

- 28 ▶ modifies provisions relating to awarding and canceling a contract and the
- 29 disqualification of offerors;
- 30 ▶ modifies provisions relating to exceptions to standard procurement processes;
- 31 ▶ modifies provisions relating to procurement protests;
- 32 ▶ authorizes the attorney general to enforce procurement provisions and bring legal
- 33 action;
- 34 ▶ modifies a provision relating to reporting unlawful conduct; and
- 35 ▶ makes technical and conforming changes.

36 Money Appropriated in this Bill:

37 None

38 Other Special Clauses:

39 None

40 Utah Code Sections Affected:

41 AMENDS:

- 42 **63G-6a-103**, as last amended by Laws of Utah 2015, Chapters 218 and 464
- 43 **63G-6a-105**, as last amended by Laws of Utah 2015, Chapters 218 and 464
- 44 **63G-6a-106**, as last amended by Laws of Utah 2015, Chapters 218 and 362
- 45 **63G-6a-107**, as last amended by Laws of Utah 2015, Chapters 218, 306, and 464
- 46 **63G-6a-109**, as last amended by Laws of Utah 2015, Chapter 464
- 47 **63G-6a-401**, as enacted by Laws of Utah 2012, Chapter 347
- 48 **63G-6a-501**, as enacted by Laws of Utah 2012, Chapter 347
- 49 **63G-6a-604**, as last amended by Laws of Utah 2013, Chapter 445
- 50 **63G-6a-605**, as last amended by Laws of Utah 2013, Chapter 445
- 51 **63G-6a-703**, as last amended by Laws of Utah 2014, Chapter 196
- 52 **63G-6a-706**, as enacted by Laws of Utah 2012, Chapter 347
- 53 **63G-6a-707**, as last amended by Laws of Utah 2015, Chapters 97 and 218
- 54 **63G-6a-707.5**, as renumbered and amended by Laws of Utah 2014, Chapter 196
- 55 **63G-6a-709**, as last amended by Laws of Utah 2014, Chapter 196
- 56 **63G-6a-802**, as last amended by Laws of Utah 2014, Chapter 196
- 57 **63G-6a-803**, as enacted by Laws of Utah 2012, Chapter 347
- 58 **63G-6a-806**, as enacted by Laws of Utah 2013, Chapter 445

- 59 **63G-6a-1206**, as last amended by Laws of Utah 2014, Chapter 196
- 60 **63G-6a-1206.5**, as enacted by Laws of Utah 2015, Chapter 218
- 61 **63G-6a-1601**, as enacted by Laws of Utah 2012, Chapter 347
- 62 **63G-6a-1602**, as last amended by Laws of Utah 2014, Chapter 196
- 63 **63G-6a-1603**, as last amended by Laws of Utah 2015, Chapter 218
- 64 **63G-6a-1703**, as last amended by Laws of Utah 2015, Chapter 218
- 65 **63G-6a-2105**, as last amended by Laws of Utah 2014, Chapter 196
- 66 **63G-6a-2404**, as enacted by Laws of Utah 2014, Chapter 196
- 67 **63G-6a-2407**, as enacted by Laws of Utah 2014, Chapter 196

68 ENACTS:

- 69 **63G-6a-106.5**, Utah Code Annotated 1953
- 70 **63G-6a-113**, Utah Code Annotated 1953
- 71 **63G-6a-114**, Utah Code Annotated 1953
- 72 **63G-6a-115**, Utah Code Annotated 1953
- 73 **63G-6a-410**, Utah Code Annotated 1953
- 74 **63G-6a-507**, Utah Code Annotated 1953
- 75 **63G-6a-802.3**, Utah Code Annotated 1953
- 76 **63G-6a-802.7**, Utah Code Annotated 1953
- 77 **63G-6a-906**, Utah Code Annotated 1953
- 78 **63G-6a-1206.3**, Utah Code Annotated 1953
- 79 **63G-6a-1601.5**, Utah Code Annotated 1953
- 80 **63G-6a-2408**, Utah Code Annotated 1953

81 REPEALS AND REENACTS:

- 82 **63G-6a-303**, as last amended by Laws of Utah 2015, Chapters 218, 258, and 283

83 RENUMBERS AND AMENDS:

- 84 **63G-6a-110**, (Renumbered from 63G-6a-402, as last amended by Laws of Utah 2015,
- 85 Chapter 218)
- 86 **63G-6a-111**, (Renumbered from 63G-6a-407, as last amended by Laws of Utah 2013,
- 87 Chapter 445)
- 88 **63G-6a-112**, (Renumbered from 63G-6a-406, as last amended by Laws of Utah 2014,
- 89 Chapter 196)

90 **63G-6a-409**, (Renumbered from 63G-6a-502, as enacted by Laws of Utah 2012,
91 Chapter 347)

92 **63G-6a-506**, (Renumbered from 63G-6a-408, as last amended by Laws of Utah 2015,
93 Chapter 218)

94 REPEALS:

95 **63G-6a-104**, as last amended by Laws of Utah 2015, Chapter 218

96 **63G-6a-403**, as last amended by Laws of Utah 2015, Chapter 97

97 **63G-6a-404**, as last amended by Laws of Utah 2014, Chapter 196

98 **63G-6a-503**, as last amended by Laws of Utah 2013, Chapter 445

99 **63G-6a-504**, as enacted by Laws of Utah 2012, Chapter 347

100 **63G-6a-505**, as enacted by Laws of Utah 2013, Chapter 445



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

103 Section 1. Section **63G-6a-103** is amended to read:

104 **63G-6a-103. Definitions.**

105 As used in this chapter:

106 (1) "Applicable rulemaking authority" means:

107 (a) for a legislative procurement unit, the Legislative Management Committee;

108 (b) for a judicial procurement unit, the Judicial Council;

109 (c) (i) only to the extent of the procurement authority expressly granted to the

110 procurement unit by statute:

111 (A) for the building board or the Division of Facilities Construction and Management,

112 created in Section [63A-5-201](#), the building board;

113 (B) for the Office of the Attorney General, the attorney general; and

114 (C) for the Department of Transportation created in Section [72-1-201](#), the executive

115 director of the Department of Transportation; and

116 (ii) for each other executive branch procurement unit, the board;

117 (d) for a local government procurement unit, the legislative body of the local

118 government procurement unit;

119 (e) for a school district or a public school, the board, except to the extent of a school

120 district's own nonadministrative rules that do not conflict with the provisions of this chapter;

- 121 (f) for a state institution of higher education, the State Board of Regents;
122 (g) for a public transit district, the chief executive of the public transit district;
123 (h) for a local district other than a public transit district or for a special service district;
124 (i) before January 1, 2015, the board of trustees of the local district or the governing
125 body of the special service district; or
126 (ii) on or after January 1, 2015, the board, except to the extent that the board of trustees
127 of the local district or the governing body of the special service district makes its own rules:
128 (A) with respect to a subject addressed by board rules; or
129 (B) that are in addition to board rules; or
130 (i) for any other procurement unit, the board.
131 (2) "Approved vendor" means a vendor who has been approved through the approved
132 vendor list process.
133 (3) "Approved vendor list" means a list of approved vendors established under Section
134 [63G-6a-507](#).
135 (4) "Approved vendor list process" means the procurement process described in
136 Section [63G-6a-507](#).
137 ~~[(1)]~~ (5) "Bidder" means a person who ~~[responds]~~ submits a bid or price quote in
138 response to an invitation for bids.
139 (6) "Bidding process" means the procurement process described in Part 6, Bidding.
140 (7) "Board" means the Utah State Procurement Policy Board, created in Section
141 [63G-6a-202](#).
142 (8) "Building board" means the State Building Board, created in Section [63A-5-101](#).
143 ~~[(2)]~~ (9) "Change directive" means a written order signed by the procurement officer
144 that directs the contractor to suspend work or make changes, as authorized by contract, without
145 the consent of the contractor.
146 ~~[(3)]~~ (10) "Change order" means a written alteration in specifications, delivery point,
147 rate of delivery, period of performance, price, quantity, or other provisions of a contract, upon
148 mutual agreement of the parties to the contract.
149 ~~[(4)]~~ (11) "Chief procurement officer" means the chief procurement officer appointed
150 under Subsection [63G-6a-302](#)(1).
151 ~~[(5)]~~ (12) "Conducting procurement unit" means a procurement unit that conducts all

152 aspects of a procurement:

153 (a) except:

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

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

156 (b) including:

157 (i) preparing any solicitation document;

158 (ii) appointing an evaluation committee;

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

160 [63G-6a-707\(5\)\(b\)](#) relating to scores calculated for costs of proposals;

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

162 (v) negotiating the terms and conditions of a contract, subject to the issuing

163 procurement unit's approval; and

164 (vi) ~~administering a~~ contract administration.

165 (13) "Conservation district" means the same as that term is defined in Section

166 [17D-3-102](#).

167 ~~[(6)(a)]~~ (14) "Construction":

168 (a) means the process of building, renovating, altering, improving, or repairing a public
169 building or public work[-]; and

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

172 ~~[(7)(a)]~~ (15) "Construction manager/general contractor":

173 (a) means a contractor who enters into a contract:

174 (i) for the management of a construction project ~~[when the contract]~~; and

175 (ii) that allows the contractor to subcontract for additional labor and materials that are
176 not included in the contractor's cost proposal submitted at the time of the procurement of the
177 contractor's services[-]; and

178 ~~["Construction manager/general contractor"]~~ does not include a contractor whose
179 only subcontract work not included in the contractor's cost proposal submitted as part of the
180 procurement of the contractor's services is to meet subcontracted portions of change orders
181 approved within the scope of the project.

182 ~~[(8)]~~ (16) "Contract" means an agreement for the procurement or disposal of a

183 procurement item.

184 (17) "Contract administration" means all functions, duties, and responsibilities
185 associated with managing, overseeing, and carrying out a contract between a procurement unit
186 and a contractor, including:

187 (a) implementing the contract;

188 (b) ensuring compliance with the contract terms and conditions by the conducting
189 procurement unit and the contractor;

190 (c) executing change orders;

191 (d) processing contract amendments;

192 (e) resolving, to the extent practicable, contract disputes;

193 (f) curing contract errors and deficiencies;

194 (g) terminating a contract;

195 (h) measuring or evaluating completed work and contractor performance;

196 (i) computing payments under the contract; and

197 (j) closing out a contract.

198 ~~[(9)]~~ (18) "Contractor" means a person who is awarded a contract with a procurement
199 unit.

200 ~~[(10)]~~ (19) "Cooperative procurement" means procurement conducted by, or on behalf
201 of:

202 (a) more than one procurement unit; or

203 (b) a procurement unit and a cooperative purchasing organization.

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

207 ~~[(11)]~~ (21) "Cost-plus-a-percentage-of-cost contract" means a contract ~~[where]~~ under
208 which the contractor is paid a percentage ~~[over and above]~~ of the total actual expenses or costs
209 in addition to the contractor's actual expenses or costs.

210 ~~[(12)]~~ (22) "Cost-reimbursement contract" means a contract under which a contractor
211 is reimbursed for costs which are allowed and allocated in accordance with the contract terms
212 and the provisions of this chapter, and a fee, if any.

213 ~~[(13)]~~ (23) "Days" means calendar days, unless expressly provided otherwise.

214 ~~[(14)]~~ (24) "Definite quantity contract" means a fixed price contract that provides for
215 the supply of a specified amount of goods over a specified period, with deliveries scheduled
216 according to a specified schedule.

217 ~~[(15)]~~ (25) "Design-build" means the procurement of design professional services and
218 construction by the use of a single contract with the design-build provider.

219 ~~[(16)]~~ (26) "Design professional" means:

220 (a) an individual licensed as an architect under Title 58, Chapter 3a, Architects
221 Licensing Act; or

222 (b) an individual licensed as a professional engineer or professional land surveyor
223 under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing
224 Act.

225 (27) "Design professional procurement process" means the procurement process
226 described in Part 15, Design Professional Services.

227 ~~[(17)]~~ (28) "Design professional services" means:

228 (a) professional services within the scope of the practice of architecture as defined in
229 Section [58-3a-102](#);

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

231 (c) master planning and programming services.

232 ~~[(18) "Directed procurement" means a procurement of a procurement item in which the
233 source of the funds used to procure the procurement item:]~~

234 ~~[(a) directs from whom the procurement item is to be procured; or]~~

235 ~~[(b) imposes requirements on how the procurement is to be administered.]~~

236 ~~[(19)]~~ (29) "Director" means the director of the division.

237 (30) "Division" means the Division of Purchasing and General Services, created in
238 Section [63A-2-101](#).

239 (31) "Educational procurement unit" means:

240 (a) a school district;

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

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

243 (d) the Utah Education and Telehealth Network; or

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

245 ~~[(20)]~~ (32) "Established catalogue price" means the price included in a catalogue, price
246 list, schedule, or other form that:

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

252 (33) "Executive branch procurement unit" means a department, division, office,
253 bureau, agency, or other organization within the state executive branch.

