a nonbinding process where a
 1365 procurement unit requests information relating to a procurement item.

1366 ~~[(38)]~~ (39) "Request for proposals" includes all documents, including documents that
 1367 are attached or incorporated by reference, used for soliciting proposals to provide a
 1368 procurement item to a procurement unit.

1369 (40) "Request for statement of qualifications" means all documents used to solicit
 1370 information about the qualifications of the person interested in responding to a potential
 1371 procurement, including documents attached or incorporated by reference.

1372 ~~[(39)]~~ (41) "Requirements contract" means a contract:

1373 (a) where a contractor agrees to provide a procurement unit's entire requirements for
 1374 certain procurement items at prices specified in the contract during the contract period; and

1375 (b) that:

1376 (i) does not require a minimum purchase amount; or

1377 (ii) provides a maximum purchase limit.

1378 ~~[(40)]~~ (42) "Responsible" means ~~[that a bidder or offeror: (a) is]~~ being capable, in all
 1379 respects, of: ~~[to fully perform the contract requirements solicited in an invitation for bids or a~~
 1380 ~~request for proposals; and]~~

1381 ~~[(b) has the integrity and reliability to ensure good faith performance.]~~

1382 (a) meeting all the requirements of a solicitation; and

1383 (b) fully performing all the requirements of the contract resulting from the solicitation,
 1384 including being financially solvent with sufficient financial resources to perform the contract.

1385 ~~[(41)]~~ (43) "Responsive" means ~~[that a bidder or offeror submits a response to an~~
 1386 ~~invitation for bids or a request for proposals that conforms]~~ conforming in all material respects
 1387 to the invitation for bids or request for proposals.

1388 ~~[(42)]~~ (44) "Sealed" means manually or electronically sealed and submitted bids or
 1389 proposals.

1390 ~~[(43)]~~ (45) (a) "Services" means the furnishing of labor, time, or effort by a contractor,
1391 not involving the delivery of a specific end product other than a report that is incidental to the
1392 required performance.

1393 (b) "Services" does not include an employment agreement or a collective bargaining
1394 agreement.

1395 (46) "Sole source contract" means a contract resulting from a sole source procurement.

1396 (47) "Sole source procurement" means a procurement without competition pursuant to
1397 a determination under Subsection 63G-6a-802(2)(a) that there is only one source for the
1398 procurement item.

1399 (48) "Solicitation" means an invitation for bids, request for proposals, notice of a sole
1400 source procurement, request for statement of qualifications, request for information, or any
1401 document used to obtain bids, proposals, pricing, qualifications, or information for the purpose
1402 of entering into a procurement contract.

1403 ~~[(44)]~~ (49) "Specification" means any description of the physical or functional
1404 characteristics, or nature of a procurement item included in an invitation for bids or a request
1405 for proposals, or otherwise specified or agreed to by a procurement unit, including a description
1406 of:

1407 (a) a requirement for inspecting or testing a procurement item; or

1408 (b) preparing a procurement item for delivery.

1409 ~~[(45)]~~ (50) "Standard procurement process" means one of the following methods of
1410 obtaining a procurement item:

1411 (a) bidding, as described in Part 6, Bidding;

1412 (b) request for proposals, as described in Part 7, Request for Proposals; or

1413 (c) small purchases, in accordance with the requirements established under Section
1414 [63G-6a-408](#).

1415 ~~[(46)]~~ (51) "State cooperative contract" means a contract awarded by the division for
1416 and in behalf of all public entities.

1417 (52) "Statement of qualifications" means a written statement submitted to a
1418 procurement unit in response to a request for statement of qualifications.

1419 ~~[(47)]~~ (53) (a) "Subcontractor" means a person under contract with a contractor or
1420 another subcontractor to provide services or labor for design or construction.

1421 (b) "Subcontractor" includes a trade contractor or specialty contractor.

1422 (c) "Subcontractor" does not include a supplier who provides only materials,
1423 equipment, or supplies to a contractor or subcontractor.

1424 [~~(48)~~] (54) "Supplies" means all property, including equipment, materials, and printing.

1425 [~~(49)~~] (55) "Tie bid" means that the lowest responsive and responsible bids are
1426 identical in price.

1427 [~~(50)~~] (56) "Time and materials contract" means a contract where the contractor is
1428 paid:

1429 (a) the actual cost of direct labor at specified hourly rates;

1430 (b) the actual cost of materials and equipment usage; and

1431 (c) an additional amount, expressly described in the contract, to cover overhead and
1432 profit, that is not based on a percentage of the cost to the contractor.

1433 Section 20. Section **63G-6a-104** is amended to read:

1434 **63G-6a-104. Definitions of government entities.**

1435 As used in this chapter:

1436 (1) "Applicable rulemaking authority" means:

1437 (a) as it relates to a legislative procurement unit, the Legislative Management
1438 Committee, which shall adopt a policy establishing requirements applicable to a legislative
1439 procurement unit;

1440 (b) as it relates to a judicial procurement unit, the Judicial Council;

1441 (c) as it relates to an executive branch procurement unit, except to the extent provided
1442 in Subsections (1)(d) through (g), the board;

1443 (d) as it relates to the State Building Board, created in Section **63A-5-101**, the State
1444 Building Board, but only to the extent that the rules relate to procurement authority expressly
1445 granted to the State Building Board by statute;

1446 (e) as it relates to the Division of Facilities Construction and Management, created in
1447 Section **63A-5-201**, the director of the Division of Facilities Construction and Management,
1448 but only to the extent that the rules relate to procurement authority expressly granted to the
1449 Division of Facilities Construction and Management by statute;

1450 (f) as it relates to the Office of the Attorney General, the attorney general, but only to
1451 the extent that the rules relate to procurement authority expressly granted to the attorney

1452 general by statute;

1453 (g) as it relates to the Department of Transportation, created in Section [72-1-201](#), the
1454 executive director of the Department of Transportation, but only to the extent that the rules
1455 relate to procurement authority expressly granted to the Department of Transportation by
1456 statute;

1457 (h) as it relates to a local government procurement unit, the legislative body of the local
1458 government procurement unit, not as a delegation of authority from the Legislature, but under
1459 the local government procurement unit's own legislative authority;

1460 (i) as it relates to a school district or a public school, the Utah State Procurement Policy
1461 Board, except to the extent that a school district makes its own nonadministrative rules, with
1462 respect to a particular subject, that do not conflict with the provisions of this chapter;

1463 (j) as it relates to a state institution of higher education, the State Board of Regents;

1464 (k) as it relates to a public transit district, the chief executive of the public transit
1465 district;

1466 (l) as it relates to a local district or a special service district:

1467 (i) before ~~[May 13, 2014]~~ January 1, 2015, the board of trustees of the local district or
1468 the governing body of the special service district; or

1469 (ii) on or after ~~[May 13, 2014]~~ January 1, 2015, the board, except to the extent that the
1470 board of trustees of the local district or the governing body of the special service district makes
1471 its own rules:

1472 (A) with respect to a subject addressed by board rules; or

1473 (B) that are in addition to board rules; or

1474 (m) as it relates to a procurement unit, other than a procurement unit described in
1475 Subsections (1)(a) through (l), the board.

1476 (2) "Board" means the Utah State Procurement Policy Board, created in Section
1477 [63G-6a-202](#).

1478 (3) "Building board" means the State Building Board created in Section [63A-5-101](#).

1479 (4) "Conservation district" is as defined in Section [17D-3-102](#).

1480 (5) "Cooperative purchasing organization" means an organization, association, or
1481 alliance of purchasers established to combine purchasing power in order to obtain the best
1482 value for the purchasers by engaging in procurements in accordance with Section [63G-6a-2105](#).

- 1483 ~~[(5)]~~ (6) "Division" means the Division of Purchasing and General Services.
- 1484 ~~[(6)]~~ (7) "Educational procurement unit" means:
- 1485 (a) a school district;
- 1486 (b) a public school, including a local school board or a charter school;
- 1487 (c) Utah Schools for the Deaf and Blind;
- 1488 (d) the Utah Education Network; or
- 1489 (e) an institution of higher education of the state.
- 1490 ~~[(7)]~~ (8) "Executive branch procurement unit" means each department, division, office,
- 1491 bureau, agency, or other organization within the state executive branch, including the division
- 1492 and the attorney general's office.
- 1493 ~~[(8) "External procurement unit" means:]~~
- 1494 ~~[(a) a buying organization not located in this state which, if located in this state, would~~
- 1495 ~~qualify as a procurement unit; or]~~
- 1496 ~~[(b) an agency of the United States.]~~
- 1497 (9) "Judicial procurement unit" means:
- 1498 (a) the Utah Supreme Court;
- 1499 (b) the Utah Court of Appeals;
- 1500 (c) the Judicial Council;
- 1501 (d) a state judicial district; or
- 1502 (e) each office, committee, subcommittee, or other organization within the state
- 1503 judicial branch.
- 1504 (10) "Legislative procurement unit" means:
- 1505 (a) the Legislature;
- 1506 (b) the Senate;
- 1507 (c) the House of Representatives;
- 1508 (d) a staff office of an entity described in Subsection (10)(a), (b), or (c); or
- 1509 (e) each office, committee, subcommittee, or other organization within the state
- 1510 legislative branch.
- 1511 (11) "Local building authority" is as defined in Section [17D-2-102](#).
- 1512 (12) "Local district" is as defined in Section [17B-1-102](#).
- 1513 (13) "Local government procurement unit" means:

1514 (a) a county or municipality, and each office or agency of the county or municipality,
1515 unless the county or municipality adopts its own procurement code by ordinance;

1516 (b) a county or municipality, and each office or agency of the county or municipality,
1517 that has adopted this entire chapter by ordinance; or

1518 (c) a county or municipality, and each office or agency of the county or municipality,
1519 that has adopted a portion of this chapter by ordinance, to the extent that the term is used in the
1520 adopted portion of this chapter.

1521 (14) (a) "Procurement unit" means:

1522 (i) a legislative procurement unit;

1523 (ii) an executive branch procurement unit;

1524 (iii) a judicial procurement unit;

1525 (iv) an educational procurement unit;

1526 (v) a local government procurement unit;

1527 (vi) a local district;

1528 (vii) a special service district;

1529 (viii) a local building authority;

1530 (ix) a conservation district;

1531 (x) a public corporation; or

1532 (xi) a public transit district.

1533 (b) "Procurement unit" does not include a political subdivision created under Title 11,
1534 Chapter 13, Interlocal Cooperation Act.

1535 (15) "Public corporation" is as defined in Section [63E-1-102](#).

1536 (16) "Public entity" means any state government entity or a political subdivision of the
1537 state, including:

1538 (a) a procurement unit;

1539 (b) a municipality or county, regardless of whether the municipality or county has
1540 adopted this chapter or any part of this chapter; and

1541 (c) any other government entity located in Utah that expends public funds.

1542 (17) "Public transit district" means a public transit district organized under Title 17B,
1543 Chapter 2a, Part 8, Public Transit District Act.

1544 (18) "Special service district" is as defined in Section [17D-1-102](#).

1545 Section 21. Section **63G-6a-106** is amended to read:

1546 **63G-6a-106. Specific statutory authority -- Limitations on authority of chief**
1547 **procurement officer and division.**

1548 [~~(1) The procurement authority given to a procurement unit under the following~~
1549 ~~provisions shall be retained, and shall be applied only to the extent described in those~~
1550 ~~provisions:]~~

1551 (1) A procurement unit with procurement authority under the following provisions has
1552 independent procurement authority to the extent of the applicable provisions and for the
1553 procurement items specified in the applicable provisions:

1554 (a) Title 53B, State System of Higher Education;

1555 (b) Title 63A, Chapter 5, State Building Board - Division of Facilities Construction
1556 and Management;

1557 (c) Title 67, Chapter 5, Attorney General;

1558 (d) Title 72, Transportation Code; and

1559 (e) Title 78A, Chapter 5, District [~~Courts~~] Court.

1560 (2) Except as otherwise provided in Sections [63G-6a-105](#) and [63G-6a-107](#), a
1561 procurement unit shall conduct a procurement in accordance with this chapter.

1562 (3) (a) The Department of Transportation may make rules governing the procurement
1563 of highway construction or improvement.

1564 (b) The applicable rulemaking authority for a public transit district may make rules
1565 governing the procurement of a transit construction project or a transit improvement project.

1566 (c) This Subsection (3) supersedes Subsections (1) and (2).

1567 [~~(4) Except to the extent otherwise agreed to in a memorandum of understanding~~
1568 ~~between the division and the following entities, the authority of the chief procurement officer~~
1569 ~~and of the division does not extend to a procurement unit with independent procurement~~
1570 ~~authority.]~~

1571 [~~(5) An entity described in Subsection (4) may, without supervision, interference, or~~
1572 ~~involvement by the chief procurement officer or the division, but consistent with the~~
1573 ~~requirements of this chapter:]~~

1574 (4) (a) A procurement unit listed in Subsection (4)(b) may, without the supervision,
1575 interference, oversight, control, or involvement of the division or the chief procurement officer,

1576 but in accordance with the requirements of this chapter:

1577 ~~[(a)]~~ (i) engage in a standard procurement process;

1578 ~~[(b)]~~ (ii) procure an item under an exception, as provided in this chapter, to the
1579 requirement to use a standard procurement process; or

1580 ~~[(c)]~~ (iii) otherwise engage in an act authorized or required by this chapter.

1581 (b) The procurement units to which Subsection (4)(a) applies are:

1582 (i) a legislative procurement unit;

1583 (ii) a judicial procurement unit;

1584 (iii) an educational procurement unit;

1585 (iv) a local government procurement unit;

1586 (v) a conservation district;

1587 (vi) a local building authority;

1588 (vii) a local district;

1589 (viii) a public corporation;

1590 (ix) a special service district;

1591 (x) a public transit district; and

1592 (xi) a procurement unit referred to in Subsection (1), to the extent authorized in
1593 Subsection (1).

1594 (c) A procurement unit with independent procurement authority shall comply with the
1595 requirements of this chapter.

1596 (d) Notwithstanding Subsection (4)(a), a procurement unit with independent
1597 procurement authority may agree in writing with the division to extend the authority of the
1598 division or the chief procurement officer to the procurement unit, as provided in the agreement.

1599 ~~[(6)]~~ (5) (a) The attorney general may, in accordance with the provisions of this
1600 chapter, but without involvement by the division or the chief procurement officer:

1601 ~~[(a)]~~ (i) retain outside counsel; or

1602 ~~[(b)]~~ (ii) procure litigation support services, including retaining an expert witness.

1603 ~~[(7) An entity described in Subsection (4)]~~

1604 (b) A procurement unit with independent procurement authority that is not represented
1605 by the attorney general's office may, in accordance with the provisions of this chapter, but
1606 without involvement by the division or the chief procurement officer:

1607 ~~[(a)]~~ (i) retain outside counsel; or
1608 ~~[(b)]~~ (ii) procure litigation support services, including retaining an expert witness.
1609 ~~[(8)]~~ (6) The state auditor's office may, in accordance with the provisions of this
1610 chapter, but without involvement by the division or the chief procurement officer, procure audit
1611 services.

1612 ~~[(9)]~~ (7) The state treasurer may, in accordance with the provisions of this chapter, but
1613 without involvement by the division or the chief procurement officer, procure:

1614 (a) deposit and investment services; and

1615 (b) services related to issuing bonds.

1616 Section 22. Section **63G-6a-107** is amended to read:

1617 **63G-6a-107. Exemptions from chapter -- Compliance with federal law.**

1618 (1) Except for Part ~~[23]~~ 24, Unlawful Conduct and Penalties, the provisions of this
1619 chapter ~~[are not applicable]~~ do not apply to:

1620 (a) funds administered under the Percent-for-Art Program of the Utah Percent-for-Art
1621 Act;

1622 (b) grants awarded by the state or contracts between the state and any of the following:

1623 (i) an educational procurement unit;

1624 (ii) a conservation district;

1625 (iii) a local building authority;

1626 (iv) a local district;

1627 (v) a public corporation;

1628 (vi) a special service district;

1629 (vii) a public transit district; or

1630 (viii) two or more of the entities described in Subsections (1)(b)(i) through (vii), acting
1631 under legislation that authorizes intergovernmental cooperation;

1632 (c) medical supplies or medical equipment, including service agreements for medical
1633 equipment, obtained through a purchasing consortium by the Utah State Hospital, the Utah
1634 State Developmental Center, the University of Utah Hospital, or any other hospital owned by
1635 the state or a political subdivision of the state, if:

1636 (i) the consortium uses a competitive procurement process; and

1637 (ii) the chief administrative officer of the hospital makes a written finding that the

1638 prices for purchasing medical supplies and medical equipment through the consortium are
1639 competitive with market prices; or

1640 (d) goods purchased for resale~~[-or]~~ to the public.

1641 [~~(e) any action taken by a majority of both houses of the Legislature.~~]

1642 [~~(2)(a) Notwithstanding Subsection (1), the provisions of Part 23, Unlawful Conduct~~
1643 ~~and Penalties, are not applicable to an entity described in Subsection (1)(b)(ii), (iii), (iv), (vi),~~
1644 ~~(vii), or (viii).]~~

1645 [(b)] (2) This chapter does not prevent a procurement unit from complying with the
1646 terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

1647 (3) This chapter does not apply to any action taken by a majority of both houses of the
1648 Legislature.

1649 [(3)] (4) Notwithstanding any conflicting provision of this chapter, when a
1650 procurement involves the expenditure of federal assistance, federal contract funds, local
1651 matching funds, or federal financial participation funds, the procurement unit shall comply
1652 with mandatory applicable federal law and regulations not reflected in this chapter.

1653 [(4)] (5) This chapter does not supersede the requirements for retention or withholding
1654 of construction proceeds and release of construction proceeds as provided in Section 13-8-5.

1655 Section 23. Section **63G-6a-108** is amended to read:

1656 **63G-6a-108. Limitations on and responsibility of executive branch procurement**
1657 **units.**

1658 (1) [~~Except as provided in Subsection (2), a~~] An executive branch procurement unit
1659 may not engage in a procurement unless:

1660 (a) the procurement is made under the direction and control of the division; or

1661 [(b) the division, pursuant to rules made by the board, permits the procurement unit to
1662 make the procurement on its own.]

1663 [(2) Subsection (1) does not apply to the following procurement units, all of which
1664 have independent procurement authority:]

1665 [(a) a legislative procurement unit;]

1666 [(b) a judicial procurement unit;]

1667 [(c) an educational procurement unit;]

1668 [(d) a local government procurement unit;]

1669 ~~[(e) a conservation district;]~~
 1670 ~~[(f) a local building authority;]~~
 1671 ~~[(g) a local district;]~~
 1672 ~~[(h) a public corporation;]~~
 1673 ~~[(i) a special service district;]~~
 1674 ~~[(j) the Utah Housing Corporation; or]~~
 1675 ~~[(k) a public transit district.]~~
 1676 ~~[(3) A procurement unit with independent procurement authority is not exempt from~~
 1677 ~~complying with the requirements of this chapter.]~~

1678 (b) the procurement is made under Section [63G-6a-106](#).

1679 (2) An executive branch procurement unit that conducts any part of a procurement
 1680 under this chapter is responsible to conduct that part of the procurement in compliance with
 1681 this chapter.

1682 Section 24. Section **63G-6a-109** is enacted to read:

1683 **63G-6a-109. Issuing procurement unit and conducting procurement unit.**

1684 (1) With respect to a procurement by an executive branch procurement unit:

1685 (a) the division is the issuing procurement unit; and

1686 (b) the executive branch procurement unit is the conducting procurement unit and is
 1687 responsible to ensure that the procurement is conducted in compliance with this chapter.

1688 (2) With respect to a procurement by any other procurement unit, the procurement unit
 1689 is both the issuing procurement unit and the conducting procurement unit.

1690 Section 25. Section **63G-6a-204** is amended to read:

1691 **63G-6a-204. Applicability of rules and regulations of Utah State Procurement**
 1692 **Policy Board and State Building Board -- Report to interim committee.**

1693 (1) Except as provided in Subsection (2), rules made by the board under this chapter
 1694 shall govern all procurement units for which the board is the applicable rulemaking authority.

1695 (2) The building board rules governing procurement of construction, architect-engineer
 1696 services, and leases apply to the procurement of construction, architect-engineer services, and
 1697 leases of real property by the Division of Facilities Construction and Management.

1698 (3) An applicable rulemaking authority may make its own rules, consistent with this
 1699 chapter, governing procurement by a person over which the applicable rulemaking authority

1700 has rulemaking authority.

1701 (4) The board shall make a report on or before July 1 of each year to a legislative
1702 interim committee, designated by the Legislative Management Committee created under
1703 Section 36-12-6, on the establishment, implementation, and enforcement of the rules made
1704 under Section 63G-6a-203.

1705 (5) Notwithstanding Subsection 63G-3-301(13)(b), an applicable rulemaking authority
1706 is ~~[, on or before May 13, 2014,]~~ required to initiate rulemaking proceedings, for rules required
1707 to be made under this chapter ~~[-], on or before:~~

1708 (a) May 13, 2014, if the applicable rulemaking authority is the board; or

1709 (b) January 1, 2015, for each other applicable rulemaking authority.

1710 Section 26. Section 63G-6a-303 is amended to read:

1711 **63G-6a-303. Duties of chief procurement officer.**

1712 (1) Except as otherwise specifically provided in this chapter, the chief procurement
1713 officer serves as the central procurement officer of the state and shall:

1714 ~~[(1)]~~ (a) adopt office policies governing the internal functions of the division;

1715 ~~[(2)]~~ (b) procure or supervise each procurement over which the chief procurement
1716 officer has authority;

1717 ~~[(3)]~~ (c) establish and maintain programs for the inspection, testing, and acceptance of
1718 each procurement item over which the chief procurement officer has authority;

1719 ~~[(4)]~~ (d) prepare statistical data concerning each procurement and procurement usage
1720 of a state procurement unit;

1721 ~~[(5)]~~ (e) ensure that:

1722 ~~[(a)]~~ (i) before approving a procurement not covered by an existing statewide contract
1723 for information technology or telecommunications supplies or services, the chief information
1724 officer and the agency have stated in writing to the division that the needs analysis required in
1725 Section 63F-1-205 was completed, unless the procurement is approved in accordance with
1726 Title 63M, Chapter 1, Part 26, Government Procurement Private Proposal Program; and

1727 ~~[(b)]~~ (ii) the oversight authority required by Subsection (5)(a) is not delegated outside
1728 the division; ~~[and]~~

1729 ~~[(6)]~~ (f) provide training to procurement units and to persons who do business with
1730 procurement units ~~[-];~~

1731 (g) if the chief procurement officer determines that a procurement over which the chief
 1732 procurement officer has authority is out of compliance with this chapter or board rules:

1733 (i) correct or amend the procurement to bring it into compliance; or

1734 (ii) cancel the procurement, if:

1735 (A) it is not feasible to bring the procurement into compliance; or

1736 (B) the chief procurement officer determines that it is in the best interest of the state to
 1737 cancel the procurement; and

1738 (h) if the chief procurement officer determines that a contract over which the chief
 1739 procurement officer has authority is out of compliance with this chapter or board rules, correct
 1740 or amend the contract to bring it into compliance or cancel the contract:

1741 (i) if the chief procurement officer determines that correcting, amending, or canceling
 1742 the contract is in the best interest of the state; and

1743 (ii) after consultation with the attorney general's office.

1744 (2) The chief procurement officer may:

1745 (a) correct, amend, or cancel a procurement as provided in Subsection (1)(g) at any
 1746 stage of the procurement process; and

1747 (b) correct, amend, or cancel a contract as provided in Subsection (1)(h) at any time
 1748 during the term of the contract.

1749 Section 27. Section **63G-6a-402** is amended to read:

1750 **63G-6a-402. Procurement unit required to comply with Utah Procurement Code**
 1751 **and applicable rules -- Rulemaking authority -- Reporting.**

1752 (1) Except as otherwise provided in Section [63G-6a-107](#), Section [63G-6a-403](#), Part 8,
 1753 Exceptions to Procurement Requirements, or elsewhere in this chapter, a procurement unit may
 1754 not obtain a procurement item, unless:

1755 (a) if the procurement unit is the division or a procurement unit with independent
 1756 procurement authority, the procurement unit:

1757 (i) uses a standard procurement process or an exception to a standard procurement
 1758 process, described in Part 8, Exceptions to Procurement Requirements; and

1759 (ii) complies with:

1760 (A) the requirements of this chapter; and

1761 (B) the rules made pursuant to this chapter by the applicable rulemaking authority;

1762 (b) if the procurement unit is a county, a municipality, or the Utah Housing
1763 Corporation, the procurement unit complies with:
1764 (i) the requirements of this chapter that are adopted by the procurement unit; and
1765 (ii) all other procurement requirements that the procurement unit is required to comply
1766 with; or
1767 (c) if the procurement unit is not a procurement unit described in [Subsections]
1768 Subsection (1)(a) or (b), the procurement unit:
1769 (i) obtains the procurement item under the direction and approval of the division,
1770 unless otherwise provided by a rule made by the board;
1771 (ii) uses a standard procurement process; and
1772 (iii) complies with:
1773 (A) the requirements of this chapter; and
1774 (B) the rules made pursuant to this chapter by the applicable rulemaking authority.
1775 (2) Subject to Subsection (3), the applicable rulemaking authority shall make rules
1776 relating to the management and control of procurements and procurement procedures by a
1777 procurement unit.
1778 (3) (a) Rules made under Subsection (2) shall ensure compliance with the federal
1779 contract prohibition provisions of the Sudan Accountability and Divestment Act of 2007 (Pub.
1780 L. No. 110-174) that prohibit contracting with a person doing business in Sudan.
1781 (b) The State Building Board rules governing procurement of construction,
1782 architect-engineer services, and leases apply to the procurement of construction,
1783 architect-engineer services, and leases of real property by the Division of Facilities
1784 Construction and Management.
1785 (4) An applicable rulemaking authority that is subject to Title 63G, Chapter 3, Utah
1786 Administrative Rulemaking Act, shall make the rules described in this chapter in accordance
1787 with the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
1788 (5) The State Building Board shall make a report on or before July 1 of each year to a
1789 legislative interim committee, designated by the Legislative Management Committee created
1790 under Section [36-12-6](#), on the establishment, implementation, and enforcement of the rules
1791 made by the State Building Board under this chapter.
1792 Section 28. Section **63G-6a-403** is amended to read:

1793 **63G-6a-403. Prequalification of potential vendors.**

1794 (1) [(a)] As used in this section[~~,"vendor" means~~]:

1795 (a) "Closed-ended prequalification process" means a process to prequalify potential
1796 vendors under this section that is characterized by:

1797 (i) a short, specified period of time during which potential vendors may be
1798 prequalified; and

1799 (ii) a specified date at which prequalifications expire.

1800 (b) "Open-ended prequalification process" means a process to prequalify vendors and
1801 potential vendors under this section that is characterized by an indeterminate period of time
1802 during any part of which vendors or potential vendors may be prequalified and the
1803 prequalification of previously prequalified vendors or potential vendors may be periodically
1804 renewed.

1805 (c) "Vendor" means:

1806 (i) a bidder;

1807 (ii) an offeror; or

1808 (iii) a contractor, including an architect or an engineer.

1809 [(b)] (2) A procurement unit may, in accordance with this section:

1810 [(i)] (a) using a closed-ended prequalification process or an open-ended
1811 prequalification process:

1812 (i) prequalify potential vendors to provide any procurement item or type of
1813 procurement item specified by the procurement unit; [and] or

1814 (ii) rank architects, engineers, or other professional service providers to begin the fee
1815 negotiation process, as provided in this chapter; and

1816 [(i)] (b) limit participation in [an invitation for bids, a request for proposals, or an
1817 approved vendor list] a standard procurement process to the prequalified potential vendors for
1818 the specified procurement item or type of procurement item.

1819 [(2)] (3) To prequalify potential vendors [~~to provide a specified type of procurement~~
1820 ~~item~~] or rank professional service providers, a procurement unit shall issue a request for
1821 statement of qualifications.

1822 [(3)] (4) A procurement unit that issues a request for statement of qualifications:

1823 (a) shall:

1824 [(a)] (i) publish the request for statement of qualifications in accordance with the
1825 requirements of Section [~~63G-6a-402~~] 63G-6a-406; and

1826 [(b)] (ii) state in the request for statement of qualifications:

1827 [(i)] (A) the procurement item or type of procurement item to which the request for
1828 statement of qualifications relates;

1829 [(ii)] (B) the scope of work to be performed;

1830 [(iii)] (C) the instructions and [~~the~~] deadline for [~~providing information in response to~~
1831 ~~the request for~~] submitting a statement of qualifications;

1832 [(iv)] (D) the [~~minimum~~] criteria [~~for prequalification~~] by which the procurement unit
1833 will evaluate statements of qualifications;

1834 (E) whether the prequalification process is a closed-ended prequalification process or
1835 an open-ended prequalification process;

1836 [(v)] (F) if the prequalification process is a closed-ended prequalification process, the
1837 period of time during which the list of prequalified potential vendors will remain in effect,
1838 which may not be longer than 18 months after the list of prequalified potential vendors is made
1839 available to the public under Subsection [~~(8)~~] (11)(b); [~~and~~]

1840 (G) if the prequalification process is an open-ended prequalification process, when a
1841 potential vendor may submit a statement of qualifications for the potential vendor to be
1842 considered for inclusion on the list of prequalified potential vendors; and

1843 [(vi)] (H) that a procurement unit may limit participation in an invitation for bids or a
1844 request for proposals[~~, during the time period described in Subsection (3)(b)(v),~~] to the
1845 potential vendors that are prequalified to provide the specified procurement item or type of
1846 procurement item[~~;~~]; and

1847 (b) may request the person submitting a statement of qualifications to provide:

1848 (i) basic information about the person;

1849 (ii) the person's experience and work history;

1850 (iii) information about the person's management and staff;

1851 (iv) information about the person's licenses, certifications, and other qualifications;

1852 (v) any applicable performance ratings;

1853 (vi) financial statements reporting the person's financial condition; and

1854 (vii) any other pertinent information.

1855 (5) (a) In order to renew a prequalification, a vendor or potential vendor that has been
1856 previously prequalified through an open-ended prequalification process shall submit a
1857 statement of qualifications no more than 18 months after the previous prequalification of that
1858 vendor or potential vendor.

1859 (b) A previously prequalified vendor or potential vendor submitting a statement of
1860 qualifications under Subsection (5)(a) shall comply with all requirements applicable at that
1861 time to a potential vendor seeking prequalification for the first time.

1862 (6) A procurement unit may at any time modify prequalification requirements of an
1863 open-ended prequalification process.

1864 ~~[(4)]~~ (7) The ~~[minimum]~~ criteria described in Subsection ~~[(3)(b)(iv)]~~ (4)(a)(ii)(D):

1865 (a) shall include the prequalification requirements unique to the procurement;

1866 (b) may include performance rating criteria; and

1867 (c) may not be so restrictive that the criteria unreasonably limit competition.

1868 ~~[(5)]~~ (8) A procurement unit may, before making a final list of prequalified vendors,
1869 request additional information to clarify responses made to the request for statement of
1870 qualifications.

1871 ~~[(6)]~~ (9) A potential vendor shall be included on the list of prequalified potential
1872 vendors if the potential vendor:

1873 (a) submits a timely, responsive response to the request for statement of qualifications;
1874 and

1875 (b) meets the ~~[minimum]~~ criteria for qualification described in Subsection ~~[(3)(b)(iv)]~~
1876 (4)(a)(ii)(D).

1877 ~~[(7)]~~ (10) If a request for statement of qualifications will result in only one potential
1878 vendor being placed on the list of prequalified potential vendors:

1879 (a) the procurement unit shall cancel the request for statement of qualifications; and

1880 (b) the list may not be used by the procurement unit.

1881 ~~[(8)]~~ (11) The procurement unit shall:

1882 (a) before making the list of prequalified potential vendors available to the public,
1883 provide each potential vendor who provided information in response to the request, but who
1884 did not meet the minimum qualifications for placement on the list, a written justification
1885 statement describing why the potential vendor did not meet the criteria for inclusion on the list;

1886 and

1887 (b) [~~within 30 days after the day of the deadline described in Subsection (3)(b)(iii);~~]
1888 make the list of prequalified potential vendors available to the public[-] within 30 days after:

1889 (i) completing the evaluation process, if the prequalification process is a closed-ended
1890 prequalification process; or

1891 (ii) updating the list of prequalified potential vendors, if the prequalification process is
1892 an open-ended prequalification process.

1893 Section 29. Section **63G-6a-404** is amended to read:

1894 **63G-6a-404. Approved vendor list.**

1895 (1) (a) As used in this section, "vendor" [~~is~~] has the same meaning as defined in
1896 [~~Subsection~~] Section 63G-6a-403[(1)(a)].

1897 (b) The process described in this section may not be used for construction projects that
1898 cost more than an amount specified by the applicable rulemaking authority.

1899 (c) The division or a procurement unit with independent procurement authority may
1900 compile a list of approved vendors from which procurement items may be obtained.

1901 (2) An approved vendor list may only be compiled from timely, responsive responses
1902 received under Section **63G-6a-403** or the process described in Part 15, Architect-Engineer
1903 Services.

1904 (3) In order to ensure equal treatment of vendors on an approved vendor list, for
1905 services other than the services described in Subsection (4) or (5) the procurement unit shall
1906 use one of the following methods in an unbiased manner:

1907 (a) a rotation system, organized alphabetically, numerically, or randomly;

1908 (b) assigning vendors to a specified geographical area; or

1909 (c) classifying each vendor based on each vendor's particular expertise, qualifications,
1910 or field.

1911 (4) (a) For a construction project that costs less than the amount established by the
1912 applicable rulemaking authority, under Subsection (1)(b), a procurement unit shall select a
1913 potential construction contractor from an approved potential contractor list, using an invitation
1914 for bids or a request for proposals.

1915 (b) For architectural or engineering services for a construction project described in
1916 Subsection (4)(a), a procurement unit shall select a potential contractor from an approved

1917 potential contractor list:

- 1918 (i) using a rotation system, organized alphabetically, numerically, or randomly;
1919 (ii) assigning a potential contractor to a specified geographical area; or
1920 (iii) classifying each potential contractor based on the potential contractor's field or
1921 area of expertise.

1922 (5) A procurement unit may not use an approved vendor list described in this section
1923 for a construction project with a cost that is equal to or greater than the amount established by
1924 the applicable rulemaking authority under Subsection (1)(b).

1925 (6) (a) After selecting a potential contractor under Subsection (4)(b), a procurement
1926 unit shall enter into fee negotiations with the potential contractor.

1927 (b) If, after good faith negotiations, the procurement unit and the potential contractor
1928 are unable to negotiate a fee that is acceptable to both parties, the procurement unit shall select
1929 another contractor under Subsection (4)(b) and enter into fee negotiations with that potential
1930 contractor.

1931 Section 30. Section **63G-6a-406** is amended to read:

1932 **63G-6a-406. Public notice of certain solicitations.**

1933 (1) The division or a procurement unit with independent procurement authority that
1934 issues [~~an invitation for bids, a request for proposals, or a notice of sole source procurement~~] a
1935 solicitation required to be published in accordance with this section, shall provide public notice
1936 that includes:

1937 (a) [~~for an invitation for bids or a request for proposals,~~] the name of the [~~issuing~~]
1938 conducting procurement unit;

1939 (b) the name of the procurement unit acquiring the procurement item;

1940 (c) [~~for an invitation for bids or a request for proposals,~~] information on how to contact
1941 the issuing procurement unit [~~in relation to the invitation for bids or request for proposals~~];

1942 [~~(d) for a notice of sole source procurement, contact information and other information~~
1943 ~~relating to contesting, or obtaining additional information in relation to, the sole source~~
1944 ~~procurement;~~]

1945 [~~(e) for an invitation for bids or a request for proposals, the date of the opening and~~
1946 ~~closing of the invitation for bids or request for proposals;~~]

1947 [~~(f) for a notice of sole source procurement, the earliest date that the procurement unit~~

1948 ~~may make the sole source procurement;]~~
1949 (d) the date of the opening and closing of the solicitation;
1950 ~~[(g)] (e)~~ information on how to obtain a copy of the [invitation for bids, request for
1951 proposals, or further information related to the sole source procurement; and] procurement
1952 documents;
1953 ~~[(h)] (f)~~ a general description of the procurement items that will be obtained through
1954 the standard procurement process or sole source procurement[-]; and
1955 (g) for a notice of a sole source procurement:
1956 (i) contact information and other information relating to contesting or obtaining
1957 additional information relating to the sole source procurement; and
1958 (ii) the earliest date that the procurement unit may make the sole source procurement.
1959 (2) Except as provided in Subsection (4), ~~[for an invitation for bids or a request for~~
1960 ~~proposals,]~~ the issuing procurement unit shall publish the notice described in Subsection (1)~~;~~
1961 ~~using at least one of the following methods]:~~
1962 (a) at least seven days before the day of the deadline for submission of a bid or other
1963 ~~response[-, publish the notice:]; and~~
1964 (b) (i) in a newspaper of general circulation in the state; [or]
1965 (ii) in a newspaper of local circulation in the area:
1966 (A) directly impacted by the procurement; or
1967 (B) over which the procurement unit has jurisdiction; [or]
1968 ~~[(b) at least seven consecutive days before the day of the deadline for submission of a~~
1969 ~~bid or other response, publish the notice:]~~
1970 ~~[(i)]~~ (iii) on the main website for the issuing procurement unit or the procurement unit
1971 acquiring the procurement item; or
1972 ~~[(ii)]~~ (iv) on a state website that is owned, managed by, or provided under contract
1973 with, the division for posting a public procurement notice.
1974 (3) Except as provided in Subsection (4), for a sole source procurement for which
1975 notice is required to be published in accordance with this section, the issuing procurement unit
1976 ~~[making the sole source procurement]~~ shall publish the notice described in Subsection (1)~~;~~
1977 ~~using at least one of the following methods]:~~
1978 (a) at least seven days before the ~~[day on which the procurement unit makes the]~~

1979 acquisition of the sole source procurement~~[- publish the notice:]~~ item; and
1980 (b) (i) in a newspaper of general circulation in the state; ~~[or]~~
1981 (ii) in a newspaper of local circulation in the area:
1982 (A) directly impacted by the procurement; or
1983 (B) over which the procurement unit has jurisdiction; ~~[or]~~
1984 ~~[(b) at least seven consecutive days before the day on which the procurement unit~~
1985 ~~makes the sole source procurement, publish the notice:]~~
1986 ~~[(b)]~~ (iii) on the main website for the procurement unit acquiring the procurement item;
1987 or
1988 ~~[(b)]~~ (iv) on a state website that is owned by, managed by, or provided under contract
1989 with, the division for posting a procurement notice.
1990 (4) An issuing procurement unit~~[- or the procurement unit making a sole source~~
1991 ~~procurement]~~ may reduce the seven-day period described in Subsection (2) or (3), if the
1992 procurement officer or the procurement officer's designee signs a written statement that:
1993 (a) states that a shorter time is needed; and
1994 (b) ~~[as it relates to an invitation for bids or a request for proposals,]~~ determines that
1995 competition from multiple sources may be obtained within the shorter period of time.
1996 (5) (a) An issuing procurement unit shall make a copy of ~~[an invitation for bids or a~~
1997 ~~request for proposals]~~ the solicitation documents available for public inspection at the main
1998 office of the issuing procurement unit or on the website described in Subsection (2)(b) until the
1999 award of the contract or the cancellation of the procurement.
2000 (b) A procurement unit ~~[making]~~ issuing a sole source procurement shall make a copy
2001 of information related to the sole source procurement available for public inspection at the
2002 main office of the procurement unit or on the website described in Subsection (3)(b) until the
2003 award of the contract or the cancellation of the procurement.
2004 (c) A procurement unit shall maintain all records in accordance with Part 20, Records.
2005 Section 31. Section **63G-6a-408** is amended to read:
2006 **63G-6a-408. Small purchases.**
2007 (1) As used in this section:
2008 (a) "Annual cumulative threshold" means the maximum total annual amount,
2009 established by the applicable rulemaking authority under Subsection (2)(a)(i), that a

2010 procurement unit may expend to obtain procurement items from the same source under this
2011 section.

2012 (b) "Individual procurement threshold" means the maximum amount, established by
2013 the applicable rulemaking authority under Subsection (2)(a)(ii), for which a procurement unit
2014 may purchase a procurement item under this section.

2015 (c) "Single procurement aggregate threshold" means the maximum total amount,
2016 established by the applicable rulemaking authority under Subsection (2)(a)(iii), that a
2017 procurement unit may expend to obtain multiple procurement items from one source at one
2018 time under this section.

2019 (2) The applicable rulemaking authority may make rules governing small purchases,
2020 including:

2021 (a) establishing expenditure thresholds, including:

2022 (i) an annual cumulative threshold;

2023 (ii) an individual procurement threshold; and

2024 (iii) a single procurement aggregate threshold;

2025 (b) establishing procurement requirements relating to the thresholds described in
2026 Subsection (2)(a); and

2027 (c) the use of electronic, telephone, or written quotes.

2028 (3) Expenditures made under this section by a procurement unit may not exceed a
2029 threshold established by the applicable rulemaking authority, unless the chief procurement
2030 officer or the head of a procurement unit with independent procurement authority gives written
2031 authorization to exceed the threshold that includes the reasons for exceeding the threshold.

2032 (4) Except as provided in Subsection (5), an executive branch procurement unit may
2033 not obtain a procurement item through a small purchase standard procurement process if the
2034 procurement item may be obtained through a state cooperative contract or a contract awarded
2035 by the chief procurement officer under Subsection [63G-6a-2105\(1\)](#).

2036 (5) Subsection (4) does not apply if:

2037 (a) the procurement item is obtained for an unanticipated, urgent or unanticipated,
2038 emergency condition, including:

2039 (i) an item needed to avoid stopping a public construction project;

2040 (ii) an immediate repair to a facility or equipment; or

2041 (iii) another emergency condition; or
2042 (b) the chief procurement officer or the head of a procurement unit that is an executive
2043 branch procurement unit with independent procurement authority:
2044 (i) determines in writing that it is in the best interest of the procurement unit to obtain
2045 an individual procurement item outside of the state contract, comparing:
2046 (A) the contract terms and conditions applicable to the procurement item under the
2047 state contract with the contract terms and conditions applicable to the procurement item if the
2048 procurement item is obtained outside of the state contract;
2049 (B) the maintenance and service applicable to the procurement item under the state
2050 contract with the maintenance and service applicable to the procurement item if the
2051 procurement item is obtained outside of the state contract;
2052 (C) the warranties applicable to the procurement item under the state contract with the
2053 warranties applicable to the procurement item if the procurement item is obtained outside of
2054 the state contract;
2055 (D) the quality of the procurement item under the state contract with the quality of the
2056 procurement item if the procurement item is obtained outside of the state contract; and
2057 (E) the cost of the procurement item under the state contract with the cost of the
2058 procurement item if the procurement item is obtained outside of the state contract;
2059 (ii) for a procurement item that, if defective in its manufacture, installation, or
2060 performance, may result in serious physical injury, death, or substantial property damage,
2061 determines in writing that the terms and conditions, relating to liability for injury, death, or
2062 property damage, available from the source other than the contractor who holds the state
2063 contract, are similar to, or better than, the terms and conditions available under the state
2064 contract; and
2065 (iii) grants an exception, in writing, to the requirement described in Subsection (4).
2066 (6) Except as otherwise expressly provided in this section, a procurement unit:
2067 (a) may not use the small purchase standard procurement process described in this
2068 section for ongoing, continuous, and regularly scheduled procurements that exceed the annual
2069 cumulative threshold; and
2070 (b) shall make its ongoing, continuous, and regularly scheduled procurements that
2071 exceed the annual cumulative threshold through a contract awarded through another standard

2072 procurement process described in this chapter or an applicable exception to another standard
2073 procurement process, described in Part 8, Exceptions to Procurement Requirements.