254 ~~[(21)]~~ (34) "Fixed price contract" means a contract that provides a price, for each
255 procurement item obtained under the contract, that is not subject to adjustment except to the
256 extent that:

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

260 ~~[(22)]~~ (35) "Fixed price contract with price adjustment" means a fixed price contract
261 that provides for an upward or downward revision of price, precisely described in the contract,
262 that:

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

266 ~~[(23)]~~ (36) "Grant" means an expenditure of public funds or other assistance, or an
267 agreement to expend public funds or other assistance, for a public purpose authorized by law,
268 without acquiring a procurement item in exchange.

269 ~~[(24)]~~ (37) "Head of a procurement unit" means:

- 270 (a) ~~[as it relates to]~~ for a legislative procurement unit, any person designated by rule
271 made by the applicable rulemaking authority;
272 (b) ~~[as it relates to]~~ for an executive branch procurement unit:
273 (i) the director of ~~[a]~~ the division; or
274 (ii) any other person designated by the board, by rule;
275 (c) ~~[as it relates to]~~ for a judicial procurement unit:

- 276 (i) the Judicial Council; or
277 (ii) any other person designated by the Judicial Council, by rule;
278 (d) ~~[as it relates to]~~ for a local government procurement unit:
279 (i) the legislative body of the local government procurement unit; or
280 (ii) any other person designated by the local government procurement unit;
281 (e) ~~[as it relates to]~~ for a local district other than a public transit district, the board of
282 trustees of the local district or a designee of the board of trustees;
283 (f) ~~[as it relates to]~~ for a special service district, the governing body of the special
284 service district or a designee of the governing body;
285 (g) ~~[as it relates to]~~ for a local building authority, the board of directors of the local
286 building authority or a designee of the board of directors;
287 (h) ~~[as it relates to]~~ for a conservation district, the board of supervisors of the
288 conservation district or a designee of the board of supervisors;
289 (i) ~~[as it relates to]~~ for a public corporation, the board of directors of the public
290 corporation or a designee of the board of directors;
291 (j) ~~[as it relates to]~~ for a school district or any school or entity within a school district,
292 the board of the school district, or the board's designee;
293 (k) ~~[as it relates to]~~ for a charter school, the individual or body with executive authority
294 over the charter school, or the individual's or body's designee;
295 (l) ~~[as it relates to]~~ for an institution of higher education of the state, the president of
296 the institution of higher education, or the president's designee; or
297 (m) ~~[as it relates to]~~ for a public transit district, the board of trustees or a designee of
298 the board of trustees.
- 299 (38) "Immaterial error":
300 (a) means an irregularity or abnormality that is:
301 (i) a matter of form that does not affect substance; or
302 (ii) an inconsequential variation from a requirement of a solicitation that has no, little,
303 or a trivial effect on the procurement process and that is not prejudicial to other vendors; and
304 (b) includes:
305 (i) a missing signature, missing acknowledgment of an addendum, missing copy of a
306 solicitation, or missing copy of or an incorrect form of a professional license, bond, or

307 insurance certificate;

308 (ii) a typographical error;

309 (iii) an error resulting from an inaccuracy or omission in the solicitation; and

310 (iv) any other error that the chief procurement officer or the head of a procurement unit

311 with independent procurement authority considers to be immaterial.

312 ~~[(25)]~~ (39) "Indefinite quantity contract" means a fixed price contract that:

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

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

316 (ii) provides a maximum purchase limit.

317 ~~[(26)]~~ (40) "Independent procurement authority" means authority granted to a

318 procurement unit under Subsection 63G-6a-106(4)(a).

319 ~~[(27)]~~ (41) "Invitation for bids" ~~[includes all documents, including documents that are~~
320 ~~attached or incorporated by reference, used for soliciting];~~

321 (a) means a document used to solicit:

322 (i) bids to provide a procurement item to a procurement unit; or

323 (ii) quotes for a price of a procurement item to be provided to a procurement unit; and

324 (b) includes all documents attached to or incorporated by reference in a document

325 described in Subsection (41)(a).

326 ~~[(28)]~~ (42) "Issuing procurement unit" means a procurement unit that:

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

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

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

330 (43) "Judicial procurement unit" means:

331 (a) the Utah Supreme Court;

332 (b) the Utah Court of Appeals;

333 (c) the Judicial Council;

334 (d) a state judicial district; or

335 (e) an office, committee, subcommittee, or other organization within the state judicial
336 branch.

337 ~~[(29)]~~ (44) "Labor hour contract" is a contract ~~[where]~~ under which:

- 338 (a) the supplies and materials are not provided by, or through, the contractor; and
- 339 (b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and
- 340 profit for a specified number of labor hours or days.

341 (45) "Legislative procurement unit" means:

- 342 (a) the Legislature;
- 343 (b) the Senate;
- 344 (c) the House of Representatives;
- 345 (d) a staff office of the Legislature, the Senate, or the House of Representatives; or
- 346 (e) an office, committee, subcommittee, commission, or other organization within the
- 347 state legislative branch.

348 (46) "Local building authority" means the same as that term is defined in Section
349 17D-2-102.

350 (47) "Local district" means the same as that term is defined in Section 17B-1-102.

351 (48) "Local government procurement unit" means:

- 352 (a) a county or municipality, and each office or agency of the county or municipality,
- 353 unless the county or municipality adopts its own procurement code by ordinance;
- 354 (b) a county or municipality that has adopted this entire chapter by ordinance, and each
- 355 office or agency of that county or municipality; or
- 356 (c) a county or municipality that has adopted a portion of this chapter by ordinance, to
- 357 the extent that a term in the ordinance is used in the adopted portion of this chapter, and each
- 358 office or agency of that county or municipality.

359 [~~30~~] (49) "Multiple award contracts" means the award of a contract for an indefinite
360 quantity of a procurement item to more than one bidder or offeror.

361 [~~31~~] (50) "Multiyear contract" means a contract that extends beyond a one-year
362 period, including a contract that permits renewal of the contract, without competition, beyond
363 the first year of the contract.

364 [~~32~~] (51) "Municipality" means a city or a town.

365 (52) "Nonadopting local government procurement unit" means:

- 366 (a) a county or municipality that has not adopted Part 16, Controversies and Protests,
- 367 Part 17, Procurement Appeals Board, Part 18, Appeals to Court and Court Proceedings, and
- 368 Part 19, General Provisions Related to Protest or Appeal; and

369 (b) each office or agency of a county or municipality described in Subsection (52)(a).

370 [~~(33)~~] (53) "Offeror" means a person who [responds] submits a proposal in response to
 371 a request for proposals.

372 (54) "Person" means the same as that term is defined in Section 68-3-12.5, excluding a
 373 political subdivision and a government office, department, division, bureau, or other body of
 374 government.

375 [~~(34)~~] (55) "Preferred bidder" means a bidder that is entitled to receive a reciprocal
 376 preference under the requirements of this chapter.

377 [~~(35)~~] (56) "Procure" means to acquire a procurement item through a procurement.

378 [~~(36)~~] (57) "Procurement":

379 (a) means:

380 (i) a procurement unit's acquisition of a procurement item through an expenditure of
 381 public funds, regardless of the source of the funds, including federal funds, or an agreement to
 382 expend public funds[, in exchange for a procurement item]; or

383 (ii) a procurement unit's engagement of a person:

384 (A) to provide a service or benefit to the public or to promote an interest or objective of
 385 the procurement unit or state;

386 (B) that does not involve the expenditure of public funds or an agreement to expend
 387 public funds; and

388 (C) that involves the person's use of the property, name, influence, or other thing of
 389 value of the procurement unit or state;

390 (b) includes all functions that pertain to the acquisition of a procurement item, as
 391 described in Subsection (57)(a)(i), or the engagement of a person, as described in Subsection
 392 (57)(a)(ii), including:

393 [~~(i) the description of requirements;~~]

394 [~~(ii) the selection process;~~]

395 [~~(iii) solicitation of sources;~~]

396 [~~(iv) the preparation for soliciting a procurement item; and]~~

397 [~~(v) the award of a contract; and]~~

398 (i) preparing and issuing a solicitation;

399 (ii) conducting a standard procurement process; and

400 (iii) conducting a procurement process that is an exception to a standard procurement
401 process under Part 8, Exceptions to Procurement Requirements; and

402 (c) does not include a grant.

403 [~~(37)~~] (58) "Procurement item" means a supply, a service, construction, or technology.

404 [~~(38)~~] (59) "Procurement officer" means:

405 (a) [~~as it relates to~~] for a procurement unit with independent procurement authority:

406 (i) the head of the procurement unit;

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

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

409 (b) [~~as it relates to~~] for the division or a procurement unit without independent

410 procurement authority, the chief procurement officer.

411 (60) "Procurement unit":

412 (a) means:

413 (i) a legislative procurement unit;

414 (ii) an executive branch procurement unit;

415 (iii) a judicial procurement unit;

416 (iv) an educational procurement unit;

417 (v) a local government procurement unit;

418 (vi) a local district;

419 (vii) a special service district;

420 (viii) a local building authority;

421 (ix) a conservation district;

422 (x) a public corporation; or

423 (xi) a public transit district; and

424 (b) does not include a political subdivision created under Title 11, Chapter 13,

425 Interlocal Cooperation Act.

426 [~~(39)~~] (61) "Professional service" means a service that requires a high degree of
427 specialized knowledge and discretion in the performance of [~~the~~] a service, including:

428 (a) legal [~~services~~] service;

429 (b) consultation [~~services~~] service;

430 (c) architectural [~~services~~] service;

- 431 (d) engineering;
- 432 (e) design;
- 433 (f) underwriting;
- 434 (g) bond counsel;
- 435 (h) financial advice;
- 436 (i) construction management;
- 437 (j) medical [~~services~~] service;
- 438 (k) psychiatric [~~services~~] service; or
- 439 (l) counseling [~~services~~] service.

440 [~~(40)~~] (62) "Protest officer" means:

441 (a) [~~as it relates to~~] for the division or a procurement unit with independent
442 procurement authority:

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

446 (b) [~~as it relates to~~] for a procurement unit without independent procurement authority,
447 the chief procurement officer or the chief procurement officer's designee.

448 (63) "Public corporation" means the same as that term is defined in Section [63E-1-102](#).

449 (64) "Public entity" means any government entity of the state or political subdivision of
450 the state, including:

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

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

457 (66) "Qualified vendor" means a vendor who:

- 458 (a) is responsible; and
- 459 (b) submits a responsive statement of qualifications under Section [63G-6a-410](#) that
460 meets the minimum mandatory requirements, evaluation criteria, and any applicable score
461 thresholds set forth in the request for statement of qualifications.

462 [(41)] (67) "Request for information" means a nonbinding process [~~where~~] through
463 which a procurement unit requests information relating to a procurement item.

464 [(42)] (68) "Request for proposals" [~~includes all documents, including documents that~~
465 ~~are attached or incorporated by reference, used for soliciting~~] means a document used to solicit
466 proposals to provide a procurement item to a procurement unit, including all other documents
467 that are attached to that document or incorporated in that document by reference.

468 (69) "Request for proposals process" means the procurement process described in Part
469 7, Request for Proposals.

470 [(43)] (70) "Request for statement of qualifications" means [~~all documents~~] a document
471 used to solicit information about the qualifications of [the] a person interested in responding to
472 a potential procurement, including all other documents attached to that document or
473 incorporated in that document by reference.

474 [(44)] (71) "Requirements contract" means a contract:

475 (a) [~~where~~] under which a contractor agrees to provide a procurement unit's entire
476 requirements for certain procurement items at prices specified in the contract during the
477 contract period; and

478 (b) that:

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

480 (ii) provides a maximum purchase limit.

481 [(45)] (72) "Responsible" means being capable, in all respects, of:

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

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

485 [(46)] (73) "Responsive" means conforming in all material respects to the [~~invitation~~
486 ~~for bids or request for proposals~~] requirements of a solicitation.

487 [(47)] (74) "Sealed" means manually or electronically [~~sealed and submitted bids or~~
488 ~~proposals~~] secured to prevent disclosure.

489 [(48)-(a)] (75) "Services":

490 (a) means the furnishing of labor, time, or effort by a contractor, not involving the
491 delivery of a specific end product other than a report that is incidental to the required
492 performance[-]; and

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

495 (76) "Small purchase process" means the procurement process described in Section
496 [63G-6a-506](#).

497 ~~[(49)]~~ (77) "Sole source contract" means a contract resulting from a sole source
498 procurement.

499 ~~[(50)]~~ (78) "Sole source procurement" means a procurement without competition
500 pursuant to a determination under Subsection [63G-6a-802\(2\)\(a\)](#) that there is only one source
501 for the procurement item.

502 ~~[(51)]~~ (79) "Solicitation" means an invitation for bids, request for proposals, notice of a
503 sole source procurement, request for statement of qualifications, or request for information~~[-or~~
504 ~~any document used to obtain bids, proposals, pricing, qualifications, or information for the~~
505 ~~purpose of entering into a procurement contract]~~.

506 (80) "Solicitation response" means:

507 (a) a bid submitted in response to an invitation for bids;

508 (b) a proposal submitted in response to a request for proposals; or

509 (c) a statement of qualifications submitted in response to a request for statement of
510 qualifications.

511 (81) "Special service district" means the same as that term is defined in Section
512 [17D-1-102](#).

513 ~~[(52)]~~ (82) "Specification" means any description of the physical or functional
514 characteristics~~[-]~~ or of the nature of a procurement item included in an invitation for bids or a
515 request for proposals, or otherwise specified or agreed to by a procurement unit, including a
516 description of:

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

518 (b) preparing a procurement item for delivery.

519 ~~[(53)]~~ (83) "Standard procurement process" means ~~[one of the following methods of~~
520 ~~obtaining a procurement item]~~:

521 (a) the bidding~~[-as described in Part 6, Bidding]~~ process;

522 (b) the request for proposals~~[-as described in Part 7, Request for Proposals]~~ process;

523 [~~or~~]

524 ~~[(c) small purchases, in accordance with the requirements established under Section~~
525 ~~63G-6a-408:]~~

526 (c) the approved vendor list process;

527 (d) the small purchase process; or

528 (e) the design professional procurement process.

529 ~~[(54)]~~ (84) "State cooperative contract" means a contract awarded by the division for
530 and in behalf of all public entities.

531 ~~[(55)]~~ (85) "Statement of qualifications" means a written statement submitted to a
532 procurement unit in response to a request for statement of qualifications.

533 ~~[(56)(a)]~~ (86) "Subcontractor":

534 (a) means a person under contract with a contractor or another subcontractor to provide
535 services or labor for design or construction[.];

536 (b) ["Subcontractor"] includes a trade contractor or specialty contractor[.]; and

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

539 ~~[(57)]~~ (87) "Supplies" means all property, including equipment, materials, and printing.

540 ~~[(58)]~~ (88) "Tie bid" means that the lowest responsive ~~[and]~~ bids of responsible ~~[bids]~~
541 bidders are identical in price.

542 ~~[(59)]~~ (89) "Time and materials contract" means a contract ~~[where]~~ under which the
543 contractor is paid:

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

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

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

548 (90) "Transitional costs":

549 (a) means the costs of changing:

550 (i) from an existing provider of a procurement item to another provider of that
551 procurement item; or

552 (ii) from an existing type of procurement item to another type;

553 (b) includes:

554 (i) training costs;

- 555 (ii) conversion costs;
 556 (iii) compatibility costs;
 557 (iv) costs associated with system downtime;
 558 (v) disruption of service costs;
 559 (vi) staff time necessary to implement the change;
 560 (vii) installation costs; and
 561 (viii) ancillary software, hardware, equipment, or construction costs; and
 562 (c) does not include:
 563 (i) the costs of preparing for or engaging in a procurement process; or
 564 (ii) contract negotiation or drafting costs.
 565 (91) "Trial use contract" means a contract for a procurement item that the procurement
 566 unit acquires for a trial use or testing to determine whether the procurement item will benefit
 567 the procurement unit.
 568 (92) "Vendor":
 569 (a) means a person who is seeking to enter into a contract with a procurement unit to
 570 provide a procurement item; and
 571 (b) includes:
 572 (i) a bidder;
 573 (ii) an offeror;
 574 (iii) an approved vendor; and
 575 (iv) a design professional.
 576 Section 2. Section **63G-6a-105** is amended to read:
 577 **63G-6a-105. Application of chapter.**
 578 [~~(1) The provisions of this chapter that are enacted on May 1, 2013, apply only to a~~
 579 ~~procurement advertised, or begun on or after May 1, 2013, unless the parties agree to have the~~
 580 ~~provisions apply with respect to a procurement that was advertised or begun before May 1,~~
 581 ~~2013, but is not completed before May 1, 2013.]~~
 582 [(2)] (1) (a) Except as provided in Section **63G-6a-107**, this chapter [~~shall apply~~]
 583 applies to every expenditure of public funds irrespective of the source of the funds, including
 584 federal assistance, by any procurement unit, under any contract.
 585 (b) The provisions of this chapter do not apply to a public entity that is not a

586 procurement unit.

587 [~~3~~] (2) The following procurement units shall adopt ordinances or resolutions relating
588 to the procurement of design professional services not inconsistent with the provisions of Part
589 15, Design Professional Services:

- 590 (a) an educational procurement unit;
- 591 (b) a conservation district;
- 592 (c) a local building authority;
- 593 (d) a local district;
- 594 (e) a public corporation; or
- 595 (f) a special service district.

596 [~~4~~] (3) Any section of this chapter, or its implementing regulations, may be adopted
597 by:

- 598 (a) a county;
- 599 (b) a municipality; or
- 600 (c) the Utah Housing Corporation.

601 [~~5~~] (4) Rules adopted under this chapter shall be consistent with the provisions of this
602 chapter.

603 [~~6~~] (5) An applicable rulemaking authority or a procurement unit may not adopt rules,
604 policies, or regulations that are inconsistent with this chapter.

605 [~~7~~] (6) Unless otherwise provided by statute, this chapter does not apply to
606 procurement of real property.

607 [~~8~~] (7) Notwithstanding any provision of this chapter, a procurement unit may
608 administer a [~~direct~~] procurement in accordance with the requirements imposed by the source
609 of the funds used to procure the procurement item.

610 Section 3. Section **63G-6a-106** is amended to read:

611 **63G-6a-106. Procurement units with specific statutory procurement authority --**
612 **Independent procurement authority.**

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

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

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

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

620 (d) Title 72, Transportation Code; and

621 (e) Title 78A, Chapter 5, District Court.

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

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

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

628 [~~(c) This Subsection (3) supersedes Subsections (1) and (2).~~]

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

632 (i) engage in a standard procurement process;

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

635 (iii) otherwise engage in an act authorized or required by this chapter.

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

637 (i) a legislative procurement unit;

638 (ii) a judicial procurement unit;

639 (iii) an educational procurement unit;

640 (iv) a local government procurement unit;

641 (v) a conservation district;

642 (vi) a local building authority;

643 (vii) a local district;

644 (viii) a public corporation;

645 (ix) a special service district;

646 (x) a public transit district; and

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

648 Subsection (1).

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

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

654 ~~[(e) At any stage of the procurement process, a head of a procurement unit with
655 independent procurement authority who determines that a procurement over which the
656 procurement unit has authority is out of compliance with this chapter or applicable rules may:]~~

657 ~~[(i) correct or amend the procurement to bring it into compliance; or]~~

658 ~~[(ii) cancel the procurement, if the head of the procurement unit determines that it is:]~~

659 ~~[(A) not feasible to bring the procurement into compliance; or]~~

660 ~~[(B) in the best interest of the procurement unit to cancel the procurement.]~~

661 (e) With respect to a procurement or contract over which the head of a procurement
662 unit with independent procurement authority has authority, the head of the procurement unit
663 with independent procurement authority may:

664 (i) manage and supervise the procurement to ensure to the extent practicable that
665 taxpayers receive the best value;

666 (ii) prepare and issue standard specifications for procurement items;

667 (iii) review contracts, coordinate contract compliance, conduct contract audits, and
668 approve change orders;

669 (iv) delegate duties and authority to an employee of the procurement unit, as the head
670 of the procurement unit with independent procurement authority considers appropriate;

671 (v) for an executive branch procurement unit, coordinate with the executive director of
672 the Department of Technology Services, created in Section [63F-1-103](#), with respect to the
673 procurement unit's procurement of information technology services;

674 (vi) correct, amend, or cancel a procurement at any stage of the procurement process if
675 the procurement is out of compliance with this chapter or a board rule;

676 (vii) after consultation with, as applicable, the attorney general's office or the
677 procurement unit's legal counsel, correct, amend, or cancel a contract at any time during the
678 term of the contract if:

- 679 (A) the contract is out of compliance with this chapter or a board rule; and
680 (B) the head of the procurement unit with independent procurement authority
681 determines that correcting, amending, or canceling the contract is in the best interest of the
682 state; and
- 683 (viii) attempt to resolve a contract dispute in coordination with the legal counsel of the
684 procurement unit with independent procurement authority.
- 685 (f) The head of a procurement unit with independent procurement authority serves as
686 the protest officer for a protest involving the procurement unit.
- 687 ~~(f)~~ (g) If, at any time during the term of a contract awarded by a procurement unit
688 with independent procurement authority, the head of the procurement unit determines that the
689 contract is out of compliance with this chapter or applicable rules, the head of the procurement
690 unit may correct or amend the contract to bring it into compliance or cancel the contract:
- 691 (i) if the head of the procurement unit determines that correcting, amending, or
692 canceling the contract is in the best interest of the procurement unit; and
693 (ii) after consulting with legal counsel.
- 694 (5) (a) The attorney general may, in accordance with the provisions of this chapter, but
695 without involvement by the division or the chief procurement officer:
- 696 (i) retain outside counsel, subject to Section 67-5-33 if the attorney general retains
697 outside counsel under a contingent fee contract, as defined in that section; or
698 (ii) procure litigation support services, including retaining an expert witness.
- 699 (b) A procurement unit with independent procurement authority that is not represented
700 by the attorney general's office may, in accordance with the provisions of this chapter, but
701 without involvement by the division or the chief procurement officer:
- 702 (i) retain outside counsel; or
703 (ii) procure litigation support services, including retaining an expert witness.
- 704 (6) The state auditor's office may, in accordance with the provisions of this chapter, but
705 without involvement by the division or the chief procurement officer, procure audit services.
- 706 (7) The state treasurer may, in accordance with the provisions of this chapter, but
707 without involvement by the division or the chief procurement officer, procure:
- 708 (a) deposit services; and
709 (b) services related to issuing bonds.

710 Section 4. Section **63G-6a-106.5** is enacted to read:

711 **63G-6a-106.5. Policy for legislative procurement units.**

712 The Legislative Management Committee shall adopt a policy establishing requirements
713 applicable to a legislative procurement unit.

714 Section 5. Section **63G-6a-107** is amended to read:

715 **63G-6a-107. Exemptions from chapter -- Compliance with other provisions.**

716 (1) Except for Part 24, Unlawful Conduct and Penalties, the provisions of this chapter
717 do not apply to:

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

720 (b) a grant;

721 (c) a contract between procurement units;

722 (d) medical supplies or medical equipment, including service agreements for medical
723 equipment, obtained [~~through a purchasing consortium by the Utah State Hospital, the Utah~~
724 ~~State Developmental Center,]~~ by the University of Utah Hospital[~~, or any other hospital owned~~
725 ~~by the state or a political subdivision of the state,]~~ through a purchasing consortium if:

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

727 (ii) the chief administrative officer of the hospital makes a written finding that the
728 prices for purchasing medical supplies and medical equipment through the consortium are
729 competitive with market prices;

730 (e) the purchase of firefighting supplies or equipment by the Division of Forestry, Fire,
731 and State Lands, created in Section **65A-1-4**, through the federal General Services
732 Administration or the National Fire Cache system;

733 (f) goods purchased for resale to the public; or

734 (g) activities related to the management of investments by a public entity granted
735 investment authority by law.

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

738 [(~~3~~)] (2) Notwithstanding any conflicting provision of this chapter, when a
739 procurement involves the expenditure of federal or state assistance, federal contract funds,
740 local matching funds, or federal financial participation funds, the procurement unit shall

741 comply with mandatory applicable federal or state law and regulations not reflected in this
742 chapter.

743 ~~[(4)]~~ (3) This chapter does not supersede the requirements for retention or withholding
744 of construction proceeds and release of construction proceeds as provided in Section 13-8-5.

745 (4) This chapter does not apply to a procurement unit's hiring a mediator, arbitrator, or
746 arbitration panel member to participate in the procurement unit's dispute resolution efforts.

747 Section 6. Section **63G-6a-109** is amended to read:

748 **63G-6a-109. Issuing procurement unit and conducting procurement unit.**

749 (1) ~~[(a) Except as provided in Subsection (1)(b), with]~~ With respect to a procurement
750 by an executive branch procurement unit:

751 ~~[(i)]~~ (a) the division is the issuing procurement unit; and

752 ~~[(ii)]~~ (b) the executive branch procurement unit is the conducting procurement unit and
753 is responsible to ensure that the procurement is conducted in compliance with this chapter.

754 ~~[(b) An executive branch procurement unit administering a directed procurement is~~
755 ~~both the issuing procurement unit and the conducting procurement unit.]~~

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

758 (3) A conducting procurement unit is responsible for contract administration.

759 Section 7. Section **63G-6a-110**, which is renumbered from Section 63G-6a-402 is
760 renumbered and amended to read:

761 ~~[63G-6a-402].~~ **63G-6a-110. Procurement unit required to comply with Utah**
762 **Procurement Code and applicable rules -- Rulemaking authority -- Reporting.**

763 (1) Except as otherwise provided in Section 63G-6a-107, Section ~~[63G-6a-403]~~
764 63G-6a-410, Part 8, Exceptions to Procurement Requirements, or elsewhere in this chapter, a
765 procurement unit may not obtain a procurement item, unless:

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

768 (i) uses;

769 (A) a standard procurement process; or

770 (B) an exception to a standard procurement process, described in Part 8, Exceptions to
771 Procurement Requirements; and

772 (ii) complies with:

773 (A) the requirements of this chapter; and

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

775 (b) if the procurement unit is a county, a municipality, or the Utah Housing

776 Corporation, the procurement unit complies with:

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

778 (ii) all other procurement requirements that the procurement unit is required to comply

779 with; or

780 (c) if the procurement unit is not a procurement unit described in Subsection (1)(a) or

781 (b), the procurement unit:

782 (i) obtains the procurement item under the direction and approval of the division,

783 unless otherwise provided by a rule made by the board;

784 (ii) uses a standard procurement process; and

785 (iii) complies with:

786 (A) the requirements of this chapter; and

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

788 (2) Subject to Subsection (3), the applicable rulemaking authority shall make rules

789 relating to the management and control of procurements and procurement procedures by a

790 procurement unit.