2074 (7) This section does not prohibit regularly scheduled payments for a procurement item
2075 obtained under another provision of this chapter.

2076 (8) (a) It is unlawful for a person to intentionally or knowingly divide a procurement
2077 into one or more smaller procurements with the intent to make a procurement:

2078 [~~(a)~~] (i) qualify as a small purchase, if, before dividing the procurement, it would not
2079 have qualified as a small purchase; or

2080 [~~(b)~~] (ii) meet a threshold established by rule made by the applicable rulemaking
2081 authority, if, before dividing the procurement, it would not have met the threshold.

2082 (b) A person who engages in the conduct made unlawful under Subsection (8)(a) is
2083 guilty of:

2084 (i) a second degree felony, if the value of the procurement before being divided is
2085 \$1,000,000 or more;

2086 (ii) a third degree felony, if the value of the procurement before being divided is
2087 \$250,000 or more but less than \$1,000,000;

2088 (iii) a class A misdemeanor, if the value of the procurement before being divided is
2089 \$100,000 or more but less than \$250,000; or

2090 (iv) a class B misdemeanor, if the value of the procurement before being divided is less
2091 than \$100,000.

2092 (9) A division of a procurement that is prohibited under Subsection (8) includes doing
2093 any of the following with the intent or knowledge described in Subsection (8):

2094 (a) making two or more separate purchases;

2095 (b) dividing an invoice or purchase order into two or more invoices or purchase orders;
2096 or

2097 (c) making smaller purchases over a period of time.

2098 (10) A person who violates Subsection (8) is subject to the criminal penalties described
2099 in Section [~~63G-6a-2305~~] [63G-6a-2405](#).

2100 (11) The Division of Finance within the Department of Administrative Services may
2101 conduct an audit of an executive branch procurement unit to verify compliance with the
2102 requirements of this section.

2103 (12) An executive branch procurement unit may not make a small purchase after
2104 January 1, 2014, unless the chief procurement officer certifies that the person responsible for
2105 procurements in the procurement unit has satisfactorily completed training on this section and
2106 the rules made under this section.

2107 Section 32. Section **63G-6a-603** is amended to read:

2108 **63G-6a-603. Invitation for bids -- Contents -- Notice.**

2109 (1) The bidding standard procurement process begins when the [~~division or a~~
2110 ~~procurement unit with independent procurement authority~~] issuing procurement unit issues an
2111 invitation for bids.

2112 (2) An invitation for bids shall:

2113 (a) state the period of time during which bids will be accepted;

2114 (b) describe the manner in which a bid shall be submitted;

2115 (c) state the place where a bid shall be submitted; and

2116 (d) include, or incorporate by reference:

2117 (i) a description of the procurement items sought;

2118 (ii) the objective criteria that will be used to evaluate the bids; and

2119 (iii) the required contractual terms and conditions.

2120 (3) An issuing procurement unit shall publish an invitation for bids in accordance with
2121 the requirements of Section [63G-6a-406](#).

2122 Section 33. Section **63G-6a-606** is amended to read:

2123 **63G-6a-606. Evaluation of bids -- Award -- Cancellation -- Disqualification.**

2124 (1) [~~The division or a~~] A procurement unit [~~with independent procurement authority~~]
2125 that conducts a procurement using a bidding standard procurement process shall evaluate each
2126 bid using the objective criteria described in the invitation for bids, which may include:

2127 (a) experience;

2128 (b) performance ratings;

2129 (c) inspection;

2130 (d) testing;

2131 (e) quality;

2132 (f) workmanship;

2133 (g) time and manner of delivery;

- 2134 (h) references;
- 2135 (i) financial stability;
- 2136 (j) cost;
- 2137 (k) suitability for a particular purpose; or
- 2138 (l) other objective criteria specified in the invitation for bids.
- 2139 (2) Criteria not described in the invitation for bids may not be used to evaluate a bid.
- 2140 (3) The conducting procurement unit shall:
- 2141 (a) award the contract as soon as practicable to:
- 2142 (i) the lowest responsive and responsible bidder who meets the objective criteria
- 2143 described in the invitation for bids; or
- 2144 (ii) if, in accordance with Subsection (4), the procurement officer or the head of the
- 2145 conducting procurement unit disqualifies the bidder described in Subsection (3)(a)(i), the next
- 2146 lowest responsive and responsible bidder who meets the objective criteria described in the
- 2147 invitation for bids; or
- 2148 (b) cancel the invitation for bids without awarding a contract.
- 2149 (4) In accordance with Subsection (5), the procurement officer or the head of the
- 2150 conducting procurement unit may disqualify a bidder for:
- 2151 (a) a violation of this chapter;
- 2152 (b) a violation of a requirement of the invitation for bids;
- 2153 (c) unlawful or unethical conduct; or
- 2154 (d) a change in circumstance that, had the change been known at the time the bid was
- 2155 submitted, would have caused the bidder to not be the lowest responsive and responsible bidder
- 2156 who meets the objective criteria described in the invitation for bids.
- 2157 (5) A procurement officer or head of a conducting procurement unit who disqualifies a
- 2158 bidder under Subsection (4) shall:
- 2159 (a) make a written finding, stating the reasons for disqualification; and
- 2160 (b) provide a copy of the written finding to the disqualified bidder.
- 2161 (6) If a conducting procurement unit cancels an invitation for bids without awarding a
- 2162 contract, the conducting procurement unit shall make available for public inspection a written
- 2163 justification for the cancellation.
- 2164 Section 34. Section **63G-6a-607** is amended to read:

2165 **63G-6a-607. Action when all bids are over budget.**

2166 (1) Except as provided in Subsection (2) or (3), if the fiscal officer for the conducting
2167 procurement unit certifies that all accepted bids exceed available funds and that the lowest
2168 responsive and responsible bidder does not exceed the available funds by more than 5%, the
2169 procurement officer may negotiate an adjustment of the bid price and bid requirements with the
2170 lowest responsive and responsible bidder in order to bring the bid within the amount of
2171 available funds.

2172 (2) A procurement officer may not adjust the bid requirements under Subsection (1) if
2173 there is a substantial likelihood that, had the adjustment been included in the invitation for
2174 bids, a person that did not submit a bid would have submitted a responsive, responsible, and
2175 competitive bid.

2176 (3) The Division of Facilities Construction and Management is exempt from the
2177 requirements of this section if:

2178 (a) the building board adopts rules governing procedures when all accepted bids exceed
2179 available funds; and

2180 (b) the Division of Facilities Construction and Management complies with the rules
2181 described in Subsection (3)(a).

2182 Section 35. Section **63G-6a-609** is amended to read:

2183 **63G-6a-609. Multiple stage bidding process.**

2184 (1) [~~The division or a~~ A procurement unit [~~with independent procurement authority~~
2185 that conducts a procurement using a bidding standard procurement process may [~~conduct a bid~~
2186 in] use multiple stages[;] to:

2187 (a) narrow the number of bidders who will progress to a subsequent stage;

2188 (b) prequalify bidders for subsequent stages, in accordance with Section [63G-6a-403](#);

2189 (c) enter into a contract for a single procurement; or

2190 (d) award multiple contracts for a series of upcoming procurements.

2191 (2) The invitation for bids for a multiple stage bidding process shall:

2192 (a) describe the requirements for, and purpose of, each stage of the process;

2193 (b) indicate whether the procurement unit intends to award:

2194 (i) a single contract; or

2195 (ii) multiple contracts for a series of upcoming procurements; and

2196 (c) state that:
2197 (i) the first stage is for prequalification only;
2198 (ii) a bidder may not submit any pricing information in the first stage of the process;
2199 and
2200 (iii) bids in the second stage will only be accepted from a person who prequalifies in
2201 the first stage.

2202 (3) During the first stage, the conducting procurement unit:

2203 (a) shall prequalify bidders to participate in subsequent stages, in accordance with
2204 Section 63G-6a-403;

2205 (b) shall prohibit the submission of pricing information until the final stage; and

2206 (c) may, before beginning the second stage, request additional information to clarify
2207 the qualifications of the bidders who submit timely responses.

2208 (4) Contracts may only be awarded for a procurement item described in stage one of
2209 the invitation for bids.

2210 (5) The [~~division or a~~] conducting procurement unit [~~with independent procurement~~
2211 ~~authority may conduct a bid in~~] may use as many stages as it determines to be appropriate.

2212 (6) Except as otherwise expressly provided in this section, [~~the division or~~] a
2213 procurement unit [~~with independent procurement authority shall conduct~~] conducting a
2214 multiple stage bidding process [~~in accordance~~] under this section shall ensure compliance with
2215 this part.

2216 (7) The applicable rulemaking authority may make rules governing the use of a
2217 multiple stage process described in this section.

2218 Section 36. Section **63G-6a-611** is amended to read:

2219 **63G-6a-611. Invitation for bids for reverse auction -- Notice contents --**
2220 **Agreement to terms and conditions.**

2221 (1) The reverse auction bidding process begins when the [~~division or a~~] issuing
2222 procurement unit [~~with independent procurement authority~~] issues an invitation for bids to
2223 prequalify bidders to participate in the reverse auction.

2224 (2) The invitation for bids shall:

2225 (a) state the period of time during which bids will be accepted;

2226 (b) state that the bid will be conducted by reverse auction;

- 2227 (c) describe the procurement items sought;
- 2228 (d) describe the minimum requirements to become prequalified;
- 2229 (e) state the required contractual terms and conditions; and
- 2230 (f) describe the procedure that the ~~[division or the]~~ conducting procurement unit ~~[with~~
2231 ~~independent procurement authority]~~ will follow in ~~[conducting]~~ the reverse auction.
- 2232 (3) In order to participate in a reverse auction, a bidder shall agree to:
- 2233 (a) the specifications, and contractual terms and conditions, of the procurement; and
- 2234 (b) be trained in, and abide by, the procedure that the division or the procurement unit
2235 with independent procurement authority will follow in conducting the reverse auction.
- 2236 (4) The division or a procurement unit with independent procurement authority shall
2237 publish an invitation for bids for a reverse auction in accordance with the requirements of
2238 Section [63G-6a-406](#).
- 2239 Section 37. Section **63G-6a-612** is amended to read:
- 2240 **63G-6a-612. Conduct of reverse auction.**
- 2241 (1) ~~[When]~~ A procurement unit conducting a reverse auction~~[- the division or a~~
2242 ~~procurement unit with independent procurement authority]~~:
- 2243 (a) may conduct the reverse auction at a physical location or by electronic means;
- 2244 (b) shall permit all prequalified bidders to participate in the reverse auction;
- 2245 (c) may not permit a bidder to participate in the reverse auction if the bidder did not
2246 prequalify to participate in the reverse auction;
- 2247 (d) may not accept a bid after the time for submission of a bid has expired;
- 2248 (e) shall update the bids on a real time basis; and
- 2249 (f) shall conduct the reverse auction in a manner that permits each bidder to:
- 2250 (i) bid against each other; and
- 2251 (ii) lower the bidder's price below the lowest bid before the reverse auction closes.
- 2252 (2) At the end of the reverse auction, the conducting procurement unit shall:
- 2253 (a) award the contract as soon as practicable to the lowest responsive and responsible
2254 bidder who meets the objective criteria described in the invitation for bids; or
- 2255 (b) cancel the reverse auction without awarding a contract.
- 2256 (3) After the reverse auction is finished, the conducting procurement ~~[officer]~~ unit shall
2257 make publicly available:

- 2258 (a) (i) the amount of the final bid submitted by each bidder during the reverse auction;
2259 and
2260 (ii) the identity of the bidder that submitted each final bid; and
2261 (b) if practicable:
2262 (i) the amount of each bid submitted during the reverse auction; and
2263 (ii) the identity of the bidder that submitted each bid.

2264 Section 38. Section **63G-6a-702** is amended to read:

2265 **63G-6a-702. Contracts awarded by request for proposals.**

2266 (1) A request for proposals standard procurement process may be used instead of
2267 bidding if the procurement officer determines, in writing, that the request for proposals
2268 standard procurement process will provide the best value to the procurement unit.

2269 (2) The request for proposals standard procurement process is appropriate to use for:

- 2270 (a) the procurement of professional services;
2271 (b) a design-build procurement;

2272 (c) when cost is not the most important factor to be considered in making the selection
2273 that is most advantageous to the procurement unit; or

2274 (d) when factors, in addition to cost, are highly significant in making the selection that
2275 is most advantageous to the procurement unit.

2276 (3) The procurement of architect-engineer services is governed by Part 15,
2277 Architect-Engineer Services.

2278 Section 39. Section **63G-6a-703** is amended to read:

2279 **63G-6a-703. Request for proposals -- Notice -- Contents.**

2280 (1) The request for proposals standard procurement process begins when the division
2281 or a procurement unit with independent procurement authority issues a request for proposals.

2282 (2) A request for proposals shall:

- 2283 (a) state the period of time during which a proposal will be accepted;
2284 (b) describe the manner in which a proposal shall be submitted;
2285 (c) state the place where a proposal shall be submitted;
2286 (d) include, or incorporate by reference:

2287 (i) a description of the procurement items sought;

2288 (ii) a description of the subjective and objective criteria that will be used to evaluate

2289 the proposal; and

2290 (iii) the standard contractual terms and conditions required by the authorized
2291 purchasing entity;

2292 (e) state the relative weight that will be given to each score [~~awarded~~] for the criteria
2293 described in Subsection (2)(d)(ii), including cost;

2294 (f) state the formula that will be used to determine the score awarded for the cost of
2295 each proposal;

2296 (g) if the request for proposals will be conducted in multiple stages, as described in
2297 Section 63G-6a-710, include a description of the stages and the criteria and scoring that will be
2298 used to screen offerors at each stage; and

2299 (h) state that discussions may be conducted with offerors who submit proposals
2300 determined to be reasonably susceptible of being selected for award, followed by an
2301 opportunity to make best and final offers, but that proposals may be accepted without
2302 discussions.

2303 (3) The division or a procurement unit with independent procurement authority shall
2304 publish a request for proposals in accordance with the requirements of Section 63G-6a-406.

2305 Section 40. Section 63G-6a-704 is amended to read:

2306 **63G-6a-704. Opening of proposals and acceptance.**

2307 (1) An issuing procurement unit shall ensure that proposals are opened in a manner that
2308 avoids disclosing the contents to competing offerors during the evaluation process.

2309 (2) An issuing procurement unit may not accept a proposal[~~-(a)~~] after the time for
2310 submission of a proposal has expired[~~;-or~~].

2311 [~~(b) that is not responsive to the request for proposals.~~]

2312 (3) At any time during the request for proposals standard procurement process, a
2313 conducting procurement unit may reject a proposal if the conducting procurement unit
2314 determines that:

2315 (a) the person submitting the proposal is not responsible; or

2316 (b) the proposal is not responsive or does not meet mandatory minimum requirements
2317 stated in the request for proposals.

2318 Section 41. Section 63G-6a-707 is amended to read:

2319 **63G-6a-707. Evaluation of proposals -- Evaluation committee.**

2320 (1) ~~[Each proposal shall be evaluated]~~ To determine which proposal provides the best
2321 value to the procurement unit, the evaluation committee shall evaluate each responsive and
2322 responsible proposal that has not been disqualified from consideration under the provisions of
2323 this chapter, using the criteria described in the request for proposals, which may include:

- 2324 (a) experience;
- 2325 (b) performance ratings;
- 2326 (c) inspection;
- 2327 (d) testing;
- 2328 (e) quality;
- 2329 (f) workmanship;
- 2330 (g) time, manner, or schedule of delivery;
- 2331 (h) references;
- 2332 (i) financial ~~[stability]~~ solvency;
- 2333 (j) suitability for a particular purpose;
- 2334 (k) management plans;
- 2335 (l) cost; or
- 2336 (m) other subjective or objective criteria specified in the request for proposals.

2337 (2) Criteria not described in the request for proposals may not be used to evaluate a
2338 proposal.

2339 (3) The ~~[issuing]~~ conducting procurement unit shall:

- 2340 (a) appoint an evaluation committee consisting of at least three individuals; and
- 2341 (b) ensure that the evaluation committee and each member of the evaluation
2342 committee:

- 2343 (i) does not have a conflict of interest with any of the offerors;
- 2344 (ii) can fairly evaluate each proposal;
- 2345 (iii) does not contact or communicate with an offeror ~~[for any reason other than~~
2346 ~~conducting the standard procurement process]~~ concerning the procurement outside the official
2347 evaluation committee process; and

2348 (iv) conducts the evaluation in a manner that ensures a fair and competitive process
2349 and avoids the appearance of impropriety.

2350 (4) The evaluation committee may, with the approval of the head of the conducting

2351 procurement unit, enter into discussions or conduct interviews with, or [participate in] attend
2352 presentations by, the offerors.

2353 (5) (a) Except as provided in [Subsection (6) or] Subsections (5)(b) and (7), each
2354 member of the evaluation committee is prohibited from knowing, or having access to, any
2355 information relating to the cost, or the scoring of the cost, of a proposal until after the
2356 evaluation committee submits its final recommended scores on all other criteria to the issuing
2357 procurement unit.

2358 (b) The issuing procurement unit shall:

2359 (i) if applicable, assign an individual who is not a member of the evaluation committee
2360 to calculate scores for cost based on the applicable scoring formula, weighting, and other
2361 scoring procedures contained in the request for proposals;

2362 (ii) review the evaluation committee's scores and correct any errors, scoring
2363 inconsistencies, and reported noncompliance with this chapter;

2364 (iii) add the scores calculated for cost, if applicable, to the evaluation committee's final
2365 recommended scores on criteria other than cost to derive the total combined score for each
2366 responsive and responsible proposal; and

2367 (iv) provide to the evaluation committee the total combined score calculated for each
2368 responsive and responsible proposal, including any applicable cost formula, weighting, and
2369 scoring procedures used to calculate the total combined scores.

2370 (c) The evaluation committee may not:

2371 (i) change its final recommended scores described in Subsection (5)(a) after the
2372 evaluation committee has submitted those scores to the issuing procurement unit; or

2373 (ii) change cost scores calculated by the issuing procurement unit.

2374 (6) (a) As used in this Subsection (6), "management fee" includes only the following
2375 fees of the construction manager/general contractor:

2376 (i) preconstruction phase services;

2377 (ii) monthly supervision fees for the construction phase; and

2378 (iii) overhead and profit for the construction phase.

2379 (b) When selecting a construction manager/general contractor for a construction
2380 project, the evaluation committee:

2381 (i) may score a construction manager/general contractor based upon criteria contained

2382 in the solicitation, including qualifications, performance ratings, references, management plan,
2383 certifications, and other project specific criteria described in the solicitation;

2384 (ii) may, as described in the solicitation, weight and score the management fee as a
2385 fixed rate or as a fixed percentage of the estimated contract value;

2386 ~~[(i)]~~ (iii) may, at any time after the opening of the responses to the request for
2387 proposals, have access to, and consider, the management fee proposed by the offerors; and

2388 ~~[(ii)]~~ (iv) except as provided in Subsection (7), may not know or have access to any
2389 other information relating to the cost of construction submitted by the offerors, until after the
2390 evaluation committee submits its final recommended scores on all other criteria to the issuing
2391 procurement unit.

2392 (7) (a) The deliberations of an evaluation committee may be held in private.

2393 (b) If the evaluation committee is a public body, as defined in Section [52-4-103](#), the
2394 evaluation committee shall comply with Section [52-4-205](#) in closing a meeting for its
2395 deliberations.

2396 ~~[(7)]~~ (8) An issuing procurement unit is not required to comply with Subsection (5) if[;
2397 ~~before opening the responses to the request for proposals;~~] the head of the issuing procurement
2398 unit or a person designated by rule made by the applicable rulemaking authority:

2399 (a) signs a written statement:

2400 (i) indicating that, due to the nature of the proposal or other circumstances, it is in the
2401 best interest of the procurement unit to waive compliance with Subsection (5); and

2402 (ii) describing the nature of the proposal and the other circumstances relied upon to
2403 waive compliance with Subsection (5); and

2404 (b) makes the written statement available to the public, upon request.