791 ~~[(3)(a) Rules made under Subsection (2) shall ensure compliance with the federal~~

792 ~~contract prohibition provisions of the Sudan Accountability and Divestment Act of 2007 (Pub.~~

793 ~~L. No. 110-174) that prohibit contracting with a person doing business in Sudan.]~~

794 ~~[(b)]~~ (3) The State Building Board rules governing procurement of construction, design

795 professional services, and leases apply to the procurement of construction, design professional

796 services, and leases of real property by the Division of Facilities Construction and

797 Management.

798 (4) An applicable rulemaking authority that is subject to Title 63G, Chapter 3, Utah

799 Administrative Rulemaking Act, shall make the rules described in this chapter in accordance

800 with the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

801 (5) The State Building Board shall make a report on or before July 1 of each year to a

802 legislative interim committee, designated by the Legislative Management Committee created

803 under Section 36-12-6, on the establishment, implementation, and enforcement of the rules
804 made by the State Building Board under this chapter.

805 (6) The rules of the applicable rulemaking authority for the executive branch
806 procurement unit shall require, for each contract and request for proposals, the inclusion of a
807 clause that requires the issuing procurement unit, for the duration of the contract, to make
808 available contact information of the winning contractor to the Department of Workforce
809 Services in accordance with Section 35A-2-203. This requirement does not preclude a
810 contractor from advertising job openings in other forums throughout the state.

811 Section 8. Section 63G-6a-111, which is renumbered from Section 63G-6a-407 is
812 renumbered and amended to read:

813 ~~[63G-6a-407].~~ **63G-6a-111. Purpose of specifications.**

814 (1) All specifications shall seek to promote the overall economy and best use for the
815 purposes intended and encourage competition in satisfying the needs of the procurement unit,
816 and may not be unduly restrictive.

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

820 Section 9. Section 63G-6a-112, which is renumbered from Section 63G-6a-406 is
821 renumbered and amended to read:

822 ~~[63G-6a-406].~~ **63G-6a-112. Public notice of certain solicitations.**

823 (1) The division or a procurement unit with independent procurement authority that
824 issues a solicitation required to be published in accordance with this section, shall provide
825 public notice that includes:

- 826 (a) the name of the conducting procurement unit;
827 (b) the name of the procurement unit acquiring the procurement item;
828 (c) information on how to contact the issuing procurement unit;
829 (d) the date of the opening and closing of the solicitation;
830 (e) information on how to obtain a copy of the procurement documents;
831 (f) a general description of the procurement items that will be obtained through the
832 standard procurement process or sole source procurement; and
833 (g) for a notice of a sole source procurement:

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

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

837 (2) Except as provided in Subsection (4), the issuing procurement unit shall publish the
838 notice described in Subsection (1):

839 (a) at least seven days before the day of the deadline for submission of a bid or other
840 response; and

841 (b) (i) in a newspaper of general circulation in the state;

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

843 (A) directly impacted by the procurement; or

844 (B) over which the procurement unit has jurisdiction;

845 (iii) on the main website for the issuing procurement unit or the procurement unit
846 acquiring the procurement item; or

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

849 (3) Except as provided in Subsection (4), for a sole source procurement for which
850 notice is required to be published in accordance with this section, the issuing procurement unit
851 shall publish the notice described in Subsection (1):

852 (a) at least seven days before the acquisition of the sole source procurement item; and

853 (b) (i) in a newspaper of general circulation in the state;

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

855 (A) directly impacted by the procurement; or

856 (B) over which the procurement unit has jurisdiction;

857 (iii) on the main website for the procurement unit acquiring the procurement item; or

858 (iv) on a state website that is owned by, managed by, or provided under contract with,
859 the division for posting a procurement notice.

860 (4) An issuing procurement unit may reduce the seven-day period described in
861 Subsection (2) or (3), if the procurement officer or the procurement officer's designee signs a
862 written statement that:

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

864 (b) determines that competition from multiple sources may be obtained within the

865 shorter period of time.

866 (5) (a) An issuing procurement unit shall make a copy of the solicitation documents
867 available for public inspection at the main office of the issuing procurement unit or on the
868 website described in Subsection (2)(b) until the award of the contract or the cancellation of the
869 procurement.

870 (b) A procurement unit issuing a sole source procurement shall make a copy of
871 information related to the sole source procurement available for public inspection at the main
872 office of the procurement unit or on the website described in Subsection (3)(b) until the award
873 of the contract or the cancellation of the procurement.

874 (c) A procurement unit shall maintain all records in accordance with Part 20, Records.

875 (6) A procurement unit that issues a request for statement of qualifications as part of an
876 approved vendor list process that results in the establishment of an open-ended vendor list, as
877 defined in Section 63G-6a-507, shall keep the request for statement of qualifications posted on
878 a website described in Subsection (2)(b)(iii) or (iv) during the entire period of the open-ended
879 vendor list.

880 Section 10. Section **63G-6a-113** is enacted to read:

881 **63G-6a-113. Contract price may be based on established terms.**

882 A procurement unit acquiring a procurement item may establish the price of the
883 procurement item based on:

884 (1) a price list, rate schedule, or price catalog:

885 (a) submitted by a vendor and accepted by the procurement unit; or

886 (b) mandated by the procurement unit or a federal agency; or

887 (2) a federal regulation for a health and human services program.

888 Section 11. Section **63G-6a-114** is enacted to read:

889 **63G-6a-114. Correcting an immaterial error in a solicitation response.**

890 (1) The chief procurement officer or the head of a procurement unit with independent
891 procurement authority:

892 (a) may allow a vendor to correct an immaterial error in a solicitation response as
893 provided in this section; and

894 (b) may not allow a vendor to:

895 (i) correct a deficiency, inaccuracy, or mistake in a solicitation response that is not an

896 immaterial error;

897 (ii) correct an incomplete submission of documents that the solicitation required to be
898 submitted with the solicitation response;

899 (iii) correct a failure to submit a timely solicitation response;

900 (iv) substitute or alter a required form or other document specified in the solicitation;

901 (v) remedy a cause for a vendor being considered to be not responsible or a solicitation
902 response not responsive; or

903 (vi) correct a defect or inadequacy resulting in a determination that a vendor's
904 solicitation response does not meet the mandatory minimum requirements, evaluation criteria,
905 or applicable score thresholds established in the solicitation.

906 (2) A chief procurement officer who allows a vendor to correct an immaterial error
907 under this section:

908 (a) shall establish a deadline by which the vendor is required to submit the correction;
909 and

910 (b) may not allow the vendor to correct an immaterial error in a solicitation response if
911 the vendor submits the correction after the deadline.

912 (3) A chief procurement officer or the head of a procurement unit with independent
913 procurement authority who allows a vendor to correct an immaterial error in a solicitation
914 response shall prepare and sign a written document supporting the reason for allowing the
915 correction.

916 Section 12. Section **63G-6a-115** is enacted to read:

917 **63G-6a-115. Clarifying information in a solicitation response.**

918 (1) A procurement unit may at any time request a vendor to clarify information
919 contained in a solicitation response.

920 (2) A procurement unit may allow a vendor to respond to a request under Subsection
921 (1):

922 (a) in writing;

923 (b) by submitting a printed document; or

924 (c) by an oral discussion or presentation.

925 (3) A procurement unit that requests a vendor to clarify information contained in a
926 solicitation response under this section:

927 (a) shall establish a deadline by which the vendor is required to submit the clarifying
928 information; and

929 (b) may not allow the vendor to submit clarifying information after the deadline.

930 (4) A vendor's response to a request under Subsection (2)(a):

931 (a) may only explain, illustrate, or interpret the contents of the vendor's original
932 solicitation response;

933 (b) if presented orally, shall be confirmed in writing;

934 (c) may not be used to address criteria or specifications not contained in the vendor's
935 original solicitation response; and

936 (d) may not be used to:

937 (i) correct a deficiency, inaccuracy, or mistake in a solicitation response that is not an
938 immaterial error;

939 (ii) correct an incomplete submission of documents that the solicitation required to be
940 submitted with the solicitation response;

941 (iii) correct a failure to submit a timely solicitation response;

942 (iv) substitute or alter a required form or other document specified in the solicitation;

943 (v) remedy a cause for a vendor being considered to be not responsible or a solicitation
944 response not responsive; or

945 (vi) correct a defect or inadequacy resulting in a determination that a vendor does not
946 meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds
947 established in the solicitation.

948 Section 13. Section **63G-6a-303** is repealed and reenacted to read:

949 **63G-6a-303. Duties and authority of chief procurement officer.**

950 (1) The chief procurement officer:

951 (a) is the director of the division;

952 (b) serves as the central procurement officer of the state;

953 (c) serves as a voting member of the board; and

954 (d) serves as the protest officer for a protest relating to a procurement of an executive
955 branch procurement unit without independent procurement authority or a state cooperative
956 contract procurement.

957 (2) Except as otherwise provided in this chapter, the chief procurement officer shall:

958 (a) develop procurement policies and procedures supporting ethical procurement
959 practices, fair and open competition among vendors, and transparency within the state's
960 procurement process;

961 (b) administer the state's cooperative purchasing program, including state cooperative
962 contracts and associated administrative fees;

963 (c) enter into an agreement with a public entity for services provided by the division, if
964 the agreement is in the best interest of the state;

965 (d) ensure the division's compliance with any applicable law, rule, or policy, including
966 a law, rule, or policy applicable to the division's role as an issuing procurement unit or
967 conducting procurement unit, or as the state's central procurement organization;

968 (e) manage the division's electronic procurement system;

969 (f) oversee the recruitment, training, career development, certification requirements,
970 and performance evaluation of the division's procurement personnel;

971 (g) make procurement training available to procurement units and persons who do
972 business with procurement units;

973 (h) provide exemplary customer service and continually improve the division's
974 procurement operations; and

975 (i) exercise all other authority, fulfill all other duties and responsibilities, and perform
976 all other functions authorized under this chapter.

977 (3) With respect to a procurement or contract over which the chief procurement officer
978 has authority under this chapter, the chief procurement officer, except as otherwise provided in
979 this chapter:

980 (a) shall:

981 (i) manage and supervise a procurement to ensure to the extent practicable that
982 taxpayers receive the best value;

983 (ii) prepare and issue standard specifications for procurement items;

984 (iii) review contracts, coordinate contract compliance, conduct contract audits, and
985 approve change orders;

986 (iv) coordinate with the executive director of the Department of Technology Services,
987 created in Section 63F-1-103, with respect to the procurement of information technology
988 services by an executive branch procurement unit;

989 (v) correct, amend, or cancel a procurement at any stage of the procurement process if
990 the procurement is out of compliance with this chapter or a board rule;

991 (vi) after consultation with the attorney general's office, correct, amend, or cancel a
992 contract at any time during the term of the contract if:

993 (A) the contract is out of compliance with this chapter or a board rule; and

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

996 (vii) make a reasonable attempt to resolve a contract dispute, in coordination with the
997 attorney general's office; and

998 (b) may:

999 (i) delegate limited purchasing authority to a state agency, with appropriate oversight
1000 and control to ensure compliance with this chapter;

1001 (ii) delegate duties and authority to an employee of the division, as the chief
1002 procurement officer considers appropriate;

1003 (iii) negotiate and settle contract overcharges, undercharges, and claims, in accordance
1004 with the law and after consultation with the attorney general's office;

1005 (iv) authorize a procurement unit to make a procurement pursuant to a regional
1006 solicitation, as defined in Subsection [63G-6a-2105\(2\)](#), even if the procurement item is also
1007 offered under a state cooperative contract, if the chief procurement officer determines that the
1008 procurement pursuant to a regional solicitation is in the best interest of the acquiring
1009 procurement unit; and

1010 (v) remove an individual from the procurement process or contract administration for:

1011 (A) having a conflict of interest or the appearance of a conflict of interest with a person
1012 responding to a solicitation or with a contractor;

1013 (B) having a bias or the appearance of bias for or against a person responding to a
1014 solicitation or for or against a contractor;

1015 (C) making an inconsistent or unexplainable score for a solicitation response;

1016 (D) having inappropriate contact or communication with a person responding to a
1017 solicitation;

1018 (E) socializing inappropriately with a person responding to a solicitation or with a
1019 contractor;

1020 (F) engaging in any other action or having any other association that causes the chief
1021 procurement officer to conclude that the individual cannot fairly evaluate a solicitation
1022 response or administer a contract; or

1023 (G) any other violation of a law, rule, or policy.

1024 (4) The chief procurement officer has final authority to determine whether an executive
1025 branch procurement unit's anticipated expenditure of public funds, anticipated agreement to
1026 expend public funds, or provision of a benefit constitutes a procurement that is subject to this
1027 chapter.

1028 (5) Except as otherwise provided in this chapter, the chief procurement officer shall
1029 review, monitor, and audit the procurement activities and delegated procurement authority of
1030 an executive branch procurement unit without independent procurement authority to ensure
1031 compliance with this chapter, rules made by the applicable rulemaking authority, and division
1032 policies.