2405 ~~[(8) The evaluation committee shall award scores to each responsive and responsible~~
2406 ~~proposal that has not been disqualified from consideration under the provisions of this chapter.]~~

2407 Section 42. Section ~~63G-6a-707.5~~, which is renumbered from Section 63G-6a-705 is
2408 renumbered and amended to read:

2409 ~~[63G-6a-705].~~ **63G-6a-707.5. Best and final offers.**

2410 ~~[(1) After proposals are received and opened, the issuing procurement unit may~~
2411 ~~conduct discussions with the offerors and allow the offerors to make best and final offers after~~
2412 ~~the discussions.]~~

- 2413 (1) At any time during the evaluation process, the evaluation committee, with the
 2414 approval of the director or head of the issuing procurement unit, may:
- 2415 (a) request best and final offers from responsible and responsive offerors; and
 2416 (b) evaluate those offers.
- 2417 (2) [~~The issuing procurement unit~~] In requesting and evaluating best and final offers
 2418 under Subsection (1), the evaluation committee shall:
- 2419 (a) ensure that each offeror receives fair and equal treatment with respect to the other
 2420 offerors;
- 2421 (b) establish a schedule and procedures for conducting discussions;
- 2422 (c) ensure that information in each proposal and information gathered during
 2423 discussions is not shared with other offerors until the contract is awarded;
- 2424 (d) ensure that auction tactics are not used in the discussion process, including
 2425 discussing and comparing the costs and features of other proposals; and
- 2426 (e) set a common date and time for the submission of best and final offers.
- 2427 (3) If an offeror chooses not to participate in a discussion or does not make a timely
 2428 best and final offer, the offer submitted by the [~~offerors~~] offeror before the conduct of
 2429 discussions shall be treated as the offeror's best and final offer.
- 2430 Section 43. Section **63G-6a-708** is amended to read:
- 2431 **63G-6a-708. Justification statement -- Cost-benefit analysis.**
- 2432 (1) (a) In determining which proposal provides the best value to the procurement unit,
 2433 the evaluation committee and the conducting procurement unit shall prepare a written
 2434 justification statement that:
- 2435 (i) explains the score assigned to each evaluation category;
 2436 (ii) explains how the proposal with the highest total combined score provides the best
 2437 value to the procurement unit in comparison to the other proposals;
 2438 (iii) if applicable, includes the cost-benefit analysis described in Subsection (2) and
 2439 how the cost-benefit analysis relates to the best value to the procurement unit; and
 2440 (iv) if applicable, includes the written determination described in Subsection (5).
- 2441 (b) An explanation under Subsection (1)(a)(i) need not address each criterion within
 2442 each category.
- 2443 [~~(1)~~] (2) If, in determining the best value to the procurement unit, the evaluation

2444 committee awards the highest score [~~awarded by the evaluation committee~~], including the score
2445 for cost, [~~is awarded~~] to a proposal other than the lowest cost proposal, and the difference
2446 between the cost of the highest scored proposal and the lowest cost proposal exceeds the
2447 greater of \$10,000 or 5% of the lowest cost proposal, the [~~issuing procurement unit shall make~~]
2448 evaluation committee and the conducting procurement unit shall prepare an informal written
2449 cost-benefit analysis that:

2450 (a) explains, in general terms, the advantage to the procurement unit of awarding the
2451 contract to the higher cost offeror; and

2452 (b) [~~includes;~~] except as provided in Subsection [~~(+)(c);~~] (5):

2453 (i) includes the estimated added financial value to the procurement unit of each
2454 [~~criteria~~] criterion that justifies awarding the contract to the higher cost offeror; and

2455 [~~(c) includes, to the extent that assigning a financial value to a particular criteria is not~~
2456 ~~practicable, a statement describing;~~]

2457 [~~(i) why it is not practicable to assign a financial value to the criteria; and~~]

2458 [~~(ii) in nonfinancial terms, the advantage to the procurement unit, based on the~~
2459 ~~particular criteria, of awarding the contract to the higher cost offeror;]~~

2460 [~~(d)~~] (ii) demonstrates that the value of the advantage to the procurement unit of
2461 awarding the contract to the higher cost offeror exceeds the value of the difference between the
2462 cost of the higher cost proposal and the cost of the lower cost proposals[~~; and~~].

2463 [~~(e) includes any other information required by rule made by the applicable rulemaking~~
2464 ~~authority.~~]

2465 [(2)] (3) If the informal cost-benefit analysis described in Subsection [(+)] (2) does not
2466 justify [~~award of~~] awarding the contract to the offeror that received the highest score, the
2467 issuing procurement unit:

2468 (a) may not award the contract to the offeror that received the highest score; and

2469 (b) may award the contract to the offeror that received the next highest score, unless:

2470 (i) an informal cost-benefit analysis is required, because the difference between the
2471 cost proposed by the offeror that received the next highest score and the lowest cost proposal
2472 exceeds the greater of \$10,000 or 5% of the lowest cost proposal; and

2473 (ii) the informal cost-benefit analysis does not justify award of the contract to the
2474 offeror that received the next highest score.

2475 ~~[(3)]~~ (4) If the informal cost-benefit analysis described in Subsection ~~[(1)]~~ (2) does not
 2476 justify award of the contract to the offeror, described in Subsection ~~[(2)]~~ (3), that received the
 2477 next highest score, the issuing procurement unit:

2478 (a) may not award the contract to the offeror that received the next highest score; and

2479 (b) shall continue with the process described in Subsection ~~[(2)]~~ (3) for each offeror
 2480 that received the next highest score, until the issuing procurement unit:

2481 (i) awards the contract in accordance with the provisions of this section; or

2482 (ii) cancels the request for proposals.

2483 (5) (a) The evaluation committee, with the issuing procurement unit's approval, may
 2484 waive, in whole or in part, a requirement under Subsection (2)(b) if the evaluation committee
 2485 determines in writing that assigning a financial value to a particular procurement item or
 2486 evaluation criterion is not practicable.

2487 (b) A written determination under Subsection (5)(a):

2488 (i) shall explain:

2489 (A) why it is not practicable to assign a financial value to the procurement item or
 2490 evaluation criterion; and

2491 (B) in nonfinancial terms, why awarding the contract to the higher cost offeror
 2492 provides the best value to the procurement unit; and

2493 (ii) may be included as part of the justification statement.

2494 ~~[(4)]~~ (6) (a) An issuing procurement unit is not required to make the cost-benefit
 2495 analysis described in this section for a contract with a construction manager/general contractor
 2496 if the contract is awarded based solely on the qualifications of the construction
 2497 manager/general contractor and the management fee described in Subsection ~~[63G-6a-706]~~
 2498 ~~63G-6a-707~~(6).

2499 (b) The applicable rulemaking authority shall make rules that establish procedures and
 2500 criteria for awarding a contract described in Subsection ~~[(4)]~~ (6)(a) to ensure that:

2501 (i) a competitive process is maintained; and

2502 (ii) the contract awarded is in the best interest of the procurement unit.

2503 Section 44. Section **63G-6a-709** is amended to read:

2504 **63G-6a-709. Award of contract -- Cancellation -- Disqualification.**

2505 (1) After the completion of the evaluation and scoring of proposals ~~[is completed, the~~

2506 ~~issuing procurement unit shall:]~~ and the justification statement, including any required
 2507 cost-benefit analysis, the evaluation committee shall submit the proposals, evaluation scores,
 2508 and justification statement to the head of the procurement unit or designee for review and final
 2509 determination of a contract award.

2510 (2) After reviewing the proposals, evaluation scores, and justification statement,
 2511 including any required cost-benefit analysis, the head of the issuing procurement unit or
 2512 designee shall:

2513 (a) ~~[except as provided in Section 63G-6a-708;]~~ award the contract as soon as
 2514 practicable to:

2515 (i) the responsive and responsible offeror with the highest total score; or

2516 (ii) if, in accordance with Subsection ~~[(2)]~~ (3), the procurement officer or the head of
 2517 the issuing procurement unit disqualifies the offeror described in Subsection ~~[(+)]~~ (2)(a)(i), the
 2518 responsive and responsible offeror with the next highest total score; or

2519 (b) cancel the request for proposals without awarding a contract.

2520 ~~[(2)]~~ (3) In accordance with Subsection ~~[(3)]~~ (4), the procurement officer or the head of
 2521 the issuing procurement unit may disqualify an offeror for:

2522 (a) a violation of this chapter;

2523 (b) not being responsive or responsible;

2524 ~~[(b)]~~ (c) a violation of a requirement of the request for proposals;

2525 ~~[(c)]~~ (d) unlawful or unethical conduct; or

2526 ~~[(d)]~~ (e) a change in circumstance that, had the change been known at the time the
 2527 proposal was submitted, would have caused the proposal to not have the highest score.

2528 ~~[(3)]~~ (4) A procurement officer or head of an issuing procurement unit who disqualifies
 2529 an offeror under Subsection ~~[(2)]~~ (3) shall:

2530 (a) make a written finding, stating the reasons for disqualification; and

2531 (b) provide a copy of the written finding to the disqualified offeror.

2532 ~~[(4)]~~ (5) If an issuing procurement unit cancels a request for proposals without
 2533 awarding a contract, the issuing procurement unit shall make available for public inspection a
 2534 written justification for the cancellation.

2535 Section 45. Section **63G-6a-709.5** is amended to read:

2536 **63G-6a-709.5. Publication of award and scores.**

2537 (1) The issuing procurement unit shall, on the next business day [~~on which~~] after the
2538 award of a contract is announced, make available to each offeror and to the public a written
2539 statement that includes:

2540 [~~(1)~~] (a) the name of the offeror to which the contract is awarded and the total score
2541 awarded by the evaluation committee to that offeror;

2542 (b) the justification statement under Section 63G-6a-708, including any required
2543 cost-benefit analysis; and

2544 [~~(2)~~] (c) the total score awarded by the evaluation committee to each offeror to which
2545 the contract is not awarded, without identifying which offeror received which score[~~and~~].

2546 [~~(3) any cost-benefit analysis made, under Section 63G-6a-708, in relation to the~~
2547 ~~request for proposals.~~]

2548 (2) Subsection (1)(a) does not prevent the issuing procurement unit from using codes
2549 or another method in a statement under Subsection (1) to distinguish offerors to which the
2550 contract is not awarded and to indicate their scores, as long as an offeror cannot be matched
2551 with the score awarded to that offeror.

2552 Section 46. Section **63G-6a-802** is amended to read:

2553 **63G-6a-802. Award of contract without competition -- Notice -- Extension of**
2554 **contract without engaging in standard procurement process.**

2555 (1) As used in this section:

2556 (a) "Transitional costs" mean the costs of changing from an existing provider of, or
2557 type of, a procurement item to another provider of, or type of, procurement item.

2558 (b) "Transitional costs" include:

2559 (i) training costs;

2560 (ii) conversion costs;

2561 (iii) compatibility costs;

2562 (iv) system downtime;

2563 (v) disruption of service;

2564 (vi) staff time necessary to put the transition into effect;

2565 (vii) installation costs; and

2566 (viii) ancillary software, hardware, equipment, or construction costs.

2567 (c) "Transitional costs" do not include:

2568 (i) the costs of preparing for or engaging in a procurement process; or

2569 (ii) contract negotiation or contract drafting costs.

2570 (d) "Trial use contract" means a contract between a procurement unit and a vendor for
2571 a procurement item that the procurement unit acquires for trial use or testing to determine
2572 whether the procurement item will benefit the procurement unit.

2573 (2) The division or a procurement unit with independent procurement authority may
2574 award a contract for a procurement item without competition if the procurement officer, the
2575 head of the procurement unit, or a designee of either who is senior to the procurement officer
2576 or the head of the procurement unit, determines in writing that:

2577 (a) there is only one source for the procurement item; [~~or~~]

2578 (b) the award to a specific supplier, service provider, or contractor is a condition of a
2579 donation that will fund the full cost of the supply, service, or construction item[-]; or

2580 (c) the procurement item is needed for trial use or testing to determine whether the
2581 procurement item will benefit the procurement unit.

2582 (3) Circumstances under which there is only one source for a procurement item may
2583 include:

2584 (a) where the most important consideration in obtaining a procurement item is the
2585 compatibility of equipment, technology, software, accessories, replacement parts, or service;

2586 [~~(b) where a procurement item is needed for trial use or testing;~~]

2587 [~~(c)~~] (b) where transitional costs are unreasonable or cost prohibitive; or

2588 [~~(d)~~] (c) procurement of public utility services.

2589 (4) (a) [~~The~~] Subject to Subsection (4)(b), the applicable rulemaking authority shall
2590 make rules regarding the publication of notice for a sole source procurement that, at a
2591 minimum, require publication of notice of a sole source procurement, in accordance with
2592 Section 63G-6a-406, if the cost of the procurement exceeds \$50,000.

2593 (b) Publication of notice under Section 63G-6a-406 is not required for:

2594 (i) the procurement of public utility services pursuant to a sole source contract; or

2595 (ii) other sole source procurements provided by rule.

2596 (5) The division or a procurement unit with independent procurement authority who
2597 awards a sole source contract on behalf of another procurement unit shall negotiate with the
2598 contractor to ensure that the terms of the contract, including price and delivery, are in the best

2599 interest of the procurement unit.

2600 (6) (a) The period of trial use or testing of a procurement item under a trial use contract
2601 may not exceed 18 months, unless the procurement officer provides a written exception
2602 documenting the reason for a longer period.

2603 (b) A trial use contract shall:

2604 (i) state that the purpose of the contract is strictly for the purpose of the trial use or
2605 testing of a procurement item;

2606 (ii) state that the contract terminates upon completion of the trial use or testing period;

2607 (iii) state that, after the trial use or testing period, the procurement unit is not obligated
2608 to purchase or enter into a contract for the procurement item, regardless of the trial use or
2609 testing result;

2610 (iv) state that any purchase of the procurement item beyond the terms of the trial use
2611 contract will be made in accordance with this chapter; and

2612 (v) include, as applicable:

2613 (A) test schedules;

2614 (B) deadlines and a termination date;

2615 (C) measures that will be used to evaluate the performance of the procurement item;

2616 (D) any fees and associated expenses or an explanation of the circumstances

2617 warranting a waiver of those fees and expenses;

2618 (E) the obligations of the procurement unit and vendor;

2619 (F) provisions regarding the ownership of the procurement item during and after the
2620 trial use or testing period;

2621 (G) an explanation of the grounds upon which the contract may be terminated;

2622 (H) a limitation of liability;

2623 (I) a consequential damage waiver provision;

2624 (J) a statement regarding the confidentiality or nondisclosure of information;

2625 (K) a provision relating to any required bond or security deposit; and

2626 (L) other requirements unique to the procurement item for trial use or testing.

2627 (c) Publication of notice under Section [63G-6a-406](#) is not required for a procurement
2628 pursuant to a trial use contract.

2629 [~~(6)~~ (7) The division or a procurement unit with independent procurement authority

- 2630 may extend a contract for a reasonable period of time without engaging in a standard
2631 procurement process, if:
- 2632 (a) the award of a new contract for the procurement item is delayed due to a protest or
2633 appeal;
 - 2634 (b) the standard procurement process is delayed due to unintentional error;
 - 2635 (c) changes in industry standards require significant changes to specifications for the
2636 procurement item;
 - 2637 (d) the extension is necessary to prevent the loss of federal funds;
 - 2638 (e) the extension is necessary to address a circumstance where the appropriation of
2639 state or federal funds has been delayed; ~~[or]~~
 - 2640 (f) the extension covers the period of time during which contract negotiations with a
2641 new provider are being conducted~~[;]~~; or
 - 2642 (g) the extension is necessary to avoid a lapse in critical governmental services that
2643 may negatively impact public health, safety, or welfare.

2644 Section 47. Section **63G-6a-904** is amended to read:

2645 **63G-6a-904. Debarment from consideration for award of contracts -- Causes for**
2646 **debarment.**

2647 (1) ~~(a) [After reasonable notice to the person involved and reasonable opportunity for~~
2648 ~~that person to be heard] Subject to Subsection (1)(b), the chief procurement officer~~;~~a~~
2649 ~~procurement officer,]~~ or the head of a procurement unit with independent procurement
2650 authority may~~;~~ ~~after consultation with the procurement unit involved in the matter for which~~
2651 ~~debarment is sought and, if the procurement unit is in the state executive branch, the attorney~~
2652 ~~general]:~~

2653 ~~[(a)]~~ (i) debar a person for cause from consideration for award of contracts for a period
2654 not to exceed three years; or

2655 ~~[(b)]~~ (ii) suspend a person from consideration for award of contracts if there is
2656 probable cause to believe that the person has engaged in any activity that might lead to
2657 debarment.

2658 (b) Before debarring or suspending a person under Subsection (1)(a), the chief
2659 procurement officer or head of a procurement unit with independent procurement authority
2660 shall:

- 2661 (i) consult with:
- 2662 (A) the procurement unit involved in the matter for which debarment or suspension is
- 2663 sought; and
- 2664 (B) the attorney general, if the procurement unit is in the state executive branch, or the
- 2665 procurement unit's attorney, if the procurement unit is not in the state executive branch;
- 2666 (ii) give the person at least 10 days' prior written notice of:
- 2667 (A) the reasons for which debarment or suspension is being considered; and
- 2668 (B) the hearing under Subsection (1)(b)(iii); and
- 2669 (iii) hold a hearing in accordance with Subsection (1)(c).
- 2670 (c) (i) At a hearing under Subsection (1)(b)(iii), the chief procurement officer or head
- 2671 of a procurement unit with independent procurement authority may:
- 2672 (A) subpoena witnesses and compel their attendance at the hearing;
- 2673 (B) subpoena documents for production at the hearing;
- 2674 (C) obtain additional factual information; and
- 2675 (D) obtain testimony from experts, the person who is the subject of the proposed
- 2676 debarment or suspension, representatives of the procurement unit, or others to assist the chief
- 2677 procurement officer or head of a procurement unit with independent procurement authority to
- 2678 make a decision on the proposed debarment or suspension.
- 2679 (ii) The Rules of Evidence do not apply to a hearing under Subsection (1)(b)(iii).
- 2680 (iii) The chief procurement officer or head of a procurement unit with independent
- 2681 procurement authority shall:
- 2682 (A) record a hearing under Subsection (1)(b)(iii);
- 2683 (B) preserve all records and other evidence relied upon in reaching a decision until the
- 2684 decision becomes final;
- 2685 (C) for an appeal of a debarment or suspension by a procurement unit other than a
- 2686 legislative procurement unit, a judicial procurement unit, a local government procurement unit,
- 2687 or a public transit district, submit to the procurement policy board chair a copy of the written
- 2688 decision and all records and other evidence relied upon in reaching the decision, within seven
- 2689 days after receiving a notice that an appeal of a debarment or suspension has been filed under
- 2690 Section [63G-6a-1702](#) or after receiving a request from the procurement policy board chair; and
- 2691 (D) for an appeal of a debarment or suspension by a legislative procurement unit, a

2692 judicial procurement unit, a local government procurement unit, or a public transit district,
2693 submit to the Utah Court of Appeals a copy of the written decision and all records and other
2694 evidence relied upon in reaching the decision, within seven days after receiving a notice that an
2695 appeal of a debarment or suspension has been filed under Section [63G-6a-1802](#).

2696 (iv) The holding of a hearing under Subsection (1)(b)(iii) or the issuing of a decision
2697 under Subsection (1)(b)(v) does not affect a person's right to later question or challenge the
2698 jurisdiction of the chief procurement officer or head of a procurement unit with independent
2699 procurement authority to hold a hearing or issue a decision.

2700 (v) The chief procurement officer or head of a procurement unit with independent
2701 procurement authority shall:

2702 (A) promptly issue a written decision regarding a proposed debarment or suspension,
2703 unless the matter is settled by mutual agreement; and

2704 (B) mail, email, or otherwise immediately furnish a copy of the decision to the person
2705 who is the subject of the decision.

2706 (vi) A written decision under Subsection (1)(b)(v) shall:

2707 (A) state the reasons for the debarment or suspension, if debarment or suspension is
2708 ordered;

2709 (B) inform the person who is debarred or suspended of the right to judicial or
2710 administrative review as provided in this chapter; and

2711 (C) indicate the amount of the security deposit or bond required under Section
2712 [63G-6a-1703](#) and how that amount was calculated.

2713 (vii) (A) A decision of debarment or suspension issued by a procurement unit other
2714 than a legislative procurement unit, a judicial procurement unit, a local government
2715 procurement unit, or a public transit district is final and conclusive unless the person who is
2716 debarred or suspended files an appeal of the decision under Section [63G-6a-1702](#).

2717 (B) A decision of debarment or suspension issued by a legislative procurement unit, a
2718 judicial procurement unit, a local government procurement unit, or a public transit district is
2719 final and conclusive unless the person who is debarred or suspended files an appeal of the
2720 decision under Section [63G-6a-1802](#).

2721 (2) A suspension [~~described in Subsection (1)(b)] under this section~~ may not be for a
2722 period exceeding three months, unless an indictment has been issued for an offense which

2723 would be a cause for debarment under Subsection (3), in which case the suspension shall, at the
2724 request of the attorney general, if the procurement unit is in the state executive branch, or the
2725 procurement unit's attorney, if the procurement unit is not in the state executive branch, remain
2726 in effect until after the trial of the suspended person.

2727 (3) The causes for debarment include the following:

2728 (a) conviction of a criminal offense as an incident to obtaining or attempting to obtain a
2729 public or private contract or subcontract or in the performance of a public or private contract or
2730 subcontract;

2731 (b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery,
2732 falsification or destruction of records, receiving stolen property, or any other offense indicating
2733 a lack of business integrity or business honesty which currently, seriously, and directly affects
2734 responsibility as a [state] contractor for the procurement unit;

2735 (c) conviction under state or federal antitrust statutes;

2736 (d) failure without good cause to perform in accordance with the terms of the contract;

2737 (e) a violation of this chapter; or

2738 (f) any other cause that the chief procurement officer~~[- the procurement officer,]~~ or the
2739 head of a procurement unit with independent procurement authority determines to be so serious
2740 and compelling as to affect responsibility as a [state] contractor for the procurement unit,
2741 including debarment by another governmental entity.

2742 (4) A person who is debarred or suspended under this section may appeal the
2743 debarment or suspension:

2744 (a) as provided in Section 63G-6a-1702, if the debarment or suspension is by a
2745 procurement unit other than a legislative procurement unit, a judicial procurement unit, a local
2746 government procurement unit, or a public transit district; or

2747 (b) as provided in Section 63G-6a-1802, if the debarment or suspension is by a
2748 legislative procurement unit, a judicial procurement unit, a local government procurement unit,
2749 or a public transit district.

2750 (5) A procurement unit may consider a cause for debarment under Subsection (3) as the
2751 basis for determining that a person responding to a solicitation is not responsible:

2752 (a) independent of any effort or proceeding under this section to debar or suspend the
2753 person; and

2754 (b) even if the procurement unit does not choose to seek debarment or suspension.

2755 Section 48. Section **63G-6a-1103** is amended to read:

2756 **63G-6a-1103. Bonds necessary when contract is awarded -- Waiver -- Action --**
2757 **Attorney fees.**

2758 (1) When a construction contract is awarded under this chapter, the contractor to whom
2759 the contract is awarded shall deliver the following bonds or security to the [state] procurement
2760 unit, which shall become binding on the parties upon the execution of the contract:

2761 (a) a performance bond satisfactory to the [state] procurement unit that is in an amount
2762 equal to 100% of the price specified in the contract and is executed by a surety company
2763 authorized to do business in [~~this~~] the state or any other form satisfactory to the [state]
2764 procurement unit; and

2765 (b) a payment bond satisfactory to the [state] procurement unit that is in an amount
2766 equal to 100% of the price specified in the contract and is executed by a surety company
2767 authorized to do business in [~~this~~] the state or any other form satisfactory to the [state]
2768 procurement unit, which is for the protection of each person supplying labor, service,
2769 equipment, or material for the performance of the work provided for in the contract.

2770 (2) (a) When a construction contract is awarded under this chapter, the procurement
2771 officer or the head of the issuing procurement unit responsible for carrying out the construction
2772 project may not require a contractor to whom a contract is awarded to obtain a bond of the
2773 types referred to in Subsection (1) from a specific insurance or surety company, producer,
2774 agent, or broker.

2775 (b) A person who violates Subsection (2)(a) is guilty of an infraction.

2776 (3) Rules of the applicable rulemaking authority may provide for waiver of the
2777 requirement of a bid, performance, or payment bond for circumstances in which the
2778 procurement officer considers any or all of the bonds to be unnecessary to protect the
2779 procurement unit.

2780 (4) A person shall have a right of action on a payment bond under this section for any
2781 unpaid amount due to the person if:

2782 (a) the person has furnished labor, service, equipment, or material for the work
2783 provided for in the contract for which the payment bond is furnished under this section; and

2784 (b) the person has not been paid in full within 90 days after the last day on which the

2785 person performed the labor or service or supplied the equipment or material for which the
2786 claim is made.

2787 (5) An action upon a payment bond may only be brought in a court of competent
2788 jurisdiction in a county where the construction contract was to be performed. The action is
2789 barred if not commenced within one year after the last day on which the claimant performed
2790 the labor or service or supplied the equipment or material on which the claim is based. The
2791 obligee named in the bond need not be joined as a party to the action.

2792 (6) In any suit upon a payment bond, the court shall award reasonable attorney fees to
2793 the prevailing party, which fees shall be taxed as costs in the action.

2794 Section 49. Section **63G-6a-1105** is amended to read:

2795 **63G-6a-1105. Form of bonds -- Effect of certified copy.**

2796 (1) The form of the bonds required by this part shall be established by rule made by the
2797 applicable rulemaking authority.

2798 (2) Any person may obtain from the [state] procurement unit a certified copy of a bond
2799 upon payment of the cost of reproduction of the bond and postage, if any.

2800 (3) A certified copy of a bond [~~shall be~~] is prima facie evidence of the contents,
2801 execution, and delivery of the original.

2802 Section 50. Section **63G-6a-1202** is repealed and reenacted to read:

2803 **63G-6a-1202. Standard contract clauses encouraged.**

2804 A procurement unit is encouraged to establish standard contract clauses to assist the
2805 procurement unit and to help contractors and potential contractors to understand applicable
2806 requirements.

2807 Section 51. Section **63G-6a-1204** is amended to read:

2808 **63G-6a-1204. Multiyear contracts.**

2809 (1) Except as provided in Subsection (7), a procurement unit may enter into a multiyear
2810 contract resulting from an invitation for bids or a request for proposals, if:

2811 (a) the procurement officer determines, in the discretion of the procurement officer,
2812 that entering into a multiyear contract is in the best interest of the procurement unit; and

2813 (b) the invitation for bids or request for proposals:

2814 (i) states the term of the contract, including all possible renewals of the contract;

2815 (ii) states the conditions for renewal of the contract; and

2816 (iii) includes the provisions of Subsections (3) through (5) that are applicable to the
2817 contract.

2818 (2) In making the determination described in Subsection (1)(a), the procurement officer
2819 shall consider whether entering into a multiyear contract will:

2820 (a) result in significant savings to the procurement unit, including:

2821 (i) reduction of the administrative burden in procuring, negotiating, or administering
2822 contracts;

2823 (ii) continuity in operations of the procurement unit; or

2824 (iii) the ability to obtain a volume or term discount;

2825 (b) encourage participation by a person who might not otherwise be willing or able to
2826 compete for a shorter term contract; or

2827 (c) provide an incentive for a bidder or offeror to improve productivity through capital
2828 investment or better technology.

2829 (3) (a) The determination described in Subsection (1)(a) is discretionary and is not
2830 required to be in writing or otherwise recorded.

2831 (b) Except as provided in Subsections (4) and (5), notwithstanding any provision of an
2832 invitation for bids, a request for proposals, or a contract to the contrary, a multiyear contract,
2833 including a contract that was awarded outside of an invitation for bids or request for proposals
2834 process, may not continue or be renewed for any year after the first year of the multiyear
2835 contract if adequate funds are not appropriated or otherwise available to continue or renew the
2836 contract.

2837 (4) A multiyear contract that is funded solely by federal funds may be continued or
2838 renewed for any year after the first year of the multiyear contract if:

2839 (a) adequate funds to continue or renew the contract have not been, but are expected to
2840 be appropriated by, and received from, the federal government;

2841 (b) continuation or renewal of the contract before the money is appropriated or
2842 received is permitted by the federal government; and

2843 (c) the contract states that it may be cancelled or suspended, without penalty, if the
2844 anticipated federal funds are not appropriated or received.

2845 (5) A multiyear contract that is funded in part by federal funds may be continued or
2846 renewed for any year after the first year of the multiyear contract if:

2847 (a) the portion of the contract that is to be funded by funds of a public entity are
2848 appropriated;

2849 (b) adequate federal funds to continue or renew the contract have not been, but are
2850 expected to be, appropriated by, and received from, the federal government;

2851 (c) continuation or renewal of the contract before the federal money is appropriated or
2852 received is permitted by the federal government; and

2853 (d) the contract states that it may be cancelled or suspended, without penalty, if the
2854 anticipated federal funds are not appropriated or received.

2855 (6) A procurement unit may not continue or renew a multiyear contract after the end of
2856 the multiyear contract term or the renewal periods described in the contract, unless the
2857 procurement unit engages in a new standard procurement process or complies with an
2858 exception, described in this chapter, to using a standard procurement process.

2859 (7) A multiyear contract, including any renewal periods, may not exceed a period of
2860 five years, unless:

2861 (a) the procurement officer determines, in writing, that:

2862 (i) a longer period is necessary in order to obtain the procurement item;

2863 (ii) a longer period is customary for industry standards; or

2864 (iii) a longer period is in the best interest of the procurement unit; and

2865 (b) the written determination described in Subsection (7)(a) is included in the file
2866 relating to the procurement.

2867 (8) This section does not apply to a contract for the design or construction of a facility,
2868 a road, a public transit project, or a contract for the financing of equipment.

2869 Section 52. Section **63G-6a-1205** is amended to read:

2870 **63G-6a-1205. Regulation of contract types -- Permitted and prohibited contract**
2871 **types.**

2872 (1) Except as otherwise provided in this section, and subject to rules made under this
2873 section by the applicable rulemaking authority, a procurement unit may use any type of contract
2874 that will promote the best interests of the procurement unit.

2875 (2) An applicable rulemaking authority:

2876 (a) may make rules governing, placing restrictions on, or prohibiting the use of any
2877 type of contract; and

- 2878 (b) may not make rules that permit the use of a contract:
2879 (i) that is prohibited under this section; or
2880 (ii) in a manner that is prohibited under this section.
- 2881 (3) A procurement officer, the head of an issuing procurement unit, or a designee of
2882 either, may not use a type of contract, other than a firm fixed price contract, unless the
2883 procurement officer makes a written determination that:
- 2884 (a) the proposed contractor's accounting system will permit timely development of all
2885 necessary cost data in the form required by the specific contract type contemplated;
- 2886 (b) the proposed contractor's accounting system is adequate to allocate costs in
2887 accordance with generally accepted accounting principles; and
- 2888 (c) the use of a specified type of contract, other than a firm fixed price contract, is in
2889 the best interest of the procurement unit, taking into consideration the following criteria:
- 2890 (i) the type and complexity of the procurement item;
- 2891 (ii) the difficulty of estimating performance costs at the time the contract is entered
2892 into, due to factors that may include:
- 2893 (A) the difficulty of determining definitive specifications;
- 2894 (B) the difficulty of determining the risks, to the contractor, that are inherent in the
2895 nature of the work to be performed; or
- 2896 (C) the difficulty to clearly determine other factors necessary to enter into an accurate
2897 firm fixed price contract;
- 2898 (iii) the administrative costs to the procurement unit and the contractor;
- 2899 (iv) the degree to which the procurement unit is required to provide technical
2900 coordination during performance of the contract;
- 2901 (v) the impact that the choice of contract type may have upon the level of competition
2902 for award of the contract;
- 2903 (vi) the stability of material prices, commodity prices, and wage rates in the applicable
2904 market;
- 2905 (vii) the impact of the contract type on the level of urgency related to obtaining the
2906 procurement item;
- 2907 (viii) the impact of any applicable governmental regulation relating to the contract; and
2908 (ix) other criteria that the procurement officer determines may relate to determining the

2909 contract type that is in the best interest of the procurement unit.

2910 (4) Contract types that, subject to the provisions of this section and rules made under
2911 this section, may be used by a procurement unit include the following:

2912 (a) a fixed price contract;

2913 (b) a fixed price contract with price adjustment;

2914 (c) a time and materials contract;

2915 (d) a labor hour contract;

2916 (e) a definite quantity contract;

2917 (f) an indefinite quantity contract;

2918 (g) a requirements contract; [~~or~~]

2919 (h) a contract based on a rate table in accordance with industry standards; or

2920 [~~(h)~~] (i) a contract that includes one of the following construction delivery methods:

2921 (i) design-build;

2922 (ii) design-bid-build; or

2923 (iii) construction manager/general contractor.

2924 (5) Except as it applies to a change order, a procurement unit may not enter into a
2925 cost-plus-percentage-of-cost contract, unless:

2926 (a) use of a cost-plus-percentage-of-cost contract is approved by the procurement
2927 officer;

2928 (b) it is standard practice in the industry to obtain the procurement item through a
2929 cost-plus-percentage-of-cost contract; and

2930 (c) the percentage and the method of calculating costs in the contract are in accordance
2931 with industry standards.

2932 (6) A procurement unit may not enter into a cost-reimbursement contract, unless the
2933 procurement officer makes a written determination that:

2934 (a) (i) a cost-reimbursement contract is likely to cost less than any other type of
2935 permitted contract; or

2936 (ii) it is impracticable to obtain the procurement item under any other type of permitted
2937 contract; and

2938 (b) the proposed contractor's accounting system:

2939 (i) will timely develop the cost data in the form necessary for the procurement unit to

2940 timely and accurately make payments under the contract; and
2941 (ii) will allocate costs in accordance with generally accepted accounting principles.

2942 Section 53. Section **63G-6a-1206** is amended to read:

2943 **63G-6a-1206. Rules and regulations to determine allowable incurred costs --**
2944 **Required information -- Auditing of books.**

2945 (1) (a) The applicable rulemaking authority may, by rule, establish the cost principles
2946 to be included in a cost-reimbursement contract to determine incurred costs for the purpose of
2947 calculating a reimbursement.

2948 (b) The cost principles established by rule under Subsection (1)(a) may be modified, by
2949 contract, if the procurement officer or head of the issuing procurement unit approves the
2950 modification.

2951 (2) Except as provided in Subsection (5), a person who seeks to be, or is, a party in a
2952 cost-based contract with a procurement unit shall:

2953 (a) submit cost or pricing data relating to determining the cost or pricing amount; and

2954 (b) certify that, to the best of the contractor's knowledge and belief, the cost or pricing
2955 data submitted is accurate and complete as of the date specified by the procurement unit.

2956 (3) The procurement officer shall ensure that the date specified under Subsection (2)(b)
2957 is before:

2958 (a) the pricing of any contract awarded by a standard procurement process or pursuant
2959 to a sole source procurement, if the total contract price is expected to exceed an amount
2960 established by rule made by the applicable rulemaking authority; or

2961 (b) the pricing of any change order that is expected to exceed an amount established by
2962 rule made by the applicable rulemaking authority.

2963 (4) A contract or change order that requires a certification described in Subsection (2)
2964 shall include a provision that the price to the procurement unit, including profit or fee, shall be
2965 adjusted to exclude any significant sums by which the procurement unit finds that the price was
2966 increased because the contractor provided cost or pricing data that was inaccurate, incomplete,
2967 or not current as of the date specified by the procurement officer.

2968 (5) A procurement unit is not required to comply with Subsection (2) if:

2969 (a) the contract price is based on adequate price competition;

2970 (b) the contract price is based on established catalogue prices or market prices;

- 2971 (c) the contract price is set by law or rule; or
2972 (d) the procurement states, in writing:
2973 (i) that, in accordance with rules made by the applicable rulemaking authority, the
2974 requirements of Subsection (2) may be waived; and
2975 (ii) the reasons for the waiver.
2976 (6) The procurement officer or audit entity under contract with the procurement unit
2977 may, at reasonable times and places, only to the extent that the books and records relate to the
2978 applicable cost or pricing data, audit the books and records of:
2979 (a) a person who has submitted cost or pricing data pursuant to this section; or
2980 (b) a contractor or subcontractor under a contract or subcontract other than a firm fixed
2981 price contract.
2982 (7) Unless a shorter time is provided for by contract:
2983 (a) a person described in Subsection (6)(a) shall maintain the books and records
2984 described in Subsection (6) for three years after the day on which the fiscal year in which final
2985 payment is made under the contract ends;
2986 (b) a contractor shall maintain the books and records described in Subsection (6) for
2987 three years after the day on which the fiscal year in which final payment under the prime
2988 contract ends; and
2989 (c) a subcontractor shall maintain the books and records described in Subsection (6) for
2990 three years after the day on which the fiscal year in which final payment is made under the
2991 subcontract ends.
2992 Section 54. Section **63G-6a-1402** is amended to read:
2993 **63G-6a-1402. Procurement of design-build transportation project contracts.**
2994 (1) As used in this section:
2995 (a) "Design-build transportation project contract" means the procurement of both the
2996 design and construction of a transportation project in a single contract with a company or
2997 combination of companies capable of providing the necessary engineering services and
2998 construction.
2999 (b) "Transportation agency" means:
3000 (i) the Department of Transportation;
3001 (ii) a county of the first or second class, as defined in Section [17-50-501](#);

- 3002 (iii) a municipality of the first class, as defined in Section 10-2-301;
- 3003 (iv) a public transit district that has more than 200,000 people residing within its
- 3004 boundaries; and
- 3005 (v) a public airport authority.
- 3006 (2) Except as provided in Subsection (3), a transportation agency may award a
- 3007 design-build transportation project contract for any transportation project that has an estimated
- 3008 cost of at least \$50,000,000 by following the requirements of this section.
- 3009 (3) (a) The Department of Transportation:
- 3010 (i) may award a design-build transportation project contract for any transportation
- 3011 project by following the requirements of this section; and
- 3012 (ii) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative
- 3013 Rulemaking Act, establishing requirements for the procurement of its design-build
- 3014 transportation project contracts in addition to those required by this section.
- 3015 (b) A public transit district that has more than 200,000 people residing within its
- 3016 boundaries:
- 3017 (i) may award a design-build transportation project contract for any transportation
- 3018 project by following the requirements of this section; and
- 3019 (ii) shall pass ordinances or a resolution establishing requirements for the procurement
- 3020 of its design-build transportation project contracts in addition to those required by this section.
- 3021 (c) A design-build transportation project contract authorized under this Subsection (3)
- 3022 is not subject to the estimated cost threshold described in Subsection (2).
- 3023 (d) A design-build transportation project contract may include provision by the
- 3024 contractor of operations, maintenance, or financing.
- 3025 (4) (a) Before entering into a design-build transportation project contract, a
- 3026 transportation agency may issue a request for qualifications to prequalify potential contractors.
- 3027 (b) Public notice of the request for qualifications shall be given in accordance with
- 3028 board rules.
- 3029 (c) A transportation agency shall require, as part of the qualifications specified in the
- 3030 request for qualifications, that potential contractors at least demonstrate their:
- 3031 (i) construction experience;
- 3032 (ii) design experience;

3033 (iii) financial, manpower, and equipment resources available for the project; and

3034 (iv) experience in other design-build transportation projects with attributes similar to
3035 the project being procured.

3036 (d) The request for qualifications shall identify the number of eligible competing
3037 proposers that the transportation agency will select to submit a proposal, which may not be less
3038 than two.

3039 (5) The transportation agency shall:

3040 (a) evaluate the responses received from the request for qualifications;

3041 (b) select from their number those qualified to submit proposals; and

3042 (c) invite those respondents to submit proposals based upon the transportation agency's
3043 request for proposals.

3044 (6) Except as provided in Subsection (7), if the transportation agency fails to receive at
3045 least two qualified eligible competing proposals, the transportation agency shall readvertise the
3046 project.

3047 (7) A transportation agency may award a contract for a transportation project that has
3048 an estimated cost of \$5,000,000 or less to a qualified eligible proposer if:

3049 (a) only a single proposal is received; and

3050 (b) the transportation agency determines that:

3051 (i) the proposal is advantageous to the state; and

3052 (ii) the proposal price is reasonable.

3053 (8) The transportation agency shall issue a request for proposals to those qualified
3054 respondents that:

3055 (a) includes a scope of work statement constituting an information for proposal that
3056 may include:

3057 (i) preliminary design concepts;

3058 (ii) design criteria, needs, and objectives;

3059 (iii) warranty and quality control requirements;

3060 (iv) applicable standards;

3061 (v) environmental documents;

3062 (vi) constraints;

3063 (vii) time expectations or limitations;

- 3064 (viii) incentives or disincentives; and
- 3065 (ix) other special considerations;
- 3066 (b) requires submitters to provide:
- 3067 (i) a sealed cost proposal;
- 3068 (ii) a critical path matrix schedule, including cash flow requirements;
- 3069 (iii) proposal security; and
- 3070 (iv) other items required by the department for the project; and
- 3071 (c) may include award of a stipulated fee to be paid to offerors who submit
- 3072 unsuccessful proposals.
- 3073 (9) The transportation agency shall:
- 3074 (a) evaluate the submissions received in response to the request for proposals from the
- 3075 prequalified offerors;
- 3076 (b) comply with rules relating to discussion of proposals, best and final offers, and
- 3077 evaluations of the proposals submitted; and
- 3078 (c) after considering price and other identified factors, award the contract to the
- 3079 responsive and responsible offeror whose proposal is most advantageous to the transportation
- 3080 agency or the state.
- 3081 Section 55. Section **63G-6a-1502** is amended to read:
- 3082 **63G-6a-1502. Policy regarding architect-engineer services.**
- 3083 (1) It is the policy of this state to publicly announce all requirements for
- 3084 architect-engineer services through a request for statement of qualifications and to negotiate
- 3085 contracts for architect-engineer services on the basis of demonstrated competence and
- 3086 qualification for the type of services required, and at fair and reasonable prices.
- 3087 (2) Architect-engineer services shall be procured as provided in this part except as
- 3088 otherwise provided in Sections [63G-6a-403](#), [63G-6a-404](#), [63G-6a-408](#), [63G-6a-802](#), and
- 3089 [63G-6a-803](#).
- 3090 (3) This part does not affect the authority of, and does not apply to procedures
- 3091 undertaken by, a procurement unit to obtain the services of architects or engineers in the
- 3092 capacity of employees of the procurement unit.
- 3093 Section 56. Section **63G-6a-1503** is amended to read:
- 3094 **63G-6a-1503. Selection committee for architect-engineer services.**

3095 (1) In the procurement of architect-engineer services, the procurement officer or the
3096 head of an issuing procurement unit shall encourage firms engaged in the lawful practice of
3097 their profession to submit [~~annually~~] a statement of qualifications [~~and performance data~~].

3098 (2) The [~~Building Board shall be the~~] director of the Division of Facilities Construction
3099 and Management shall appoint an evaluation committee for architect-engineer services
3100 contracts under its authority.

3101 (3) An evaluation committee for architect-engineer services contracts not under the
3102 authority of the [~~Building Board~~] Division of Facilities Construction and Management shall be
3103 established in accordance with rules made by the applicable rulemaking authority.

3104 (4) An evaluation committee shall:

3105 (a) evaluate current statements of qualifications and performance data on file with the
3106 [~~state~~] procurement unit, together with those that may be submitted by other firms in response
3107 to the announcement of [~~the~~] a proposed contract;

3108 (b) consider no less than three firms; and

3109 (c) based upon criteria established and published by the issuing procurement unit,
3110 select no less than three of the firms considered to be the most highly qualified to provide the
3111 services required.

3112 Section 57. Section **63G-6a-1505** is amended to read:

3113 **63G-6a-1505. Determination of compensation for architect-engineer services.**

3114 (1) The procurement officer shall award a contract to a qualified firm at compensation
3115 that the procurement officer determines, in writing, to be fair and reasonable to the [~~state~~]
3116 procurement unit.

3117 (2) In making the determination described in Subsection (1), the procurement officer
3118 shall take into account the services':

3119 (a) estimated value;

3120 (b) scope;

3121 (c) complexity; and

3122 (d) professional nature.