1033 Section 14. Section **63G-6a-401** is amended to read:

1034 **Part 4. Supplemental Procurement Procedures**

1035 **63G-6a-401. Title.**

1036 This part is known as [~~"General Procurement Provisions."~~] "Supplemental Procurement
1037 Procedures."

1038 Section 15. Section **63G-6a-409**, which is renumbered from Section 63G-6a-502 is
1039 renumbered and amended to read:

1040 [~~**63G-6a-502**~~]. **63G-6a-409. Request for information.**

1041 (1) The purpose of a request for information is to:

1042 (a) obtain information, comments, or suggestions from potential bidders or offerors
1043 before issuing an invitation for bids or request for proposals;

1044 (b) determine whether to issue an invitation for bids or a request for proposals; and

1045 (c) generate interest in a potential invitation for bids or [a] request for proposals.

1046 (2) A request for information may be useful in order to:

1047 (a) prepare to issue an invitation for bids or request for proposals for an unfamiliar or
1048 complex procurement;

1049 (b) determine the market availability of a procurement item; or

1050 (c) determine best practices, industry standards, performance standards, product

- 1051 specifications, and innovations relating to a procurement item.
- 1052 (3) (a) A request for information is not a procurement process and may not be used to:
- 1053 (i) solicit cost, pricing, or rate information;
- 1054 (ii) negotiate fees;
- 1055 (iii) make a purchase; or
- 1056 (iv) enter into a contract.
- 1057 (b) To make a purchase or enter into a contract, a procurement unit is required to:
- 1058 (i) use a standard procurement process; or
- 1059 (ii) comply with an exception to the requirement to use a standard procurement
- 1060 process, as described in Part 8, Exceptions to Procurement Requirements.
- 1061 (4) A response to a request for information is not an offer and may not be accepted to
- 1062 form a binding contract.
- 1063 (5) A request for information may seek a wide range of information, including:
- 1064 (a) availability of a procurement item;
- 1065 (b) delivery schedules;
- 1066 (c) industry standards and practices;
- 1067 (d) product specifications;
- 1068 (e) training;
- 1069 (f) new technologies;
- 1070 (g) capabilities of potential providers of a procurement item; and
- 1071 (h) alternate solutions.
- 1072 (6) A record containing information submitted to or by a governmental entity in
- 1073 response to a request for information is a protected record under Section [63G-2-305](#).
- 1074 Section 16. Section **63G-6a-410** is enacted to read:
- 1075 **63G-6a-410. Request for statement of qualifications -- Process.**
- 1076 (1) (a) A procurement unit may use the process described in this section:
- 1077 (i) as one of the stages of a multiple-stage:
- 1078 (A) bidding process;
- 1079 (B) request for proposals process; or
- 1080 (C) design professional procurement process; and
- 1081 (ii) to identify qualified vendors to participate in other stages of the multiple-stage

1082 procurement process.

1083 (b) A procurement unit shall use the process described in this section as part of the
1084 approved vendor list process, if the procurement unit intends to establish an approved vendor
1085 list.

1086 (2) A procurement unit may not:

1087 (a) award a contract based solely on the process described in this section; or

1088 (b) solicit costs, pricing, or rates or negotiate fees through the process described in this
1089 section.

1090 (3) The process of identifying qualified vendors in a multiple-stage procurement
1091 process or of establishing an approved vendor list under Section [63G-6a-507](#) is initiated by a
1092 procurement unit issuing a request for statement of qualifications.

1093 (4) A request for statement of qualifications in a multiple-stage procurement process
1094 shall include:

1095 (a) a statement indicating that participation in other stages of the multiple-stage
1096 procurement process will be limited to qualified vendors;

1097 (b) the minimum mandatory requirements, evaluation criteria, and applicable score
1098 thresholds that will be used to identify qualified vendors, including, as applicable:

1099 (i) experience and work history;

1100 (ii) management and staff requirements or standards;

1101 (iii) licenses, certifications, and other qualifications;

1102 (iv) performance ratings or references;

1103 (v) financial stability; and

1104 (vi) other information pertaining to vendor qualifications that the chief procurement
1105 officer or the head of a procurement unit with independent procurement authority considers
1106 relevant or important; and

1107 (c) the deadline by which a vendor is required to submit a statement of qualifications.

1108 (5) A request for statement of qualifications in an approved vendor list process under
1109 Section [63G-6a-507](#) shall include:

1110 (a) a general description of, as applicable:

1111 (i) the procurement item that the procurement unit seeks to acquire;

1112 (ii) the type of project or scope or category of work that will be the subject of a

1113 procurement by the procurement unit;
1114 (iii) the procurement process the procurement unit will use to acquire the procurement
1115 item; and
1116 (iv) the type of vendor the procurement unit seeks to provide the procurement item;
1117 (b) the minimum mandatory requirements, evaluation criteria, and applicable score
1118 thresholds that vendors are required to meet to be included on the approved vendor list;
1119 (c) a statement indicating that the approved vendor list will include only responsible
1120 vendors that:
1121 (i) submit a responsive statement of qualifications; and
1122 (ii) meet the minimum mandatory requirements, evaluation criteria, and applicable
1123 score thresholds described in the request for statement of qualifications;
1124 (d) a statement indicating that only vendors on the approved vendor list will be able to
1125 participate in the procurements identified in the request for statement of qualifications;
1126 (e) a statement indicating whether the procurement unit will use a performance rating
1127 system for evaluating the performance of vendors on the approved vendor list, including
1128 whether a vendor on the approved vendor list may be disqualified and removed from the list;
1129 (f) (i) a statement indicating whether the procurement unit uses a closed-ended
1130 approved vendor list, as defined in Section [63G-6a-507](#), or an open-ended approved vendor
1131 list, as defined in Section [63G-6a-507](#); and
1132 (ii) (A) if the procurement unit uses a closed-ended approved vendor list, the deadline
1133 by which a vendor is required to submit a statement of qualifications and a specified period of
1134 time after which the approved vendor list will expire; or
1135 (B) if the procurement unit uses an open-ended approved vendor list, the deadline by
1136 which a vendor is required to submit a statement of qualifications to be considered for the
1137 initial approved vendor list, a schedule indicating when a vendor not on the initial approved
1138 vendor list may submit a statement of qualifications to be considered to be added to the
1139 approved vendor list, and the specified period of time after which a vendor is required to
1140 submit a new statement of qualifications for evaluation before the vendor's status as an
1141 approved vendor on the approved vendor list may be renewed; and
1142 (g) a description of any other criteria or requirements specific to the procurement item
1143 or scope of work that is the subject of the procurement.

1144 (6) A procurement unit issuing a request for statement of qualifications shall publish
1145 the request as provided in Section 63G-6a-112.

1146 (7) After the deadline for submitting a statement of qualifications, the chief
1147 procurement officer or the head of a procurement unit with independent procurement authority
1148 may correct an immaterial error in a statement of qualifications, as provided in Subsection
1149 63G-6a-114(1).

1150 (8) The conducting procurement unit may reject a statement of qualifications if the
1151 conducting procurement unit determines that:

1152 (a) the person submitting the statement of qualifications is not responsible; or

1153 (b) the statement of qualifications:

1154 (i) is not responsive; or

1155 (ii) does not meet mandatory minimum requirements, evaluation criteria, or applicable
1156 score thresholds stated in the request for statement of qualifications.

1157 (9) (a) (i) After the issuance of a request for statement of qualifications, the conducting
1158 procurement unit shall appoint an evaluation committee consisting of at least three individuals
1159 with at least a general familiarity with or basic understanding of:

1160 (A) the technical requirements relating to the type of procurement item that is the
1161 subject of the request for statement of qualifications; or

1162 (B) the need that the procurement item is intended to address.

1163 (ii) The conducting procurement unit shall ensure that each member of the evaluation
1164 committee and each individual participating in the evaluation committee process:

1165 (A) does not have a conflict of interest with any vendor that submits a statement of
1166 qualifications;

1167 (B) can fairly evaluate each statement of qualifications;

1168 (C) does not contact or communicate with a vendor concerning the evaluation process
1169 or procurement outside the official evaluation committee process; and

1170 (D) conducts or participates in the evaluation in a manner that ensures a fair and
1171 competitive process and avoids the appearance of impropriety.

1172 (b) A conducting procurement unit may authorize an evaluation committee to receive
1173 assistance:

1174 (i) from an expert or consultant who:

- 1175 (A) is not a member of the evaluation committee; and
1176 (B) does not participate in the evaluation scoring; and
1177 (ii) to better understand a technical issue involved in the procurement.
1178 (c) An evaluation committee appointed under this Subsection (9):
1179 (i) shall evaluate and score statements of qualifications submitted in response to a
1180 request for statement of qualifications using the minimum mandatory requirements, evaluation
1181 criteria, and applicable score thresholds set forth in the request for statement of qualifications;
1182 (ii) may not evaluate or score a statement of qualifications using criteria not included in
1183 the request for statement of qualifications; and
1184 (iii) may, with the approval of the head of the conducting procurement unit, request the
1185 vendor to clarify the vendor's statement of qualifications, as provided in Section [63G-6a-115](#).
1186 (d) After the evaluation committee completes its evaluation and scoring of the
1187 statements of qualifications, the evaluation committee shall submit the statements of
1188 qualifications and evaluation scores to the head of the procurement unit for review and final
1189 determination of:
1190 (i) qualified vendors, if the request for statement of qualifications process is used as
1191 one of the stages of a multiple-stage process; or
1192 (ii) vendors to be included on an approved vendor list, if the request for statement of
1193 qualifications process is used as part of the approved vendor list process.
1194 (e) The issuing procurement unit shall review the evaluation committee's scores and
1195 correct any errors, scoring inconsistencies, and reported noncompliance with this chapter.
1196 (f) (i) The deliberations of an evaluation committee under this Subsection (9) may be
1197 held in private.
1198 (ii) If the evaluation committee is a public body, as defined in Section [52-4-103](#), the
1199 evaluation committee shall comply with Section [52-4-205](#) in closing a meeting for its
1200 deliberations.
1201 (10) A procurement unit may at any time request a vendor to clarify information
1202 contained in a statement of qualifications, as provided in Section [63G-6a-115](#).
1203 (11) A vendor may voluntarily withdraw a statement of qualifications at any time
1204 before a contract is awarded with respect to which the statement of qualifications was
1205 submitted.

1206 (12) (a) A procurement unit may at any time:

1207 (i) take steps to confirm the accuracy of a statement of qualifications; or

1208 (ii) allow the voluntary withdrawal of an unintentionally erroneous statement of
1209 qualifications.

1210 (b) If a vendor fails to respond to a procurement unit's request to confirm the accuracy
1211 of the vendor's statement of qualifications by the deadline established by the procurement unit,
1212 the procurement unit shall consider the statement of qualifications to be accurate and may
1213 proceed with the procurement process.

1214 (13) (a) A conducting procurement unit may disqualify a vendor for:

1215 (i) a violation of this chapter;

1216 (ii) not being responsible or for filing a statement of qualifications that is not
1217 responsive;

1218 (iii) a violation of a requirement contained in the request for statement of
1219 qualifications;

1220 (iv) unlawful or unethical conduct;

1221 (v) a change in the vendor's circumstances after the vendor submits a statement of
1222 qualifications that, if the change had been known at the time the statement of qualifications was
1223 submitted, would have caused the vendor not to have a qualifying score; or

1224 (vi) a performance rating below the satisfactory performance threshold specified in the
1225 request for statement of qualifications.

1226 (b) A procurement unit that disqualifies a vendor under Subsection (13)(a) shall:

1227 (i) make a written finding, stating the reasons for the disqualification; and

1228 (ii) provide a copy of the written finding to the disqualified vendor.

1229 (14) If only one vendor meets the minimum qualifications, evaluation criteria, and
1230 applicable score thresholds set forth in the request for statement of qualifications that the
1231 procurement unit is using as part of an approved vendor list process, the conducting
1232 procurement unit:

1233 (a) shall cancel the request for statement of qualifications; and

1234 (b) may not establish an approved vendor list based on the canceled request for
1235 statement of qualifications or on statements of qualifications submitted in response to the
1236 request for statement of qualifications.

1237 (15) If a conducting procurement unit cancels a request for statement of qualifications,
1238 the conducting procurement unit shall make available for public inspection a written
1239 justification for the cancellation.

1240 (16) After receiving and reviewing the statements of qualifications and evaluation
1241 scores submitted by the evaluation committee, as provided in Subsection (9)(c), the head of the
1242 procurement unit using the request for statement of qualifications process under this section as
1243 one of the stages of a multiple-stage procurement process shall identify those vendors meeting
1244 the minimum mandatory requirements, evaluation criteria, and applicable score thresholds as
1245 qualified vendors who are allowed to participate in the remaining stages of the multiple-stage
1246 procurement process.

1247 (17) The applicable rulemaking authority may make rules in accordance with the
1248 provisions of Chapter 3, Utah Administrative Rulemaking Act, pertaining to the request for
1249 statement of qualifications and the process described in this section.

1250 Section 17. Section **63G-6a-501** is amended to read:

1251 **Part 5. Other Standard Procurement Processes**

1252 **63G-6a-501. Title.**

1253 This part is known as [~~"Request for Information."~~] "Other Standard Procurement
1254 Processes."

1255 Section 18. Section **63G-6a-506**, which is renumbered from Section 63G-6a-408 is
1256 renumbered and amended to read:

1257 [~~63G-6a-408~~]. **63G-6a-506. Small purchases.**

1258 (1) As used in this section:

1259 (a) "Annual cumulative threshold" means the maximum total annual amount,
1260 established by the applicable rulemaking authority under Subsection (2)(a)(i), that a
1261 procurement unit may expend to obtain procurement items from the same source under this
1262 section.

1263 (b) "Individual procurement threshold" means the maximum amount, established by
1264 the applicable rulemaking authority under Subsection (2)(a)(ii), for which a procurement unit
1265 may purchase a procurement item under this section.

1266 (c) "Single procurement aggregate threshold" means the maximum total amount,
1267 established by the applicable rulemaking authority under Subsection (2)(a)(iii), that a

1268 procurement unit may expend to obtain multiple procurement items from one source at one
1269 time under this section.

1270 (2) (a) The applicable rulemaking authority may make rules governing small purchases
1271 of any procurement item, including construction, job order contracting, design professional
1272 services, other professional services, information technology, and goods.

1273 (b) Rules under Subsection (2)(a) may include provisions:

1274 (i) establishing expenditure thresholds, including:

1275 (A) an annual cumulative threshold;

1276 (B) an individual procurement threshold; and

1277 (C) a single procurement aggregate threshold;

1278 (ii) establishing procurement requirements relating to the thresholds described in
1279 Subsection (2)(b)(i); and

1280 (iii) providing for the use of electronic, telephone, or written quotes.

1281 (3) Expenditures made under this section by a procurement unit may not exceed a
1282 threshold established by the applicable rulemaking authority, unless the chief procurement
1283 officer or the head of a procurement unit with independent procurement authority gives written
1284 authorization to exceed the threshold that includes the reasons for exceeding the threshold.

1285 (4) Except as provided in Subsection (5), an executive branch procurement unit may
1286 not obtain a procurement item through a small purchase standard procurement process if the
1287 procurement item may be obtained through a state cooperative contract or a contract awarded
1288 by the chief procurement officer under Subsection [63G-6a-2105\(1\)](#).

1289 (5) Subsection (4) does not apply if:

1290 (a) the procurement item is obtained for an unanticipated, urgent [~~or unanticipated~~], or
1291 emergency condition, including:

1292 (i) an item needed to avoid stopping a public construction project;

1293 (ii) an immediate repair to a facility or equipment; or

1294 (iii) another emergency condition; or

1295 (b) the chief procurement officer or the head of a procurement unit that is an executive
1296 branch procurement unit with independent procurement authority:

1297 (i) determines in writing that it is in the best interest of the procurement unit to obtain
1298 an individual procurement item outside of the state contract, comparing:

1299 (A) the contract terms and conditions applicable to the procurement item under the
1300 state contract with the contract terms and conditions applicable to the procurement item if the
1301 procurement item is obtained outside of the state contract;

1302 (B) the maintenance and service applicable to the procurement item under the state
1303 contract with the maintenance and service applicable to the procurement item if the
1304 procurement item is obtained outside of the state contract;

1305 (C) the warranties applicable to the procurement item under the state contract with the
1306 warranties applicable to the procurement item if the procurement item is obtained outside of
1307 the state contract;

1308 (D) the quality of the procurement item under the state contract with the quality of the
1309 procurement item if the procurement item is obtained outside of the state contract; and

1310 (E) the cost of the procurement item under the state contract with the cost of the
1311 procurement item if the procurement item is obtained outside of the state contract;

1312 (ii) for a procurement item that, if defective in its manufacture, installation, or
1313 performance, may result in serious physical injury, death, or substantial property damage,
1314 determines in writing that the terms and conditions, relating to liability for injury, death, or
1315 property damage, available from the source other than the contractor who holds the state
1316 contract, are similar to, or better than, the terms and conditions available under the state
1317 contract; and

1318 (iii) grants an exception, in writing, to the requirement described in Subsection (4).

1319 (6) Except as otherwise expressly provided in this section, a procurement unit:

1320 (a) may not use the small purchase standard procurement process described in this
1321 section for ongoing, continuous, and regularly scheduled procurements that exceed the annual
1322 cumulative threshold; and

1323 (b) shall make its ongoing, continuous, and regularly scheduled procurements that
1324 exceed the annual cumulative threshold through a contract awarded through another standard
1325 procurement process described in this chapter or an applicable exception to another standard
1326 procurement process, described in Part 8, Exceptions to Procurement Requirements.

1327 (7) This section does not prohibit regularly scheduled payments for a procurement item
1328 obtained under another provision of this chapter.

1329 (8) (a) It is unlawful for a person to intentionally or knowingly divide a procurement

1330 into [~~one or more~~] smaller procurements with the intent to make a procurement:

1331 (i) qualify as a small purchase, if, before dividing the procurement, it would not have
1332 qualified as a small purchase; or

1333 (ii) meet a threshold established by rule made by the applicable rulemaking authority,
1334 if, before dividing the procurement, it would not have met the threshold.

1335 (b) A person who engages in the conduct made unlawful under Subsection (8)(a) is
1336 guilty of:

1337 (i) a second degree felony, if the value of the procurement before being divided is
1338 \$1,000,000 or more;

1339 (ii) a third degree felony, if the value of the procurement before being divided is
1340 \$250,000 or more but less than \$1,000,000;

1341 (iii) a class A misdemeanor, if the value of the procurement before being divided is
1342 \$100,000 or more but less than \$250,000; or

1343 (iv) a class B misdemeanor, if the value of the procurement before being divided is less
1344 than \$100,000.

1345 (9) A division of a procurement that is prohibited under Subsection (8) includes doing
1346 any of the following with the intent or knowledge described in Subsection (8):

1347 (a) making two or more separate purchases;

1348 (b) dividing an invoice or purchase order into two or more invoices or purchase orders;
1349 or

1350 (c) making smaller purchases over a period of time.

1351 (10) A person who violates Subsection (8) is subject to the criminal penalties described
1352 in Section [63G-6a-2405](#).

1353 (11) The Division of Finance within the Department of Administrative Services may
1354 conduct an audit of an executive branch procurement unit to verify compliance with the
1355 requirements of this section.

1356 (12) An executive branch procurement unit may not make a small purchase after
1357 January 1, 2014, unless the chief procurement officer certifies that the person responsible for
1358 procurements in the procurement unit has satisfactorily completed training on this section and
1359 the rules made under this section.

1360 Section 19. Section **63G-6a-507** is enacted to read:

- 1361 **63G-6a-507. Approved vendor list procurement process.**
- 1362 (1) As used in this section:
- 1363 (a) "Closed-ended approved vendor list" means an approved vendor list that is subject
- 1364 to:
- 1365 (i) a short period of time, specified by the procurement unit, during which vendors may
- 1366 be added to the list; and
- 1367 (ii) a specified period of time after which the list will expire.
- 1368 (b) "Open-ended approved vendor list" means an approved vendor list that is subject
- 1369 to:
- 1370 (i) an indeterminate period of time during which vendors may be added to the list;
- 1371 (ii) the addition of vendors to the list throughout the term of the list; and
- 1372 (iii) a specified period of time after which a vendor on the list is required to submit the
- 1373 vendor's qualifications for evaluation before the vendor may be renewed as an approved
- 1374 vendor.
- 1375 (2) A procurement unit may not establish an approved vendor list unless the
- 1376 procurement unit has first completed the statement of qualifications process described in
- 1377 Section [63G-6a-410](#).
- 1378 (3) (a) A procurement unit may establish an approved vendor list for:
- 1379 (i) a project or procurement item with an identified, fully defined scope of work; or
- 1380 (ii) a future project or procurement item that does not have an identified, fully defined
- 1381 scope of work at the time the request for statement of qualifications is issued, if the request for
- 1382 statement of qualifications contains a general description of the:
- 1383 (A) scope or category of work;
- 1384 (B) type of vendor that the procurement unit seeks to provide the procurement item;
- 1385 and
- 1386 (C) project or procurement item.
- 1387 (b) A procurement unit may not award a contract to a vendor on an approved vendor
- 1388 list for work that is outside the scope of the general description of the work contained in the
- 1389 request for statement of qualifications.
- 1390 (4) After receiving the statements of qualifications and evaluation scores submitted by
- 1391 the evaluation committee, as provided in Subsection [63G-6a-410\(9\)\(c\)](#), the head of the

1392 conducting procurement unit using the request for statement of qualifications process under
1393 Section 63G-6a-410 as part of an approved vendor list process shall:

1394 (a) include on an approved vendor list those vendors meeting the minimum mandatory
1395 requirements, evaluation criteria, and applicable score thresholds; and

1396 (b) reject any vendor not meeting the minimum mandatory requirements, evaluation
1397 criteria, and applicable score thresholds as ineligible for inclusion on the approved vendor list.

1398 (5) (a) A procurement unit shall include approved vendors on a closed-ended approved
1399 vendor list or an open-ended approved vendor list.

1400 (b) (i) A closed-ended approved vendor list shall expire no later than 18 months after
1401 the publication of the closed-ended approved vendor list.

1402 (ii) A procurement unit shall require a vendor on an open-ended approved vendor list,
1403 in order to remain on the approved vendor list, to submit an updated statement of qualifications
1404 for evaluation no later than 18 months after the vendor was added to the list as an approved
1405 vendor.

1406 (6) A procurement unit may:

1407 (a) (i) using a standard procurement process, award a contract to a vendor on an
1408 approved vendor list for any procurement item or type of procurement item specified by the
1409 procurement unit in the request for statement of qualifications, including procurement items
1410 that the procurement unit intends to acquire in a series of upcoming procurements described in
1411 the request for statement of qualifications; and

1412 (ii) limit participation in a standard procurement process to vendors on an approved
1413 vendor list; or

1414 (b) award a contract to a vendor on an approved vendor list at a price established as
1415 provided in Section 63G-6a-113.

1416 (7) After establishing an approved vendor list as provided in this section, the
1417 conducting procurement unit shall, before using the approved vendor list, submit the approved
1418 vendor list to the issuing procurement unit for publication by the issuing procurement unit.

1419 (8) A conducting procurement unit administering an open-ended approved vendor list
1420 shall:

1421 (a) require a vendor seeking inclusion on the approved vendor list to submit a
1422 statement of qualifications that complies with all requirements applicable at the time of the

1423 initial request for statement of qualifications;

1424 (b) if modifying the requirements for inclusion on the approved vendor list, apply any
1425 new or additional requirement to all vendors equally, whether a vendor is seeking inclusion on
1426 the approved vendor list for the first time or is already included on the approved vendor list;
1427 and

1428 (c) keep the request for statement of qualifications posted on a website as required
1429 under Subsection 63G-6a-112(6).

1430 (9) The applicable rulemaking authority shall, in accordance with the provisions of
1431 Chapter 3, Utah Administrative Rulemaking Act, make rules pertaining to an approved vendor
1432 list process, including:

1433 (a) procedures to ensure that all vendors on an approved vendor list have a fair and
1434 equitable opportunity to compete for a contract or be assigned to provide work or a
1435 procurement item; and

1436 (b) requirements for using an approved vendor list with the small purchase process.

1437 Section 20. Section **63G-6a-604** is amended to read:

1438 **63G-6a-604. Bid opening and acceptance.**

1439 (1) Bids shall be opened:

1440 (a) publicly, except as provided in Section **63G-6a-611**;

1441 (b) in the presence of one or more witnesses, unless an electronic bid opening process
1442 is used where bidders may see the opening of the bid electronically; and

1443 (c) at the time and place indicated in the invitation for bids.

1444 (2) Bids shall be accepted unconditionally, without alteration or correction, except as
1445 otherwise authorized by this chapter.

1446 (3) (a) The procurement officer shall reject a bid ~~[that]~~ if the bid is not responsive or
1447 the bid is submitted by a bidder who is not responsible.

1448 (b) A bid that is not responsive includes a bid that:

1449 (i) is conditional;

1450 (ii) attempts to modify the bid requirements;

1451 (iii) contains additional terms or conditions; or

1452 (iv) fails to conform with the requirements or specifications of the invitation for bids.

1453 (c) A bid that is submitted by a bidder who is not responsible includes a bid where the

1454 procurement officer reasonably concludes that the bidder or an employee, agent, or
1455 subcontractor of the bidder, at any tier, is unable to satisfactorily fulfill the bid requirements.

1456 (4) An issuing procurement unit may not accept a bid after the time for submission of a
1457 bid has expired.

1458 (5) The procurement officer shall:

1459 (a) record the name of each bidder and the amount of each bid; and

1460 (b) after the bid is awarded, make the information described in Subsection (5)(a)
1461 available for public disclosure.

1462 Section 21. Section **63G-6a-605** is amended to read:

1463 **63G-6a-605. Correction or clarification of bids.**

1464 The chief procurement officer or the head of a procurement unit with independent
1465 procurement authority may:

1466 (1) allow a vendor to correct an immaterial error in a bid, as provided in Section
1467 63G-6a-114; and

1468 (2) request a vendor to clarify information contained in a bid, as provided in Section
1469 63G-6a-115.