3123 (3) If the procurement officer is unable to agree to a satisfactory contract with the firm
3124 first selected, at a price the procurement officer determines to be fair and reasonable to the
3125 [~~state~~] procurement unit, the procurement officer shall:

3126 (a) formally terminate discussions with that firm; and
3127 (b) undertake discussions with a second qualified firm.
3128 (4) If the procurement officer is unable to agree to a satisfactory contract with the
3129 second firm selected, at a price the procurement officer determines to be fair and reasonable to
3130 the ~~[state]~~ procurement unit, the procurement officer shall:

3131 (a) formally terminate discussions with that firm; and
3132 (b) undertake discussions with a third qualified firm.
3133 (5) If the procurement officer is unable to award a contract at a fair and reasonable
3134 price to any of the selected firms, the procurement officer shall:
3135 (a) select additional firms; and
3136 (b) continue discussions in accordance with this part until an agreement is reached.

3137 Section 58. Section **63G-6a-1602** is amended to read:

3138 **63G-6a-1602. Protest -- Time -- Authority to resolve protest.**

3139 ~~[(1) Except as provided in Subsection (2), a person who is an actual or prospective~~
3140 ~~bidder, offeror, or contractor who is aggrieved in connection with a procurement or award of a~~
3141 ~~contract may protest to the protest officer as follows:]~~

3142 ~~[(a) with respect]~~

3143 (1) (a) A protest may be filed with the protest officer by:

3144 (i) an actual or prospective bidder or offeror who is aggrieved in connection with a
3145 procurement; or

3146 (ii) a prospective contractor who is aggrieved in connection with an award of a
3147 contract.

3148 (b) (i) A protest under Subsection (1)(a) relating to an invitation for bids or a request
3149 for proposals shall be filed:

3150 [(†) (A) before the opening of bids or the closing date for proposals; or

3151 [(††) (B) if the person filing the protest did not know and should not have known of the
3152 facts giving rise to the protest before the bid opening or the closing date for proposals, within
3153 seven days after the day on which the person knows or should have known of the facts giving
3154 rise to the protest[; or].

3155 (ii) A protest under Subsection (1)(a) relating to a form of procurement not described
3156 in Subsection (1)(b)(i) but involving a deadline established for the submission of a price or

3157 response shall be filed:

3158 (A) before the deadline for the submission of a price or response; or

3159 (B) if the person filing the protest did not know and reasonably should not have known
 3160 of the facts giving rise to the protest before the deadline for the submission of a price or
 3161 response, within seven days after the day on which the person knows or reasonably should have
 3162 known of the facts giving rise to the protest.

3163 ~~[(b)]~~ (iii) [if Subsection (1)(a) does not apply,] A protest under Subsection (1)(a)
 3164 relating to a form of procurement not described in Subsection (1)(b)(i) or (ii) shall be filed
 3165 within seven days after the day on which the person filing the protest knows or should have
 3166 known of the facts giving rise to the protest.

3167 ~~[(2) A person who is debarred or suspended under this chapter may protest the~~
 3168 ~~debarment or suspension to the protest officer that ordered the debarment, as applicable, within~~
 3169 ~~seven days after the day on which the debarment or suspension is ordered.]~~

3170 ~~[(3)]~~ (2) A person who files a protest under this section shall include in the filing
 3171 document:

3172 (a) the person's address of record and email address of record; and

3173 (b) a concise statement of the grounds upon which the protest is made.

3174 ~~[(4)]~~ (3) A person described in Subsection (1)[, (2), or (3)] who fails to [timely] file a
 3175 protest [under this section] within the time prescribed in Subsection (1)(b) may not [bring a];

3176 (a) protest[;] to the protest officer a solicitation or award of a contract; or

3177 (b) file an action[;] or appeal challenging a solicitation or award of a contract[; or a
 3178 debarment or suspension;] before [the protest officer;] an appeals panel, a court, or any other
 3179 forum.

3180 ~~[(5)]~~ (4) Subject to the applicable requirements of Section 63G-10-403, a protest
 3181 officer[;] or the [protest officer's designee;] head of a procurement unit may enter into a
 3182 settlement agreement to resolve a protest.

3183 Section 59. Section **63G-6a-1603** is amended to read:

3184 **63G-6a-1603. Protest officer responsibilities and authority if protest filed --**

3185 **Decisions of protest officer to be in writing -- Effect of no writing.**

3186 (1) After a [timely] protest is filed [in accordance with Section ~~63G-6a-1602~~], the
 3187 protest officer[;] shall determine whether the protest is timely filed and complies fully with the

3188 requirements of Section 63G-6a-1602.

3189 ~~[(a) shall consider the protest; and]~~

3190 ~~[(b) may hold a hearing on the protest.]~~

3191 (2) If the protest officer determines that the protest is not timely filed or that the protest
3192 does not fully comply with Section 63G-6a-1602, the protest officer shall dismiss the protest.

3193 (3) If the protest officer determines that the protest is timely filed and complies fully
3194 with Section 63G-6a-1602, the protest officer shall:

3195 (a) dismiss the protest if the protest officer determines that the protest alleges facts that,
3196 if true, do not provide an adequate basis for the protest;

3197 (b) uphold the protest without holding a hearing if the protest officer determines that
3198 the undisputed facts of the protest indicate that the protest should be upheld; or

3199 (c) hold a hearing on the protest if there is a genuine issue of material fact that needs to
3200 be resolved in order to determine whether the protest should be upheld.

3201 ~~[(2)]~~ (4) (a) [The] If a hearing is held on a protest, the protest officer may:

3202 (i) subpoena witnesses and compel their attendance at [a] the protest hearing; [or]

3203 (ii) subpoena documents for production at [a] the protest hearing[-];

3204 (iii) obtain additional factual information; and

3205 (iv) obtain testimony from experts, the person filing the protest, representatives of the
3206 procurement unit, or others to assist the protest officer to make a decision on the protest.

3207 (b) The Rules of Evidence do not apply to a protest hearing.

3208 (c) The applicable rulemaking authority shall make rules relating to intervention in a
3209 protest, including designating:

3210 (i) who may intervene; and

3211 (ii) the time and manner of intervention.

3212 ~~[(d) [If a hearing on a protest is held under this section, the] A protest officer shall:~~

3213 (i) record [the] each hearing held on a protest under this section;

3214 ~~[(ii) preserve all evidence presented at the hearing; and]~~

3215 ~~[(iii) preserve all records and other evidence relied upon in reaching the written~~
3216 decision described in this section.]

3217 ~~[(e)]~~ (ii) [Regardless] regardless of whether a hearing on a protest is held under this
3218 section, [the protest officer shall] preserve all records and other evidence relied upon in

3219 reaching the protest officer's written decision[~~-(f) The records described in Subsections (2)(d)~~
 3220 ~~and (e) may not be destroyed~~] until the decision, and any appeal of the decision, becomes
 3221 final[~~-~~]; and

3222 (iii) submit to the procurement policy board chair a copy of the protest officer's written
 3223 decision and all records and other evidence relied upon in reaching the decision, within seven
 3224 days after receiving:

3225 (A) notice that an appeal of the protest officer's decision has been filed under Section
 3226 [63G-6a-1702](#); or

3227 (B) a request from the chair of the procurement policy board.

3228 [~~(g)~~] (e) A protest [officer who holds] officer's holding a hearing, [considers]
 3229 considering a protest, or [issues] issuing a written decision under this section does not [waive
 3230 the] affect a person's right to[~~-~~, at a] later [date,] question or challenge the protest officer's
 3231 jurisdiction to hold the hearing, consider the protest, or [render] issue the decision.

3232 (5) (a) The deliberations of a protest officer may be held in private.

3233 (b) If the protest officer is a public body, as defined in Section [52-4-103](#), the protest
 3234 officer shall comply with Section [52-4-205](#) in closing a meeting for its deliberations.

3235 [~~(3)~~] (6) (a) A protest officer, or the protest officer's designee, shall promptly issue a
 3236 written decision regarding any protest, [debarment, suspension, or contract controversy if it]
 3237 unless the protest is [not] settled by mutual agreement.

3238 (b) The decision shall:

3239 (i) state the reasons for the action taken [and];

3240 (ii) inform the protestor[~~-~~, contractor, or prospective contractor] of the right to judicial
 3241 or administrative review as provided in this chapter[~~-~~]; and

3242 (iii) indicate the amount of the security deposit or bond required under Section
 3243 [63G-6a-1703](#).

3244 (c) A person who issues a decision under Subsection (6)(a) shall mail, email, or
 3245 otherwise immediately furnish a copy of the decision to the protestor.

3246 [~~(4)(a)~~] (7) A decision described in this section is effective until stayed or reversed on
 3247 appeal, except to the extent provided in Section [63G-6a-1903](#). [A person who issues a decision
 3248 described in Subsection (1) shall mail, email, or otherwise immediately furnish a copy of the
 3249 decision to the protestor, prospective contractor, or contractor.]

3250 ~~[(b)]~~ (8) (a) A decision described in Subsection ~~[(4)]~~ (6)(a) that is issued in relation to a
 3251 procurement unit other than a legislative procurement unit ~~[or]~~, a judicial procurement unit
 3252 ~~[shall be]~~, a local government procurement unit, or a public transit district is final and
 3253 conclusive unless the protestor~~[-, prospective contractor, or contractor: (i) for a controversy~~
 3254 ~~described in Section 63G-6a-1905, commences an action in district court in accordance with~~
 3255 ~~Subsection 63G-6a-1802(5); (ii) for a controversy related to a solicitation or the award of a~~
 3256 ~~contract,]~~ files an appeal under Section 63G-6a-1702~~[-, or]~~.

3257 ~~[(iii) for a debarment or suspension, files an appeal under Section 63G-6a-1702.]~~

3258 ~~[(c)]~~ (b) A decision described in Subsection ~~[(4)]~~ (6)(a) that is issued in relation to a
 3259 legislative procurement unit ~~[or]~~, a judicial procurement unit ~~[shall be]~~, a local government
 3260 procurement unit, or a public transit district is final and conclusive unless the protestor~~[-~~
 3261 ~~prospective contractor, or contractor:]~~ files an appeal under Section 63G-6a-1802.

3262 ~~[(i) for a controversy described in Section 63G-6a-1905, commences an action in~~
 3263 ~~district court in accordance with Subsection 63G-6a-1802(5);]~~

3264 ~~[(ii) for a controversy related to a solicitation or the award of a contract, files an appeal~~
 3265 ~~under Subsection 63G-6a-1802(1)(b); or]~~

3266 ~~[(iii) for a debarment or suspension, files an appeal under Subsection~~
 3267 ~~63G-6a-1802(1)(b).]~~

3268 ~~[(5)]~~ (9) If the protest officer does not issue the written decision regarding a protest or a
 3269 contract controversy within 30 calendar days after the day on which a written request for a final
 3270 decision is filed with the protest officer, or within a longer period as may be agreed upon by the
 3271 parties, the protester, prospective contractor, or contractor may proceed as if an adverse
 3272 decision had been received.

3273 ~~[(6) Except for a controversy described in Section 63G-6a-1905, a]~~

3274 (10) A determination under this section by the protest officer regarding an issue of fact
 3275 may not be overturned on appeal unless the decision is arbitrary and capricious or clearly
 3276 erroneous.

3277 Section 60. Section 63G-6a-1702 is amended to read:

3278 **63G-6a-1702. Appeal to Utah State Procurement Policy Board -- Appointment of**
 3279 **procurement appeals panel -- Proceedings.**

3280 (1) This part applies to all procurement units other than:

- 3281 (a) a legislative procurement unit;
- 3282 (b) a judicial procurement unit;
- 3283 (c) a ~~[county or municipality]~~ local government procurement unit; or
- 3284 (d) a public transit district.
- 3285 (2) (a) ~~[A]~~ Subject to Section [63G-6a-1703](#), a party to a protest involving a
- 3286 procurement unit other than a procurement ~~[described]~~ unit listed in Subsection (1)(a), (b), (c),
- 3287 or (d) may appeal the protest decision to the board by~~[-(a)]~~ filing a written notice of appeal
- 3288 with the chair of the board within seven days after:
- 3289 (i) the day on which the written decision described in Section [63G-6a-1603](#) is:
- 3290 (A) personally served on the party or the party's representative; or
- 3291 (B) emailed or mailed to the address or email address of record provided by the party
- 3292 under Subsection [63G-6a-1602\(3\)](#); or
- 3293 (ii) the day on which the 30-day period described in Subsection [63G-6a-1603](#)~~[(5)]~~(7)
- 3294 ends, if a written decision is not issued before the end of the 30-day period~~[-]~~.
- 3295 ~~[(b) including in the filing document the person's]~~
- 3296 (b) A person appealing a debarment or suspension of a procurement unit other than a
- 3297 procurement unit listed in Subsection (1)(a), (b), (c), or (d) shall file a written notice of appeal
- 3298 with the chair of the board no later than seven days after the debarment or suspension.
- 3299 (c) A notice of appeal under Subsection (2)(a) or (b) shall:
- 3300 (i) include the address of record and email address of record of the party filing the
- 3301 notice of appeal; and
- 3302 (ii) be accompanied by a copy of any written protest decision or debarment or
- 3303 suspension order.
- 3304 ~~[(c) at the time that the notice of appeal described in Subsection (2)(a) is filed,~~
- 3305 ~~complying with the requirements of Section [63G-6a-1703](#) regarding the posting of a security~~
- 3306 ~~deposit or a bond.]~~
- 3307 (3) A person may not base an appeal of a protest under this section on a ground not
- 3308 specified in the person's protest under Section [63G-6a-1602](#).
- 3309 ~~[(3)]~~ (4) A person may not appeal from a protest described in Section [63G-6a-1602](#),
- 3310 unless:
- 3311 (a) a decision on the protest has been issued; or

3312 (b) a decision is not issued and the 30-day period described in Subsection
3313 63G-6a-1603~~[(5)]~~(7), or a longer period agreed to by the parties, has passed.

3314 ~~[(4)]~~ (5) The chair of the board or a designee of the chair who is not employed by the
3315 procurement unit responsible for the solicitation, contract award, or other action complained of:

3316 (a) shall, within seven days after the day on which the chair receives a timely written
3317 notice of appeal under Subsection (2), and if all the requirements of Subsection (2) and Section
3318 63G-6a-1703 have been met, appoint:

3319 (i) a procurement appeals panel to hear and decide the appeal, consisting of at least
3320 three individuals, each of whom ~~[shall be]~~ is:

3321 (A) a member of the board; or

3322 (B) a designee of a member appointed under Subsection (4)(a)(i)(A), if the designee is
3323 approved by the chair; and

3324 (ii) one of the members of the procurement appeals panel to be the chair of the panel;

3325 (b) may:

3326 (i) appoint the same procurement appeals panel to hear more than one appeal; or

3327 (ii) appoint a separate procurement appeals panel for each appeal; ~~[and]~~

3328 (c) may not appoint a person to a procurement appeals panel if the person is employed
3329 by the procurement unit responsible for the solicitation, contract award, or other action
3330 complained of~~[-]~~; and

3331 (d) shall, at the time the procurement appeals panel is appointed, provide appeals panel
3332 members with a copy of the protest officer's written decision and all other records and other
3333 evidence that the protest officer relied on in reaching the decision.

3334 ~~[(5)]~~ (6) A procurement appeals panel described in Subsection ~~[(4)]~~ (5) shall:

3335 (a) consist of an odd number of members;

3336 (b) ~~[except as provided in Subsection (6);]~~ conduct an informal proceeding on the
3337 appeal within 60 days after the day on which the procurement appeals panel is appointed~~[-]~~;

3338 (i) unless all parties stipulate to a later date; and

3339 (ii) subject to Subsection (8);

3340 (c) at least seven days before the proceeding, mail, email, or hand-deliver a written
3341 notice of the proceeding to the parties to the appeal; and

3342 (d) within seven days after the day on which the proceeding ends:

3343 (i) issue a written decision on the appeal; and
3344 (ii) mail, email, or hand-deliver the written decision on the appeal to the parties to the
3345 appeal and to the protest officer.

3346 (7) (a) The deliberations of a procurement appeals panel may be held in private.

3347 (b) If the procurement appeals panel is a public body, as defined in Section 52-4-103,
3348 the procurement appeals panel shall comply with Section 52-4-205 in closing a meeting for its
3349 deliberations.

3350 [~~(6)~~] (8) A procurement appeals panel may continue a procurement appeals proceeding
3351 beyond the 60-day period described in Subsection [~~(5)~~] (6)(b) if the procurement appeals panel
3352 determines that the continuance is in the interests of justice.

3353 [~~(7)~~] (9) A procurement appeals panel:

3354 (a) shall, subject to Subsection (9)(c), consider the appeal based solely on:

3355 (i) the protest decision;

3356 (ii) the record considered by the person who issued the protest decision; and

3357 (iii) if a protest hearing was held, the record of the protest hearing;

3358 (b) may not take additional evidence; [~~and~~]

3359 (c) notwithstanding Subsection (9)(b), may, during an informal hearing, ask questions
3360 and receive responses regarding the appeal, the protest decision, or the record in order to assist
3361 the panel to understand the appeal, the protest decision, and the record; and

3362 [~~(e)~~] (d) shall uphold the decision of the protest officer, unless the decision is arbitrary
3363 and capricious or clearly erroneous.

3364 [~~(8)~~] (10) If a procurement appeals panel determines that the decision of the protest
3365 officer is arbitrary and capricious or clearly erroneous, the procurement appeals panel:

3366 (a) shall remand the matter to the protest officer, to cure the problem or render a new
3367 decision;

3368 (b) may recommend action that the protest officer should take; and

3369 (c) may not order that:

3370 (i) a contract be awarded to a certain person;

3371 (ii) a contract or solicitation be cancelled; or

3372 (iii) any other action be taken other than the action described in Subsection [~~(8)~~]

3373 (10)(a).

3374 ~~[(9)]~~ (11) The board shall make rules relating to the conduct of an appeals proceeding,
 3375 including rules that provide for:

3376 (a) expedited proceedings; and

3377 (b) electronic participation in the proceedings by panel members and participants.

3378 ~~[(10)]~~ (12) The Rules of Evidence do not apply to an appeals proceeding.

3379 Section 61. Section **63G-6a-1703** is amended to read:

3380 **63G-6a-1703. Requirement to post a security deposit or bond -- Exceptions --**
 3381 **Forfeiture of security deposit or bond.**

3382 (1) Except as provided by rule made under Subsection (2)(a), a person who files ~~[an]~~ a
 3383 notice of appeal under Section 63G-6a-1702 shall, ~~[at the time that the appeal is filed]~~ before
 3384 the expiration of the time provided under Subsection 63G-6a-1702(2) for filing a notice of
 3385 appeal, pay a security deposit or post a bond with the office of the protest officer ~~[in an amount~~
 3386 ~~that is the greater of:].~~

3387 ~~[(a) for the appeal of a debarment or suspension, \$1,000;]~~

3388 ~~[(b) for any type of procurement, \$1,000;]~~

3389 ~~[(c) for an invitation for bids, 5% of:]~~

3390 (2) The amount of a security deposit or bond required under Subsection (1) is:

3391 (a) for an appeal relating to an invitation for bids or request for proposals and except as
 3392 provided in Subsection (2)(b)(ii):

3393 (i) \$20,000, if the total contract value is under \$500,000;

3394 (ii) \$25,000, if the total contract value is \$500,000 or more but less than \$1,000,000;

3395 (iii) \$50,000, if the total contract value is \$1,000,000 or more but less than \$2,000,000;

3396 (iv) \$95,000, if the total contract value is \$2,000,000 or more but less than \$4,000,000;

3397 (v) \$180,000, if the total contract value is \$4,000,000 or more but less than \$8,000,000;

3398 (vi) \$320,000, if the total contract value is \$8,000,000 or more but less than
 3399 \$16,000,000;

3400 (vii) \$600,000, if the total contract value is \$16,000,000 or more but less than
 3401 \$32,000,000;

3402 (viii) \$1,100,000, if the total contract value is \$32,000,000 or more but less than
 3403 \$64,000,000;

3404 (ix) \$1,900,000, if the total contract value is \$64,000,000 or more but less than

3405 \$128,000,000;
3406 (x) \$3,500,000, if the total contract value is \$128,000,000 or more but less than
3407 \$256,000,000;
3408 (xi) \$6,400,000, if the total contract value is \$256,000,000 or more but less than
3409 \$512,000,000; and
3410 (xii) \$10,200,000, if the total contract value is \$512,000,000 or more; or
3411 (b) \$20,000, for an appeal:
3412 (i) relating to any type of procurement process other than an invitation for bids or
3413 request for proposals;
3414 (ii) relating to an invitation for bids or request for proposals, if the estimated total
3415 contract value cannot be determined; or
3416 (iii) of a debarment or suspension.
3417 (3) (a) For an appeal relating to an invitation for bids, the estimated total contract value
3418 shall be based on:
3419 (i) the lowest responsible and responsive bid amount for the entire term of the contract,
3420 excluding any renewal period, if the bid opening has occurred; [or]
3421 [(ii) the estimated contract cost, established in accordance with Subsection (2)(b), if the
3422 bid opening has not yet occurred;]
3423 [(d) for a request for proposals, 5% of;]
3424 (ii) the total budget for the procurement item for the entire term of the contract,
3425 excluding any renewal period, if bids are based on unit or rate pricing; or
3426 (iii) if the contract is being rebid, the historical usage and amount spent on the contract
3427 over the life of the contract.
3428 (b) For an appeal relating to a request for proposals, the estimated total contract value
3429 shall be based on:
3430 (i) the lowest cost proposed in a response to a request for proposals, considering the
3431 entire term of the contract, excluding any renewal period, if the opening of proposals has
3432 occurred; [or]
3433 [(ii) the estimated contract cost, established in accordance with Subsection (2)(b), if the
3434 opening of proposals has not occurred; or]
3435 [(e) for a type of procurement other than an invitation for bids or a request for

3436 proposals, the amount established in accordance with Subsection (2).]