1470 [~~(1) Correction or withdrawal of inadvertently erroneous bids, or the cancellation of an~~
1471 ~~award or a contract that is based on an unintentionally erroneous bid, may be made in~~
1472 ~~accordance with the rules of the applicable rulemaking authority.]~~

1473 [~~(2) Notwithstanding Subsection (1), the following changes may not be made to a bid~~
1474 ~~after the bid opening:]~~

1475 [~~(a) changes in bid pricing;]~~

1476 [~~(b) changes in the cost evaluation formula; or]~~

1477 [~~(c) changes in other provisions that are prejudicial to fair competition or to the interest~~
1478 ~~of the procurement unit.]~~

1479 [~~(3) A decision to permit the correction or withdrawal of a bid or the cancellation of an~~
1480 ~~award or a contract under Subsection (1) shall be supported in a written document, signed by~~
1481 ~~the chief procurement officer, the procurement officer, or the head of the procurement unit with~~
1482 ~~independent procurement authority.]~~

1483 Section 22. Section **63G-6a-703** is amended to read:

1484 **63G-6a-703. Request for proposals -- Requirements -- Publication of request.**

- 1485 (1) The request for proposals standard procurement process begins when the division
1486 or a procurement unit with independent procurement authority issues a request for proposals.
- 1487 (2) A request for proposals shall:
- 1488 (a) state the period of time during which a proposal will be accepted;
- 1489 (b) describe the manner in which a proposal shall be submitted;
- 1490 (c) state the place where a proposal shall be submitted;
- 1491 (d) include, or incorporate by reference:
- 1492 (i) a description of the procurement items sought;
- 1493 (ii) a description of the subjective and objective criteria that will be used to evaluate
1494 the proposal; and
- 1495 (iii) the standard contractual terms and conditions required by the authorized
1496 purchasing entity;
- 1497 (e) state the relative weight that will be given to each score for the criteria described in
1498 Subsection (2)(d)(ii), including cost;
- 1499 (f) state the formula that will be used to determine the score awarded for the cost of
1500 each proposal;
- 1501 (g) if the request for proposals will be conducted in multiple stages, as described in
1502 Section [63G-6a-710](#), include a description of the stages and the criteria and scoring that will be
1503 used to screen offerors at each stage; and
- 1504 ~~[(h) state that discussions may be conducted with offerors who submit proposals
1505 determined to be reasonably susceptible of being selected for award, followed by an
1506 opportunity to make best and final offers, but that proposals may be accepted without
1507 discussions.]~~
- 1508 (h) state that best and final offers may be allowed from responsible offerors who
1509 submit responsive proposals that meet minimum qualifications, evaluation criteria, or
1510 applicable score thresholds identified in the request for proposals.
- 1511 (3) The division or a procurement unit with independent procurement authority shall
1512 publish a request for proposals in accordance with the requirements of Section [[63G-6a-406](#)]
1513 [63G-6a-112](#).
- 1514 Section 23. Section **63G-6a-706** is amended to read:
- 1515 **63G-6a-706. Correction or clarification of proposal.**

1516 The chief procurement officer or the head of a procurement unit with independent
1517 procurement authority may:

1518 (1) allow a vendor to correct an immaterial error in a proposal, as provided in Section
1519 63G-6a-114; and

1520 (2) request a vendor to clarify information contained in a proposal, as provided in
1521 Section 63G-6a-115.

1522 [~~(1) Correction or withdrawal of an unintentionally erroneous proposal, or the~~
1523 ~~cancellation of an award or contract that is based on an unintentionally erroneous proposal,~~
1524 ~~may be made in accordance with the rules of the applicable rulemaking authority.]~~

1525 [~~(2) A decision to permit the correction or withdrawal of a proposal or the cancellation~~
1526 ~~of an award or a contract under Subsection (1) shall be supported in a written document, signed~~
1527 ~~by the procurement officer.]~~

1528 Section 24. Section **63G-6a-707** is amended to read:

1529 **63G-6a-707. Evaluation of proposals -- Evaluation committee.**

1530 (1) To determine which proposal provides the best value to the procurement unit, the
1531 evaluation committee shall evaluate each responsive and responsible proposal that has not been
1532 disqualified from consideration under the provisions of this chapter, using the criteria described
1533 in the request for proposals, which may include:

1534 (a) experience;

1535 (b) performance ratings;

1536 (c) inspection;

1537 (d) testing;

1538 (e) quality;

1539 (f) workmanship;

1540 (g) time, manner, or schedule of delivery;

1541 (h) references;

1542 (i) financial solvency;

1543 (j) suitability for a particular purpose;

1544 (k) management plans;

1545 (l) the presence and quality of a work site safety program, including any requirement
1546 that the offeror imposes on subcontractors for a work site safety program;

- 1547 (m) cost; or
- 1548 (n) other subjective or objective criteria specified in the request for proposals.
- 1549 (2) Criteria not described in the request for proposals may not be used to evaluate a
- 1550 proposal.
- 1551 (3) The conducting procurement unit shall:
- 1552 (a) appoint an evaluation committee consisting of at least three individuals with at least
- 1553 a general familiarity with or basic understanding of:
- 1554 (i) the technical requirements relating to the type of procurement item that is the
- 1555 subject of the procurement; or
- 1556 (ii) the need that the procurement item is intended to address; and
- 1557 (b) ensure that the evaluation committee and each [~~member of the evaluation~~
- 1558 ~~committee~~] individual participating in the evaluation committee process:
- 1559 (i) does not have a conflict of interest with any of the offerors;
- 1560 (ii) can fairly evaluate each proposal;
- 1561 (iii) does not contact or communicate with an offeror concerning the procurement
- 1562 outside the official evaluation committee process; and
- 1563 (iv) conducts or participates in the evaluation in a manner that ensures a fair and
- 1564 competitive process and avoids the appearance of impropriety.
- 1565 (4) A conducting procurement unit may authorize an evaluation committee to receive
- 1566 assistance:
- 1567 (a) from an expert or consultant who:
- 1568 (i) is not a member of the evaluation committee; and
- 1569 (ii) does not participate in the evaluation scoring; and
- 1570 (b) to better understand a technical issue involved in the procurement.
- 1571 [~~(4)~~] (5) The evaluation committee may, with the approval of the head of the
- 1572 conducting procurement unit, enter into discussions or conduct interviews with, or attend
- 1573 presentations by, the offerors.
- 1574 [~~(5)~~] (6) (a) Except as provided in Subsections [~~(5)(b) and (8)~~] (6)(b) and (9), each
- 1575 member of the evaluation committee is prohibited from knowing, or having access to, any
- 1576 information relating to the cost, or the scoring of the cost, of a proposal until after the
- 1577 evaluation committee submits its final recommended scores on all other criteria to the issuing

1578 procurement unit.

1579 (b) The issuing procurement unit shall:

1580 (i) if applicable, assign an individual who is not a member of the evaluation committee
1581 to calculate scores for cost based on the applicable scoring formula, weighting, and other
1582 scoring procedures contained in the request for proposals;

1583 (ii) review the evaluation committee's scores and correct any errors, scoring
1584 inconsistencies, and reported noncompliance with this chapter;

1585 (iii) add the scores calculated for cost, if applicable, to the evaluation committee's final
1586 recommended scores on criteria other than cost to derive the total combined score for each
1587 responsive and responsible proposal; and

1588 (iv) provide to the evaluation committee the total combined score calculated for each
1589 responsive and responsible proposal, including any applicable cost formula, weighting, and
1590 scoring procedures used to calculate the total combined scores.

1591 (c) The evaluation committee may not:

1592 (i) change its final recommended scores described in Subsection [~~(5)~~] (6)(a) after the
1593 evaluation committee has submitted those scores to the issuing procurement unit; or

1594 (ii) change cost scores calculated by the issuing procurement unit.

1595 [~~(6)~~] (7) (a) As used in this Subsection [~~(6)~~] (7), "management fee" includes only the
1596 following fees of the construction manager/general contractor:

1597 (i) preconstruction phase services;

1598 (ii) monthly supervision fees for the construction phase; and

1599 (iii) overhead and profit for the construction phase.

1600 (b) When selecting a construction manager/general contractor for a construction
1601 project, the evaluation committee:

1602 (i) may score a construction manager/general contractor based upon criteria contained
1603 in the solicitation, including qualifications, performance ratings, references, management plan,
1604 certifications, and other project specific criteria described in the solicitation;

1605 (ii) may, as described in the solicitation, weight and score the management fee as a
1606 fixed rate or as a fixed percentage of the estimated contract value;

1607 (iii) may, at any time after the opening of the responses to the request for proposals,
1608 have access to, and consider, the management fee proposed by the offerors; and

1609 (iv) except as provided in Subsection [(8)] (9), may not know or have access to any
1610 other information relating to the cost of construction submitted by the offerors, until after the
1611 evaluation committee submits its final recommended scores on all other criteria to the issuing
1612 procurement unit.

1613 [(7)] (8) (a) The deliberations of an evaluation committee may be held in private.

1614 (b) If the evaluation committee is a public body, as defined in Section 52-4-103, the
1615 evaluation committee shall comply with Section 52-4-205 in closing a meeting for its
1616 deliberations.

1617 [(8)] (9) An issuing procurement unit is not required to comply with Subsection [(5)]
1618 (6) if the head of the issuing procurement unit or a person designated by rule made by the
1619 applicable rulemaking authority:

1620 (a) signs a written statement:

1621 (i) indicating that, due to the nature of the proposal or other circumstances, it is in the
1622 best interest of the procurement unit to waive compliance with Subsection [(5)] (6); and

1623 (ii) describing the nature of the proposal and the other circumstances relied upon to
1624 waive compliance with Subsection [(5)] (6); and

1625 (b) makes the written statement available to the public, upon request.

1626 Section 25. Section 63G-6a-707.5 is amended to read:

1627 **63G-6a-707.5. Best and final offers.**

1628 (1) At any time during the evaluation process, the evaluation committee, with the
1629 approval of the director or the head of the issuing procurement unit, may:

1630 (a) request best and final offers from responsible ~~[and]~~ offerors who have submitted
1631 responsive [offerors] proposals that meet the minimum qualifications, evaluation criteria, or
1632 applicable score thresholds identified in the request for proposals, if:

1633 (i) no single proposal addresses all the specifications stated in the request for
1634 proposals;

1635 (ii) all or a significant number of the proposals are ambiguous on a material point and
1636 the evaluation committee requires further clarification in order to conduct a fair evaluation of
1637 proposals;

1638 (iii) the evaluation committee needs additional information from all offerors to
1639 complete the evaluation of proposals;

1640 (iv) the differences between proposals in one or more material aspects are too slight to
1641 allow the evaluation committee to distinguish between proposals;

1642 (v) all cost proposals are too high or over budget; or

1643 (vi) another reason exists supporting a request for best and final offers, as provided in
1644 rules established by the applicable rulemaking authority; and

1645 (b) evaluate those best and final offers.

1646 (2) In requesting and evaluating best and final offers under Subsection (1), the
1647 evaluation committee shall:

1648 (a) ensure that each offeror receives fair and equal treatment with respect to the other
1649 offerors;

1650 (b) establish a schedule and procedures for conducting discussions;

1651 (c) ensure that information in each proposal and information gathered during
1652 discussions is not shared with other offerors until the contract is awarded;

1653 (d) ensure that auction tactics are not used in the discussion process, including
1654 discussing and comparing the costs and features of other proposals; and

1655 (e) set a common date and time for the submission of best and final offers.

1656 (3) In a best and final offer, an offeror:

1657 (a) may address only the issues described in the request for best and final offers; and

1658 (b) may not correct a material error or deficiency in the offeror's proposal or address
1659 any other issue not described in the request for best and final offers.

1660 [~~3~~] (4) If an offeror chooses not to participate in a discussion or does not make a
1661 timely best and final offer, the offer submitted by the offeror before the conduct of discussions
1662 shall be treated as the offeror's best and final offer.

1663 (5) An applicable rulemaking authority shall make rules governing best and final offers
1664 under this section.

1665 Section 26. Section **63G-6a-709** is amended to read:

1666 **63G-6a-709. Award of contract -- Cancellation -- Disqualification.**

1667 (1) After the completion of the evaluation and scoring of proposals and the justification
1668 statement, including any required cost-benefit analysis, the evaluation committee shall submit
1669 the proposals, evaluation scores, and justification statement to the head of the procurement unit
1670 or designee for review and final determination of a contract award.

1671 (2) After reviewing the proposals, evaluation scores, and justification statement,
 1672 including any required cost-benefit analysis, the head of the issuing procurement unit [~~or~~
 1673 ~~designee~~] shall:

1674 (a) (i) award the contract as soon as practicable to~~[(i)]~~ the ~~[responsive and]~~
 1675 responsible offeror with the responsive proposal receiving the highest total score; or
 1676 ~~[(ii) if, in accordance with Subsection (3), the procurement officer or the head of the~~
 1677 ~~issuing procurement unit disqualifies the offeror described in Subsection (2)(a)(i), the~~
 1678 ~~responsive and responsible offeror with the next highest total score; or]~~

1679 (ii) (A) if the head of the issuing procurement unit disqualifies an offeror under
 1680 Subsection (3) who would otherwise have been awarded a contract, award the contract to the
 1681 responsible offeror with the responsive proposal receiving the next highest total score; and

1682 (B) if the head of the issuing procurement unit disqualifies an offeror under Subsection
 1683 (3) who would otherwise have been awarded a contract under Subsection (2)(a)(ii)(A), repeat
 1684 the process described in Subsection (2)(a)(ii)(A) as many times as necessary until a contract is
 1685 awarded to a responsible offeror who is not disqualified; or

1686 (b) cancel the request for proposals without awarding a contract.