3437 [~~(2) The board shall make rules, in accordance with Title 63G, Chapter 3, Utah~~

3438 ~~Administrative Rulemaking Act, that establish:~~]

3439 [~~(a) circumstances and procedures under which the requirement for paying a security~~

3440 ~~deposit or posting a bond may be waived or reduced on grounds, including:~~]

3441 [~~(i) that the person filing the appeal is impecunious;~~]

3442 [~~(ii) circumstances where certain small purchases are involved; or~~]

3443 [~~(iii) other grounds determined by the Division of Purchasing and General Services to~~

3444 ~~be appropriate; and~~]

3445 [~~(b) the method used to determine:~~]

3446 [~~(i) the estimated contract cost described in Subsections (1)(c)(ii) and (1)(d)(ii); and~~]

3447 [~~(ii) the amount described in Subsection (1)(e).~~]

3448 [~~(3) The chair of the board shall dismiss a protest filed under Section [63G-6a-1702](#) if~~

3449 ~~the actual or prospective bidder, offeror, or contractor fails to timely pay the security deposit or~~

3450 ~~post the bond required under Subsection (1).~~]

3451 (ii) the total budget for the procurement item over the entire term of the contract,

3452 excluding any renewal period, if opened cost proposals are based on unit or rate pricing, or

3453 (iii) if the contract is being reissued, the historical usage and amount spent on the

3454 contract over the life of the contract that is being reissued.

3455 (4) The [~~chair of the board~~] protest officer shall:

3456 (a) retain the security deposit or bond until the protest and any appeal of the protest

3457 decision is final;

3458 (b) as it relates to a security deposit:

3459 (i) deposit the security deposit into an interest-bearing account; and

3460 (ii) after any appeal of the protest decision becomes final, return the security deposit

3461 and the interest it accrues to the person who paid the security deposit, unless the security

3462 deposit is forfeited to the General Fund under Subsection (5); and

3463 (c) as it relates to a bond:

3464 (i) retain the bond until the protest and any appeal of the protest decision becomes

3465 final; and

3466 (ii) after the protest and any appeal of the protest decision becomes final, return the

3467 bond to the person who posted the bond, unless the bond is forfeited to the General Fund under
3468 Subsection (5).

3469 (5) A security deposit that is paid, or a bond that is posted, under this section shall
3470 forfeit to the General Fund if:

3471 (a) the person who paid the security deposit or posted the bond fails to ultimately
3472 prevail on appeal; and

3473 (b) the procurement appeals panel finds that the protest or appeal is frivolous or that its
3474 primary purpose is to harass or cause a delay.

3475 Section 62. Section **63G-6a-1706** is amended to read:

3476 **63G-6a-1706. Dismissal of an appeal not filed in compliance with requirements.**

3477 (1) The chair of the board shall dismiss an appeal filed under Section [63G-6a-1702](#) if
3478 the person filing the appeal fails to comply with any of the requirements of Subsection
3479 [63G-6a-1702](#)(2) or Section [63G-6a-1703](#).

3480 (2) A procurement appeals panel may dismiss an appeal that is assigned to the
3481 procurement appeals panel if the appeal is not filed in accordance with the requirements of this
3482 chapter.

3483 Section 63. Section **63G-6a-1802** is amended to read:

3484 **63G-6a-1802. Appeal to Utah Court of Appeals -- Jurisdiction of district court.**

3485 [~~(1) (a) Subject to Subsection (2), a person who receives an adverse decision, or a~~
3486 ~~procurement unit, may appeal a decision of a procurement appeals panel to the Utah Court of~~
3487 ~~Appeals within seven days after the day on which the decision is issued.]~~

3488 [~~(b) A person who receives an adverse decision in a protest relating to a legislative~~
3489 ~~procurement unit, a judicial procurement unit, a local government procurement unit, or a public~~
3490 ~~transit district may appeal the decision to the Utah Court of Appeals within seven days after the~~
3491 ~~day on which the decision is issued.]~~

3492 (1) (a) As provided in this part:

3493 (i) a person may appeal a dismissal of an appeal by the board chair under Subsection
3494 [63G-6a-1706](#)(1);

3495 (ii) a person who receives an adverse decision by a procurement appeals panel may
3496 appeal that decision;

3497 (iii) subject to Subsection (2), a procurement unit, other than a legislative procurement

3498 unit, a judicial procurement unit, a local government procurement unit, or a public transit
3499 district, may appeal an adverse decision by a procurement appeals panel;

3500 (iv) a person who receives an adverse decision in a protest relating to a legislative
3501 procurement unit, a judicial procurement unit, a local government procurement unit, or a public
3502 transit district may appeal that decision; and

3503 (v) a person who is debarred or suspended under Section 63G-6a-904 by a legislative
3504 procurement unit, a judicial procurement unit, a local government procurement unit, or a public
3505 transit district may appeal the debarment or suspension.

3506 (b) A person seeking to appeal a dismissal, decision, or debarment or suspension under
3507 Subsection (1)(a) shall file a notice of appeal with the Utah Court of Appeals within seven days
3508 after the dismissal, decision, or debarment or suspension.

3509 (2) A procurement unit may not appeal the decision of a procurement appeals panel,
3510 unless the appeal is:

3511 (a) recommended by the protest officer involved; and

3512 (b) except for a procurement unit that is not represented by the attorney general's
3513 office, approved by the attorney general.

3514 (3) A person appealing a dismissal, decision, protest, debarment, or suspension under
3515 this section may not base the appeal on a ground not specified in the proceeding from which
3516 the appeal is taken.

3517 [~~3~~] (4) The Utah Court of Appeals:

3518 (a) shall consider the appeal as an appellate court;

3519 (b) may not hear the matter as a trial de novo; and

3520 (c) may not overturn a finding [~~or~~], dismissal, decision [~~of the protest officer or a~~
3521 procurement appeals panel], or debarment or suspension, unless the finding [~~or~~], dismissal,
3522 decision, or debarment or suspension is arbitrary and capricious or clearly erroneous.

3523 [~~4~~] (5) The Utah Court of Appeals is encouraged to:

3524 (a) give an appeal made under [~~Subsection (1)~~] this section priority; and

3525 (b) consider the appeal and render a decision in an expeditious manner.

3526 [~~5~~] ~~The district court shall have original jurisdiction in a cause of action between a~~
3527 ~~contractor and a procurement unit for any cause of action that arises under, or in relation to, an~~
3528 ~~existing contract between the contractor and a procurement unit.]~~

3529 Section 64. Section **63G-6a-1902** is amended to read:

3530 **63G-6a-1902. Requirement to exhaust administrative remedies -- Protests and**
 3531 **appeals.**

3532 (1) A person may not challenge a procurement, a procurement process, the award of a
 3533 contract relating to a procurement, a debarment, or a suspension, in a court, before an
 3534 administrative officer or body, or in any other forum other than the forum permitted in this
 3535 chapter.

3536 (2) A person who desires to challenge a procurement, a procurement process, the award
 3537 of a contract relating to a procurement, a debarment, or a suspension, shall bring the challenge,
 3538 in accordance with the requirements of this chapter~~[, by timely filing:].~~

3539 ~~[(a) a protest in accordance with Section 63G-6a-1602;]~~

3540 ~~[(b) any appeal of the protest decision involving a procurement unit, other than a~~
 3541 ~~legislative procurement unit, a judicial procurement unit, a local government procurement unit,~~
 3542 ~~or a public transit district, in accordance with Section 63G-6a-1702; and]~~

3543 ~~[(c) any appeal from a procurement appeals panel, or from a protest decision of a~~
 3544 ~~legislative procurement unit, a judicial procurement unit, a local government procurement unit,~~
 3545 ~~or a public transit district, in accordance with Section 63G-6a-1802.]~~

3546 ~~[(3) A person who files a protest or appeal under this chapter is limited to protesting or~~
 3547 ~~appealing on the grounds specified in the filing document described in Subsection~~
 3548 ~~63G-6a-1602.]~~

3549 ~~[(4)]~~ (3) In hearing a protest or an appeal under this chapter relating to an expenditure
 3550 of federal assistance, federal contract funds, or a federal grant, the person who hears the appeal
 3551 shall ensure compliance with federal law and regulations relating to the expenditure.

3552 Section 65. Section **63G-6a-1903** is amended to read:

3553 **63G-6a-1903. Effect of timely protest or appeal.**

3554 ~~[In the event of a timely protest under Subsection 63G-6a-1602(1), or a timely appeal of~~
 3555 ~~the protest under Section 63G-6a-1702 or 63G-6a-1802, a]~~

3556 A procurement unit, other than a legislative procurement unit, a judicial procurement
 3557 unit, a local government procurement unit, or a public transit district, may not proceed further
 3558 with ~~[the]~~ a solicitation or with the award of ~~[the]~~ a contract ~~[until]~~:

3559 (1) during the pendency of a timely:

3560 (a) protest under Subsection [63G-6a-1602\(1\)](#);
3561 (b) appeal of a protest under Section [63G-6a-1702](#); or
3562 (c) appeal of a procurement appeals panel decision under Section [63G-6a-1802](#); and
3563 (2) until:

3564 [(1)] (a) all administrative and judicial remedies are exhausted;
3565 [(2)] (b) for a protest under Section [63G-6a-1602](#) or an appeal under Section
3566 [63G-6a-1702](#):

3567 [(a)] (i) the chief procurement officer, after consultation with the attorney general's
3568 office and the head of the using agency, makes a written determination that award of the
3569 contract without delay is [~~necessary to protect substantial interests~~] in the best interest of the
3570 procurement unit or the state;

3571 [(b)] (ii) the head of [~~the purchasing agency~~] a procurement unit with independent
3572 procurement authority, after consultation with the procurement unit's attorney [~~general's office~~],
3573 makes a written determination that award of the contract without delay is [~~necessary to protect~~
3574 ~~substantial interests~~] in the best interest of the procurement unit or the state; or

3575 [(c)] (iii) for a procurement unit that is not represented by the attorney general's office,
3576 the procurement unit, after consulting with the attorney for the procurement unit, makes a
3577 written determination that award of the contract without delay is [~~necessary to protect~~
3578 ~~substantial interests~~] in the best interest of the procurement unit or the state; or

3579 [(3)] (c) for an appeal under Section [63G-6a-1802](#), or an appeal to a higher court than
3580 district court:

3581 [(a)] (i) the chief procurement officer, after consultation with the attorney general's
3582 office and the head of the using agency, makes a written determination that award of the
3583 contract without delay is in the best interest of the procurement unit or the state;

3584 [(b)] (ii) the head of [~~the purchasing agency~~] a procurement unit with independent
3585 procurement authority, after consultation with the procurement unit's attorney [~~general's office~~],
3586 makes a written determination that award of the contract without delay is in the best interest of
3587 the procurement unit or the state; or

3588 [(c)] (iii) for a procurement unit that is not represented by the attorney general's office,
3589 the procurement unit, after consulting with the attorney for the procurement unit, makes a
3590 written determination that award of the contract without delay is necessary to protect the best

3591 interest of the procurement unit or the state.

3592 Section 66. Section **63G-6a-1904** is amended to read:

3593 **63G-6a-1904. Costs to or against protestor.**

3594 (1) When a protest is sustained administratively or upon administrative or judicial
3595 review and the protesting bidder or offeror should have been awarded the contract under the
3596 solicitation but is not, the protestor shall be entitled to the following relief as a claim against
3597 the [state] procurement unit:

3598 (a) the reasonable costs incurred in connection with the solicitation, including bid
3599 preparation and appeal costs; and

3600 (b) any equitable relief determined to be appropriate by the reviewing administrative or
3601 judicial body.

3602 (2) When a protest is not sustained by a procurement appeals panel, the protestor shall
3603 reimburse the issuing procurement unit for expenses incurred in defending the appeal,
3604 including personnel costs, attorney fees, other legal costs, expenses incurred by the attorney
3605 general's office, the per diem and expenses paid by the issuing procurement unit to witnesses or
3606 appeals panel members, and any additional expenses incurred by the staff of the issuing
3607 procurement unit who have provided materials and administrative services to the procurement
3608 appeals panel for that case.

3609 (3) The provisions of Title 63G, Chapter 7, Part 4, Notice of Claim Against a
3610 Governmental Entity or a Government Employee, and Section **63G-7-601** do not apply to
3611 actions brought under this chapter by an aggrieved party for equitable relief or reasonable costs
3612 incurred in preparing or appealing an unsuccessful bid or offer.

3613 Section 67. Section **63G-6a-1906** is amended to read:

3614 **63G-6a-1906. Effect of prior determination by agents of procurement unit.**

3615 In any judicial action under Section **63G-6a-1802**, determinations by employees, agents,
3616 or other persons appointed by the [state] procurement unit shall be final and conclusive only as
3617 provided in Sections **63G-6a-1911**, **63G-6a-1603**, and **63G-6a-1705**.

3618 Section 68. Section **63G-6a-1907** is amended to read:

3619 **63G-6a-1907. Effect of violation found after award of contract.**

3620 (1) If after award of a contract it is determined administratively or upon administrative
3621 or judicial review that a procurement or award of a contract is in violation of law:

3622 (a) (i) if the person awarded the contract did not act fraudulently or in bad faith:

3623 (A) the contract may be ratified and affirmed if it is in the best interests of the [state]

3624 procurement unit; or

3625 (B) the contract may be terminated; and

3626 (ii) the person awarded the contract shall be compensated for the actual expenses

3627 reasonably incurred under the contract before the termination, plus a reasonable profit; or

3628 (b) if the person awarded the contract acted fraudulently or in bad faith:

3629 (i) the contract may be declared null and void; or

3630 (ii) the contract may be ratified and affirmed if it is in the best interests of the [state]

3631 procurement unit, without prejudice to the [state's] procurement unit's rights to any appropriate

3632 damages.

3633 (2) Under no circumstances is a person entitled to consequential damages in relation to

3634 a solicitation or award of a contract under this chapter, including consequential damages for

3635 lost profits, loss of business opportunities, or damage to reputation.

3636 Section 69. Section **63G-6a-1910** is amended to read:

3637 **63G-6a-1910. Interest rates.**

3638 (1) In controversies between [~~the state~~] a procurement unit and [~~contractors~~] a

3639 contractor under this chapter, interest on amounts ultimately determined to be due to a

3640 contractor or the [state] procurement unit are payable at the rate applicable to judgments from

3641 the date the claim arose through the date of decision or judgment, whichever is later.

3642 (2) Unless otherwise specified in a lawful contract between a procurement unit and the

3643 person making a bond claim against the procurement unit, the interest rate applicable to the

3644 bond claim is the rate described in Subsection 15-1-1(2).

3645 (3) This section does not apply to public assistance benefits programs.

3646 Section 70. Section **63G-6a-2103** is amended to read:

3647 **63G-6a-2103. Purchases between procurement units.**

3648 (1) [~~Upon request, a~~] (a) A procurement unit may [~~make services available to~~],

3649 without using a standard procurement process, purchase from another procurement unit;

3650 including;] a procurement item that the other procurement unit itself produces or provides.

3651 [~~(a) standard forms;~~]

3652 [~~(b) printed manuals;~~]

3653 ~~[(c) qualified products lists;]~~
 3654 ~~[(d) source information;]~~
 3655 ~~[(e) common use commodities listings;]~~
 3656 ~~[(f) supplier prequalification information;]~~
 3657 ~~[(g) supplier performance ratings;]~~
 3658 ~~[(h) debarred and suspended bidders lists;]~~
 3659 ~~[(i) forms for invitation for bids, requests for proposals, instructions to bidders, general~~
 3660 ~~contract provisions, and contract forms; or]~~
 3661 ~~[(j) contracts or published summaries of contracts, including price and time of delivery~~
 3662 ~~information.]~~
 3663 ~~[(2) A procurement unit may provide technical services to another procurement unit,~~
 3664 ~~including:]~~
 3665 ~~[(a) development of specifications;]~~
 3666 ~~[(b) development of quality assurance test methods, including receiving, inspection,~~
 3667 ~~and acceptance procedures;]~~
 3668 ~~[(c) use of testing and inspection facilities; or]~~
 3669 ~~[(d) use of personnel training programs.]~~
 3670 ~~[(3) Procurement units may enter into contractual arrangements and]~~
 3671 (b) (i) Subsection (1)(a) does not authorize a procurement unit to obtain a procurement
 3672 item under a contract of another procurement unit.
 3673 (ii) Subsection (1)(b)(i) does not affect the authority of a procurement unit relating to a
 3674 cooperative procurement under Subsection [63G-6a-2105\(4\)\(b\)](#).
 3675 (2) A procurement unit may publish a schedule of costs or fees for [the services
 3676 provided under Subsections (1) and (2)] procurement items available for purchase by another
 3677 procurement unit.
 3678 Section 71. Section **63G-6a-2105** is amended to read:
 3679 **63G-6a-2105. Participation of a public entity or a procurement unit in**
 3680 **agreements or contracts of procurement units -- Cooperative purchasing -- State**
 3681 **cooperative contracts.**
 3682 (1) The chief procurement officer may, in accordance with the requirements of this
 3683 chapter, enter into a cooperative procurement, and a contract that is awarded as a result of a

3684 cooperative procurement, with:

3685 (a) another state;

3686 [~~(b) an external procurement unit; or~~]

3687 (b) a cooperative purchasing organization; or

3688 (c) a public entity [~~in Utah~~] inside or outside [of Utah] the state.

3689 (2) A public entity, nonprofit organization, or, as permitted under federal law, an

3690 agency of the federal government, may obtain a procurement item from a state cooperative

3691 contract or a contract awarded by the chief procurement officer under Subsection (1), without

3692 signing a participating addendum if the [~~quote, invitation for bids, or request for proposals~~

3693 ~~used~~] solicitation issued by the chief procurement officer to obtain the contract includes a

3694 statement indicating that the resulting contract will be issued [~~on behalf of a~~] for the benefit of

3695 public [~~entity in Utah~~] entities and, as applicable, nonprofit organizations and agencies of the

3696 federal government.

3697 (3) Except as provided in Section [63G-6a-408](#), or as otherwise provided in this chapter,

3698 an executive branch procurement unit may not obtain a procurement item from a source other

3699 than a state cooperative contract or a contract awarded by the chief procurement officer under

3700 Subsection (1), if the procurement item is available under a state cooperative contract or a

3701 contract awarded by the chief procurement officer under Subsection (1).

3702 (4) A Utah procurement unit may:

3703 (a) contract with the federal government without going through a standard procurement

3704 process or an exception to a standard procurement process, described in Part 8, Exceptions to

3705 Procurement Requirements, if the procurement item obtained under the contract is provided:

3706 (i) directly by the federal government and not by a person contracting with the federal

3707 government; or

3708 (ii) by a person under contract with the federal government that obtained the contract in

3709 a manner that substantially complies with the provisions of this chapter;

3710 (b) participate in, sponsor, conduct, or administer a cooperative procurement with

3711 another Utah procurement unit or another public entity in Utah, if:

3712 (i) each party unit involved in the cooperative procurement enters into an agreement

3713 describing the rights and duties of each party;

3714 (ii) the procurement is conducted, and the contract awarded, in accordance with the

3715 requirements of this chapter;

3716 (iii) the [~~request for quotes, the invitation for bids, or the request for proposals~~]

3717 solicitation:

3718 (A) clearly indicates that the procurement is a cooperative procurement; and

3719 (B) identifies each party that may purchase under the resulting contract; and

3720 (iv) each party involved in the cooperative procurement signs a participating addendum
3721 describing its rights and obligations in relation to the resulting contract; or

3722 (c) purchase under, or otherwise participate in, an agreement or contract of [~~an external~~
3723 procurement unit] a cooperative purchasing organization, if:

3724 (i) each party involved in the cooperative procurement enters into an agreement
3725 describing the rights and duties of each party;

3726 (ii) the procurement was conducted in accordance with the requirements of this
3727 chapter;

3728 (iii) the [~~request for quotes, the invitation for bids, or the request for proposals~~]

3729 solicitation:

3730 (A) clearly indicates that the procurement is a cooperative procurement; and

3731 (B) identifies each party that may purchase under the resulting contract; and

3732 (iv) each party involved in the cooperative procurement signs a participating addendum
3733 describing its rights and obligations in relation to the resulting contract.

3734 (5) A procurement unit may not obtain a procurement item under a contract that results
3735 from a cooperative procurement described in Subsection (4), if the procurement unit:

3736 (a) is not identified under Subsection (4)(b)(iii)(B) or (4)(c)(iii)(B); or

3737 (b) does not sign a participating addendum to the contract as required by this section.

3738 (6) A procurement unit, other than a legislative procurement unit or a judicial
3739 procurement unit, may not obtain a procurement item under a contract held by the United
3740 States General Services Administration, unless, based upon documentation provided by the
3741 procurement unit, the Director of the State Division of Purchasing and General Services
3742 determines in writing that the United States General Services Administration procured the
3743 contract in a manner that substantially complies with the provisions of this chapter.

3744 (7) (a) As used in this Subsection (7), "regional solicitation" means a solicitation issued
3745 by the chief procurement officer for the procurement of a procurement item within a specified

3746 geographical region of the state.

3747 (b) In addition to any other duty or authority under this section, the chief procurement
3748 officer shall:

3749 (i) after considering board recommendations, develop a plan for issuing regional
3750 solicitations;

3751 (ii) present the plan to the Government Operations Interim Committee by September 1,
3752 2014; and

3753 (iii) after developing a plan, issue regional solicitations for procurement items in
3754 accordance with the plan and this chapter..

3755 (c) A plan under Subsection (7)(b) shall:

3756 (i) define the proposed regional boundaries for regional solicitations;

3757 (ii) specify the types of procurement items for which a regional solicitation may be
3758 issued; and

3759 (iii) identify the regional solicitations that the chief procurement officer plans to issue.

3760 (d) A regional solicitation shall require that a person responding to the solicitation offer
3761 similar warranties and submit to similar obligations as are standard under other state
3762 cooperative contracts.

3763 (e) A procurement item that is available under a state cooperative contract may not be
3764 provided under a contract pursuant to a regional solicitation until after the expiration of the
3765 state cooperative contract.

3766 Section 72. Section **63G-6a-2401** is enacted to read:

3767 **Part 24. Unlawful Conduct and Penalties**

3768 **63G-6a-2401. Title.**

3769 This part is known as "Unlawful Conduct and Penalties."

3770 Section 73. Section **63G-6a-2402** is enacted to read:

3771 **63G-6a-2402. Definitions.**

3772 As used in this part:

3773 (1) "Contract administration professional":

3774 (a) means an individual who:

3775 (i) is:

3776 (A) directly under contract with a procurement unit; or

- 3777 (B) employed by a person under contract with a procurement unit;
3778 (ii) has responsibility in:
3779 (A) developing a solicitation or grant, or conducting the procurement process; or
3780 (B) supervising or overseeing the administration or management of a contract or grant;
3781 and
3782 (b) does not include an employee of the procurement unit.
3783 (2) "Contribution":
3784 (a) means a voluntary gift or donation of money, service, or anything else of value, to a
3785 public entity for the public entity's use and not for the primary use of an individual employed
3786 by the public entity; and
3787 (b) includes:
3788 (i) a philanthropic donation;
3789 (ii) admission to a seminar, vendor fair, charitable event, fundraising event, or similar
3790 event that relates to the function of the public entity;
3791 (iii) the purchase of a booth or other display space at an event sponsored by the public
3792 entity or a group of which the public entity is a member; and
3793 (iv) the sponsorship of an event that is organized by the public entity.
3794 (3) "Family member" means a father, mother, husband, wife, son, daughter, sister,
3795 brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law,
3796 sister-in-law, son-in-law, or daughter-in-law.
3797 (4) "Governing body" means an administrative, advisory, executive, or legislative body
3798 of a public entity.
3799 (5) "Gratuity":
3800 (a) means anything of value given:
3801 (i) without anything provided in exchange; or
3802 (ii) in excess of the market value of that which is provided in exchange;
3803 (b) includes:
3804 (i) a gift or favor;
3805 (ii) money;
3806 (iii) a loan at an interest rate below the market rate or with terms that are more
3807 advantageous to the borrower than terms offered generally on the market;

3808 (iv) anything of value provided with an award, other than a certificate, plaque, or
3809 trophy;
3810 (v) employment;
3811 (vi) admission to an event;
3812 (vii) a meal, lodging, or travel;
3813 (viii) entertainment for which a charge is normally made; and
3814 (ix) a raffle, drawing for a prize, or lottery; and
3815 (c) does not include:
3816 (i) an item, including a meal in association with a training seminar, that is:
3817 (A) included in a contract or grant; or
3818 (B) provided in the proper performance of a requirement of a contract or grant;
3819 (ii) an item requested to evaluate properly the award of a contract or grant;
3820 (iii) a rebate, coupon, discount, airline travel award, dividend, or other offering
3821 included in the price of a procurement item;
3822 (iv) a meal provided by an organization or association, including a professional or
3823 educational association, an association of vendors, or an association composed of public
3824 agencies or public entities, that does not, as an organization or association, respond to
3825 solicitations;
3826 (v) a product sample submitted to a public entity to assist the public entity to evaluate a
3827 solicitation;
3828 (vi) a political campaign contribution;
3829 (vii) an item generally available to the public; or
3830 (viii) anything of value that one public agency provides to another public agency.
3831 (6) "Hospitality gift":
3832 (a) means a token gift of minimal value, including a pen, pencil, stationery, toy, pin,
3833 trinket, snack, beverage, or appetizer, given for promotional or hospitality purposes; and
3834 (b) does not include money, a meal, admission to an event for which a charge is
3835 normally made, entertainment for which a charge is normally made, travel, or lodging.
3836 (7) "Kickback":
3837 (a) means a negotiated bribe provided in connection with a procurement or the
3838 administration of a contract or grant; and

- 3839 (b) does not include anything listed in Subsection (5)(c).
- 3840 (8) "Procurement" has the same meaning as defined in Section [63G-6a-103](#), but also
- 3841 includes the awarding of a grant.
- 3842 (9) "Procurement professional":
- 3843 (a) means an individual who is an employee, and not an independent contractor, of a
- 3844 procurement unit, and who, by title or primary responsibility:
- 3845 (i) has procurement decision making authority; and
- 3846 (ii) is assigned to be engaged in, or is engaged in:
- 3847 (A) the procurement process; or
- 3848 (B) the process of administering a contract or grant, including enforcing contract or
- 3849 grant compliance, approving contract or grant payments, or approving contract or grant change
- 3850 orders or amendments; and
- 3851 (b) excludes:
- 3852 (i) any individual who, by title or primary responsibility, does not have procurement
- 3853 decision making authority;
- 3854 (ii) an individual holding an elective office;
- 3855 (iii) a member of a governing body;
- 3856 (iv) a chief executive of a public entity or a chief assistant or deputy of the chief
- 3857 executive, if the chief executive, chief assistant, or deputy, respectively, has a variety of duties
- 3858 and responsibilities beyond the management of the procurement process or the contract or grant
- 3859 administration process;
- 3860 (v) the superintendent, business administrator, principal, or vice principal of a school
- 3861 district or charter school, or the chief assistant or deputy of the superintendent, business
- 3862 administrator, principal, or vice principal;
- 3863 (vi) a university or college president, vice president, business administrator, or dean;
- 3864 (vii) a chief executive of a local district, as defined in Section [17B-1-102](#), a special
- 3865 service district, as defined in Section [17D-1-102](#), or a political subdivision created under Title
- 3866 11, Chapter 13, Interlocal Cooperation Act;
- 3867 (viii) an employee of a public entity with:
- 3868 (A) an annual budget of \$1,000,000 or less; or
- 3869 (B) no more than four full-time employees; and

3870 (ix) an executive director or director of an executive branch procurement unit who:

3871 (A) by title or primary responsibility, does not have procurement decision making

3872 authority; and

3873 (B) is not assigned to engage in, and is not engaged in, the procurement process.

3874 (10) "Public agency" has the same meaning as defined in Section 11-13-103, but also

3875 includes all officials, employees, and official representatives of a public agency, as defined in

3876 Section 11-13-103.

3877 Section 74. Section **63G-6a-2403** is enacted to read:

3878 **63G-6a-2403. Applicability.**

3879 (1) This part applies to each public entity.

3880 (2) A procurement professional is subject to this part at all times during:

3881 (a) the procurement process; and

3882 (b) the administration of a contract or grant.

3883 (3) A contract administration professional is subject to this part at all times during the

3884 period the contract administration professional is:

3885 (a) under contract with a procurement unit; and

3886 (b) involved in:

3887 (i) the procurement process; or

3888 (ii) the administration of a contract or grant.

3889 (4) This part does not apply to:

3890 (a) an individual described in Subsection 63G-6a-2402(9)(b); or

3891 (b) any individual other than a procurement professional or contract administration

3892 professional.

3893 (5) The other subsections of this section do not affect the applicability or effect of any

3894 other ethics, bribery, or other law.

3895 Section 75. Section **63G-6a-2404** is enacted to read:

3896 **63G-6a-2404. Unlawful conduct -- Exceptions -- Classification of offenses.**

3897 (1) (a) It is unlawful for a person who has or is seeking a contract with or a grant from

3898 a public entity knowingly to give, or offer, promise, or pledge to give, a gratuity or kickback to:

3899 (i) the public entity;

3900 (ii) a procurement professional or contract administration professional; or

3901 (iii) an individual who the person knows is a family member of an individual described
3902 in Subsection (1)(a)(ii).

3903 (b) It is not unlawful for a public agency to give, offer, promise, or pledge to give a
3904 contribution to another public agency.

3905 (c) A person is not guilty of unlawful conduct under Subsection (1)(a) for:

3906 (i) giving or offering, promising, or pledging to give a contribution to a public entity,
3907 unless done with the intent to induce the public entity, in exchange, to:

3908 (A) award a contract or grant;

3909 (B) make a procurement decision; or

3910 (C) take an action relating to the administration of a contract or grant; or

3911 (ii) giving or offering, promising, or pledging to give something of value to an
3912 organization to which a procurement professional or contract administration professional

3913 belongs, unless done with the intent to induce a public entity, in exchange, to:

3914 (A) award a contract or grant;

3915 (B) make a procurement decision; or

3916 (C) take an action relating to the administration of a contract or grant.

3917 (2) (a) It is unlawful for a procurement professional or contract administration
3918 professional, or a family member of either, knowingly to receive or accept, offer or agree to
3919 receive or accept, or ask for a promise or pledge of, a gratuity or kickback from a person who
3920 has or is seeking a contract with or a grant from a public entity.

3921 (b) An individual is not guilty of unlawful conduct under Subsection (2)(a) for
3922 receiving or accepting, offering or agreeing to receive or accept, or asking for a promise or
3923 pledge of a contribution on behalf of a public entity, unless done with the intent that the public
3924 entity, in exchange:

3925 (i) award a contract or grant;

3926 (ii) make a procurement decision; or

3927 (iii) take an action relating to the administration of a contract or grant.

3928 (3) Notwithstanding Subsections (1) and (2), it is not unlawful for a person to give or
3929 receive, offer to give or receive, or promise or pledge to give or ask for a promise or pledge of,
3930 a hospitality gift, if:

3931 (a) the total value of the hospitality gift is less than \$10; and

3932 (b) the aggregate value of all hospitality gifts from the person to the recipient in a
3933 calendar year is less than \$50.

3934 (4) A person who engages in the conduct made unlawful under Subsection (1) or (2) is
3935 guilty of:

3936 (a) a second degree felony, if the total value of the gratuity or kickback is \$1,000 or
3937 more;

3938 (b) a third degree felony, if the total value of the gratuity or kickback is \$250 or more
3939 but less than \$1,000;

3940 (c) a class A misdemeanor, if the total value of the gratuity or kickback is \$100 or more
3941 but less than \$250; and

3942 (d) a class B misdemeanor, if the total value of the gratuity or kickback is less than
3943 \$100.

3944 (5) The criminal sanctions described in Subsection (4) do not preclude the imposition
3945 of other penalties for conduct made unlawful under this part, in accordance with other
3946 applicable law, including:

3947 (a) dismissal from employment or other disciplinary action;

3948 (b) for an elected officer listed in Section [77-6-1](#), removal from office as provided in
3949 Title 77, Chapter 6, Removal by Judicial Proceedings;

3950 (c) requiring the public officer or employee to return the value of the unlawful gratuity
3951 or kickback; and

3952 (d) any other civil penalty provided by law.

3953 Section 76. Section **63G-6a-2405** is enacted to read:

3954 **63G-6a-2405. Discretion to declare contract or grant void -- Limitations.**

3955 (1) Subject to Subsection (2), the governing body or chief executive officer of a public
3956 entity that awards a contract or grant to a person who engages in conduct made unlawful under
3957 this part may, in the sole discretion of the governing body or chief executive officer, declare the
3958 contract or grant to be void and unenforceable, unless:

3959 (a) the contract or grant relates to the issuance of a bond or other obligation and the
3960 bond has been issued or obligation incurred; or

3961 (b) a third party has substantially changed its position in reliance upon the contract or
3962 grant.

3963 (2) Declaring a contract or grant void under Subsection (1) does not affect the
3964 obligation of a procurement unit to pay for a contractor's proper performance completed under
3965 the contract or grant or the value the contractor provides to the public entity under the contract
3966 or grant before the contract or grant is declared void.

3967 (3) Subsection (1) applies only to a procurement with respect to which:

3968 (a) public notice is provided on or after July 1, 2014, if public notice of the
3969 procurement is required; or

3970 (b) the initial contact between the public entity and the potential contractor, for
3971 purposes of the procurement, occurs on or after July 1, 2014, if public notice of the
3972 procurement is not required.

3973 Section 77. Section **63G-6a-2406** is enacted to read:

3974 **63G-6a-2406. Authority of conducting procurement unit with respect to**
3975 **evaluation committee.**

3976 Nothing in this part restricts a conducting procurement unit from:

3977 (1) requiring an evaluation committee member to disclose a conflict of interest; or

3978 (2) removing an evaluation committee member for having a conflict of interest.

3979 Section 78. Section **63G-6a-2407** is enacted to read:

3980 **63G-6a-2407. Duty to report unlawful conduct.**

3981 (1) A procurement professional shall notify the attorney general or other appropriate
3982 prosecuting attorney if the procurement professional has actual knowledge that a person has
3983 engaged in:

3984 (a) conduct made unlawful under this part; or

3985 (b) conduct, including bid rigging, improperly steering a contract to a favored vendor,
3986 exercising undue influence on an individual involved in the procurement process, or
3987 participating in collusion or other anticompetitive practices, made unlawful under other
3988 applicable law.

3989 (2) A procurement professional who fails to comply with the requirement of
3990 Subsection (1) is subject to any applicable disciplinary action or civil penalty identified in
3991 Subsection [63G-6a-2404\(5\)](#).

3992 Section 79. Section **67-16-4** is amended to read:

3993 **67-16-4. Improperly disclosing or using private, controlled, or protected**

3994 **information -- Using position to secure privileges or exemptions -- Accepting employment**
3995 **that would impair independence of judgment or ethical performance -- Exception.**

3996 (1) Except as provided in Subsection (3), it is an offense for a public officer, public
3997 employee, or legislator to:

3998 (a) accept employment or engage in any business or professional activity that he might
3999 reasonably expect would require or induce him to improperly disclose controlled information
4000 that he has gained by reason of his official position;

4001 (b) disclose or improperly use controlled, private, or protected information acquired by
4002 reason of his official position or in the course of official duties in order to further substantially
4003 the officer's or employee's personal economic interest or to secure special privileges or
4004 exemptions for himself or others;

4005 (c) use or attempt to use his official position to:

4006 (i) further substantially the officer's or employee's personal economic interest; or

4007 (ii) secure special privileges or exemptions for himself or others;

4008 (d) accept other employment that he might expect would impair his independence of
4009 judgment in the performance of his public duties; or

4010 (e) accept other employment that he might expect would interfere with the ethical
4011 performance of his public duties.

4012 (2) (a) Subsection (1) does not apply to the provision of education-related services to
4013 public school students by public education employees acting outside their regular employment.

4014 (b) The conduct referred to in Subsection (2)(a) is subject to Section [53A-1-402.5](#).

4015 (3) This section does not apply to a public officer, public employee, or legislator who
4016 engages in conduct that constitutes a violation of this section to the extent that the public
4017 officer, public employee, or legislator is chargeable, for the same conduct, under Section
4018 [~~63G-6a-2304.5~~] [63G-6a-2404](#) or Section [76-8-105](#).

4019 Section 80. Section **67-16-5** is amended to read:

4020 **67-16-5. Accepting gift, compensation, or loan -- When prohibited.**

4021 (1) As used in this section, "economic benefit tantamount to a gift" includes:

4022 (a) a loan at an interest rate that is substantially lower than the commercial rate then
4023 currently prevalent for similar loans; and

4024 (b) compensation received for private services rendered at a rate substantially

4025 exceeding the fair market value of the services.

4026 (2) Except as provided in Subsection (4), it is an offense for a public officer or public
4027 employee to knowingly receive, accept, take, seek, or solicit, directly or indirectly for himself
4028 or another a gift of substantial value or a substantial economic benefit tantamount to a gift:

4029 (a) that would tend improperly to influence a reasonable person in the person's position
4030 to depart from the faithful and impartial discharge of the person's public duties;

4031 (b) that the public officer or public employee knows or that a reasonable person in that
4032 position should know under the circumstances is primarily for the purpose of rewarding the
4033 public officer or public employee for official action taken; or

4034 (c) if the public officer or public employee recently has been, is now, or in the near
4035 future may be involved in any governmental action directly affecting the donor or lender,
4036 unless a disclosure of the gift, compensation, or loan and other relevant information has been
4037 made in the manner provided in Section [67-16-6](#).

4038 (3) Subsection (2) does not apply to:

4039 (a) an occasional nonpecuniary gift, having a value of not in excess of \$50;

4040 (b) an award publicly presented in recognition of public services;

4041 (c) any bona fide loan made in the ordinary course of business; or

4042 (d) a political campaign contribution.

4043 (4) This section does not apply to a public officer or public employee who engages in
4044 conduct that constitutes a violation of this section to the extent that the public officer or public
4045 employee is chargeable, for the same conduct, under Section [[63G-6a-2304.5](#)] [63G-6a-2404](#) or
4046 Section [76-8-105](#).

4047 Section 81. Section [67-16-5.3](#) is amended to read:

4048 **67-16-5.3. Requiring donation, payment, or service to government agency in**
4049 **exchange for approval -- When prohibited.**

4050 (1) Except as provided in Subsection (3), it is an offense for a public officer, public
4051 employee, or legislator to demand from any person as a condition of granting any application or
4052 request for a permit, approval, or other authorization, that the person donate personal property,
4053 money, or services to any agency.

4054 (2) (a) Subsection (1) does not apply to any donation of property, funds, or services to
4055 an agency that is:

- 4056 (i) expressly required by statute, ordinance, or agency rule;
- 4057 (ii) mutually agreed to between the applicant and the entity issuing the permit,
- 4058 approval, or other authorization;
- 4059 (iii) made voluntarily by the applicant; or
- 4060 (iv) a condition of a consent decree, settlement agreement, or other binding instrument
- 4061 entered into to resolve, in whole or in part, an actual or threatened agency enforcement action.

4062 (b) If a person donates property, funds, or services to an agency, the agency shall, as
4063 part of the permit or other written authorization:

- 4064 (i) identify that a donation has been made;
- 4065 (ii) describe the donation;
- 4066 (iii) certify, in writing, that the donation was voluntary; and
- 4067 (iv) place that information in its files.

4068 (3) This section does not apply to a public officer, public employee, or legislator who
4069 engages in conduct that constitutes a violation of this section to the extent that the public
4070 officer, public employee, or legislator is chargeable, for the same conduct, under Section
4071 [~~63G-6a-2304.5~~] [63G-6a-2404](#) or Section [76-8-105](#).

4072 Section 82. Section **67-16-5.6** is amended to read:

4073 **67-16-5.6. Offering donation, payment, or service to government agency in**
4074 **exchange for approval -- When prohibited.**

4075 (1) Except as provided in Subsection (3), it is an offense for any person to donate or
4076 offer to donate personal property, money, or services to any agency on the condition that the
4077 agency or any other agency approve any application or request for a permit, approval, or other
4078 authorization.

4079 (2) (a) Subsection (1) does not apply to any donation of property, funds, or services to
4080 an agency that is:

- 4081 (i) otherwise expressly required by statute, ordinance, or agency rule;
- 4082 (ii) mutually agreed to between the applicant and the entity issuing the permit,
- 4083 approval, or other authorization;
- 4084 (iii) a condition of a consent decree, settlement agreement, or other binding instrument
- 4085 entered into to resolve, in whole or in part, an actual or threatened agency enforcement action;
- 4086 or

4087 (iv) made without condition.

4088 (b) The person making the donation of property, funds, or services shall include with
4089 the donation a signed written statement certifying that the donation is made without condition.

4090 (c) The agency receiving the donation shall place the signed written statement in its
4091 files.

4092 (3) This section does not apply to a person who engages in conduct that constitutes a
4093 violation of this section to the extent that the person is chargeable, for the same conduct, under
4094 Section [[63G-6a-2304.5](#)] [63G-6a-2404](#) or Section [76-8-105](#).

4095 Section 83. Section **67-16-6** is amended to read:

4096 **67-16-6. Receiving compensation for assistance in transaction involving an**
4097 **agency -- Filing sworn statement.**

4098 (1) Except as provided in Subsection (5), it is an offense for a public officer or public
4099 employee to receive or agree to receive compensation for assisting any person or business
4100 entity in any transaction involving an agency unless the public officer or public employee files
4101 a sworn, written statement containing the information required by Subsection (2) with:

4102 (a) the head of the officer or employee's own agency;

4103 (b) the agency head of the agency with which the transaction is being conducted; and

4104 (c) the state attorney general.

4105 (2) The statement shall contain:

4106 (a) the name and address of the public officer or public employee involved;

4107 (b) the name of the public officer's or public employee's agency;

4108 (c) the name and address of the person or business entity being or to be assisted; and

4109 (d) a brief description of:

4110 (i) the transaction as to which service is rendered or is to be rendered; and

4111 (ii) the nature of the service performed or to be performed.

4112 (3) The statement required to be filed under Subsection (1) shall be filed within 10
4113 days after the date of any agreement between the public officer or public employee and the
4114 person or business entity being assisted or the receipt of compensation, whichever is earlier.

4115 (4) The statement is public information and shall be available for examination by the
4116 public.

4117 (5) This section does not apply to a public officer or public employee who engages in

4118 conduct that constitutes a violation of this section to the extent that the public officer or public
4119 employee is chargeable, for the same conduct, under Section [~~63G-6a-2304.5~~] 63G-6a-2404 or
4120 Section 76-8-105.

4121 Section 84. **Repealer.**

4122 This bill repeals:

4123 Section ~~63G-6a-1803~~, **Statutes of limitations.**

4124 Section ~~63G-6a-1905~~, **Authority to resolve controversy between state and**
4125 **contractor.**

4126 Section ~~63G-6a-2301~~, **Title.**

4127 Section ~~63G-6a-2302~~, **Duty to report factual information to attorney general.**

4128 Section ~~63G-6a-2304.5~~, **Gratuities -- Kickbacks -- Unlawful use of position or**
4129 **influence.**

4130 Section ~~63G-6a-2305~~, **Penalties for artificially dividing a purchase.**

4131 Section ~~63G-6a-2306~~, **Penalties.**

4132 Section ~~63G-6a-2307~~, **Contract awarded in relation to criminal conduct void.**

4133 Section ~~63G-6a-2308~~, **Exemption.**

4134 Section 85. **Effective date.**

4135 If approved by two-thirds of all the members elected to each house, this bill takes effect
4136 upon approval by the governor, or the day following the constitutional time limit of Utah
4137 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
4138 the date of veto override.