1687 (3) [~~In accordance with Subsection (4), the procurement officer or the~~] The head of the
 1688 issuing procurement unit may disqualify an offeror for:

1689 (a) a violation of this chapter;
 1690 (b) not being responsive or responsible;
 1691 (c) a violation of a requirement of the request for proposals;
 1692 (d) unlawful or unethical conduct; [~~or~~]
 1693 (e) a failure to sign a contract within:

1694 (i) (A) the time specified in the solicitation; or
 1695 (B) 90 days after the contract award, if no time is specified in the solicitation; or
 1696 (ii) a time authorized in writing by the head of the issuing procurement unit; or

1697 ~~[(e)]~~ (f) a change in circumstance that, had the change been known at the time the
 1698 proposal was submitted, would have caused the proposal to not have the highest score.

1699 (4) A [~~procurement officer or~~] head of an issuing procurement unit who disqualifies an
 1700 offeror under Subsection (3) shall:

1701 (a) make a written finding, stating the reasons for disqualification; and

1702 (b) provide a copy of the written finding to the disqualified offeror.

1703 (5) If an issuing procurement unit cancels a request for proposals without awarding a
1704 contract, the issuing procurement unit shall make available for public inspection a written
1705 justification for the cancellation.

1706 Section 27. Section **63G-6a-802** is amended to read:

1707 **63G-6a-802. Award of contract without competition -- Notice -- Duty to negotiate**
1708 **contract terms in best interest of procurement unit.**

1709 [~~(1) As used in this section:~~]

1710 [~~(a) "Transitional costs" mean the costs of changing from an existing provider of, or~~
1711 ~~type of, a procurement item to another provider of, or type of, procurement item.;~~]

1712 [~~(b) "Transitional costs" include:~~]

1713 [~~(i) training costs;~~]

1714 [~~(ii) conversion costs;~~]

1715 [~~(iii) compatibility costs;~~]

1716 [~~(iv) system downtime;~~]

1717 [~~(v) disruption of service;~~]

1718 [~~(vi) staff time necessary to put the transition into effect;~~]

1719 [~~(vii) installation costs; and~~]

1720 [~~(viii) ancillary software, hardware, equipment, or construction costs.;~~]

1721 [~~(c) "Transitional costs" do not include:~~]

1722 [~~(i) the costs of preparing for or engaging in a procurement process; or~~]

1723 [~~(ii) contract negotiation or contract drafting costs.;~~]

1724 [~~(d) "Trial use contract" means a contract between a procurement unit and a vendor for~~
1725 ~~a procurement item that the procurement unit acquires for trial use or testing to determine~~
1726 ~~whether the procurement item will benefit the procurement unit.;~~]

1727 [~~(2) The division or~~] (1) (a) The chief procurement officer or the head of a

1728 procurement unit with independent procurement authority may award a contract for a

1729 procurement item without competition if the chief procurement officer[;] or the head of the

1730 procurement unit[; or a designee of either who is senior to the procurement officer or the head
1731 of the procurement unit;] determines in writing that:

1732 [~~(a)~~] (i) there is only one source for the procurement item;

1733 ~~[(b) the award to a specific supplier, service provider, or contractor is a condition of a~~
1734 ~~donation that will fund the full cost of the supply, service, or construction item; or]~~

1735 ~~[(c) the procurement item is needed for trial use or testing to determine whether the~~
1736 ~~procurement item will benefit the procurement unit.]~~

1737 ~~[(3) Circumstances under which there is only one source for a procurement item may~~
1738 ~~include:]~~

1739 ~~[(a) where the most important consideration in obtaining a procurement item is the~~
1740 ~~compatibility of equipment, technology, software, accessories, replacement parts, or service;]~~

1741 ~~[(b) where transitional costs are unreasonable or cost prohibitive; or]~~

1742 ~~[(c) procurement of public utility services.]~~

1743 (ii) (A) transitional costs are a significant consideration in selecting a procurement
1744 item; and

1745 (B) the results of a cost-benefit analysis demonstrate that transitional costs are
1746 unreasonable or cost-prohibitive, and that the award of a contract without competition is in the
1747 best interest of the procurement unit; or

1748 (iii) the award of a contract is under circumstances, described in rules adopted by the
1749 applicable rulemaking authority, that make awarding the contract with competition impractical
1750 and not in the best interest of the procurement unit.

1751 (b) Circumstances supporting a determination under Subsection (1)(a)(i) that there is
1752 only one source for a procurement item include:

1753 (i) a donor imposed condition, on a donation funding the full cost of a procurement
1754 item, that the procurement unit award the contract for the procurement item to a vendor
1755 specified by the donor; and

1756 (ii) the procurement of a public utility service.

1757 (2) Transitional costs associated with a trial use or testing of a procurement item under
1758 a trial use contract may not be included in a consideration of transitional costs under
1759 Subsection (1)(a)(ii).

1760 ~~[(4)]~~ (3) (a) Subject to Subsection ~~[(4)]~~ (3)(b), the applicable rulemaking authority
1761 shall make rules regarding the publication of notice for a ~~[sole source]~~ procurement under
1762 Subsection (1)(a)(i) that, at a minimum, require publication of notice of ~~[a sole source]~~ the
1763 procurement, in accordance with Section ~~[63G-6a-406]~~ [63G-6a-112](#), if the cost of the

1764 procurement exceeds \$50,000.

1765 (b) Publication of notice under Section [~~63G-6a-406~~] [63G-6a-112](#) is not required for:

1766 (i) the procurement of public utility services pursuant to a sole source contract; or

1767 (ii) other sole source procurements provided by rule.

1768 [~~(5) The division or~~] (4) The chief procurement officer or the head of a procurement
1769 unit with independent procurement authority who awards a [sole source contract on behalf of
1770 another procurement unit] contract without competition under this section shall negotiate with
1771 the contractor to ensure that the terms of the contract, including price and delivery, are in the
1772 best interest of the procurement unit.

1773 [~~(6) (a) The period of trial use or testing of a procurement item under a trial use~~
1774 ~~contract may not exceed 18 months, unless the procurement officer provides a written~~
1775 ~~exception documenting the reason for a longer period.]~~

1776 [~~(b) A trial use contract shall:]~~

1777 [~~(i) state that the purpose of the contract is strictly for the purpose of the trial use or~~
1778 ~~testing of a procurement item;]~~

1779 [~~(ii) state that the contract terminates upon completion of the trial use or testing~~
1780 ~~period;]~~

1781 [~~(iii) state that, after the trial use or testing period, the procurement unit is not obligated~~
1782 ~~to purchase or enter into a contract for the procurement item, regardless of the trial use or~~
1783 ~~testing result;]~~

1784 [~~(iv) state that any purchase of the procurement item beyond the terms of the trial use~~
1785 ~~contract will be made in accordance with this chapter; and]~~

1786 [~~(v) include, as applicable:]~~

1787 [~~(A) test schedules;]~~

1788 [~~(B) deadlines and a termination date;]~~

1789 [~~(C) measures that will be used to evaluate the performance of the procurement item;]~~

1790 [~~(D) any fees and associated expenses or an explanation of the circumstances~~
1791 ~~warranting a waiver of those fees and expenses;]~~

1792 [~~(E) the obligations of the procurement unit and vendor;]~~

1793 [~~(F) provisions regarding the ownership of the procurement item during and after the~~
1794 ~~trial use or testing period;]~~

1795 [~~(G) an explanation of the grounds upon which the contract may be terminated;~~]
1796 [~~(H) a limitation of liability;~~]
1797 [~~(I) a consequential damage waiver provision;~~]
1798 [~~(J) a statement regarding the confidentiality or nondisclosure of information;~~]
1799 [~~(K) a provision relating to any required bond or security deposit; and]~~
1800 [~~(L) other requirements unique to the procurement item for trial use or testing;~~]
1801 [~~(e) Publication of notice under Section 63G-6a-406 is not required for a procurement~~
1802 ~~pursuant to a trial use contract.]~~

1803 [~~(7) The division or a procurement unit with independent procurement authority may~~
1804 ~~extend a contract for a reasonable period of time without engaging in a standard procurement~~
1805 ~~process, if:]~~

1806 [~~(a) the award of a new contract for the procurement item is delayed due to a protest or~~
1807 ~~appeal;]~~

1808 [~~(b) the standard procurement process is delayed due to unintentional error;]~~

1809 [~~(c) changes in industry standards require significant changes to specifications for the~~
1810 ~~procurement item;]~~

1811 [~~(d) the extension is necessary to prevent the loss of federal funds;]~~

1812 [~~(e) the extension is necessary to address a circumstance where the appropriation of~~
1813 ~~state or federal funds has been delayed;]~~

1814 [~~(f) the extension covers the period of time during which contract negotiations with a~~
1815 ~~new provider are being conducted; or]~~

1816 [~~(g) the extension is necessary to avoid a lapse in critical governmental services that~~
1817 ~~may negatively impact public health, safety, or welfare.]~~

1818 Section 28. Section **63G-6a-802.3** is enacted to read:

1819 **63G-6a-802.3. Trial use contracts.**

1820 (1) A procurement unit may award a trial use contract without competition if the
1821 contract is:

1822 (a) awarded for a procurement item that is not already available to the procurement unit
1823 under an existing contract;

1824 (b) restricted to the procurement of a procurement item in the minimum quantity and
1825 for the minimum period of time necessary to test the procurement item;

1826 (c) the only trial use contract for that procurement unit for the same procurement item;
1827 and

1828 (d) not used to circumvent the purposes and policies of this chapter as set forth in
1829 Section 63G-6a-102.

1830 (2) The period of trial use or testing of a procurement item under a trial use contract
1831 may not exceed 18 months, unless the procurement officer provides a written exception
1832 documenting the reason for a longer period.

1833 (3) A trial use contract shall:

1834 (a) state that the contract is strictly for the trial use or testing of a procurement item;

1835 (b) state that the contract terminates upon completion of the trial use or testing period;

1836 (c) state that the procurement unit is not obligated to purchase or enter into a contract
1837 for the procurement item, regardless of the trial use or testing result;

1838 (d) state that any purchase of the procurement item that is the subject of the trial use
1839 contract will be made in accordance with this chapter; and

1840 (e) include, as applicable:

1841 (i) test schedules;

1842 (ii) deadlines and a termination date;

1843 (iii) measures that will be used to evaluate the performance of the procurement item;

1844 (iv) any fees and associated expenses or an explanation of the circumstances
1845 warranting a waiver of those fees and expenses;

1846 (v) the obligations of the procurement unit and vendor;

1847 (vi) provisions regarding the ownership of the procurement item during and after the
1848 trial use or testing period;

1849 (vii) an explanation of the grounds upon which the contract may be terminated;

1850 (viii) a provision relating to any required bond or security deposit; and

1851 (ix) other requirements unique to the procurement item for trial use or testing.

1852 (4) Publication of notice under Section 63G-6a-112 is not required for a trial use
1853 contract.

1854 (5) The applicable rulemaking authority may make rules pertaining to a trial use
1855 contract.

1856 Section 29. Section **63G-6a-802.7** is enacted to read:

1857 **63G-6a-802.7. Extension of a contract without engaging in a standard**
1858 **procurement process.**

1859 The chief procurement officer or the head of a procurement unit with independent
1860 procurement authority may extend an existing contract without engaging in a standard
1861 procurement process:

1862 (1) for a period of time not to exceed 90 days, if:

1863 (a) an extension of the contract is necessary to:

1864 (i) avoid a lapse in a critical government service; or

1865 (ii) to mitigate a circumstance that is likely to have a negative impact on public health,
1866 safety, welfare, or property; and

1867 (b) (i) (A) the procurement unit is engaged in a standard procurement process for a
1868 procurement item that is the subject of the contract being extended; and

1869 (B) the standard procurement process is delayed due to an unintentional error;

1870 (ii) a change in an industry standard requires one or more significant changes to
1871 specifications for the procurement item; or

1872 (iii) an extension is necessary:

1873 (A) to prevent the loss of federal funds;

1874 (B) to mitigate the effects of a delay of a state or federal appropriation;

1875 (C) to enable the procurement unit to continue to receive a procurement item during a
1876 delay in the implementation of a contract awarded pursuant to a procurement that has already
1877 been conducted; or

1878 (D) to enable the procurement unit to continue to receive a procurement item during a
1879 period of time during which negotiations with a vendor under a new contract for the
1880 procurement item are being conducted;

1881 (2) for the period of a protest, appeal, or court action, if the protest, appeal, or court
1882 action is the reason for delaying the award of a new contract; or

1883 (3) for a period of time exceeding 90 days, if the attorney general or the procurement
1884 unit's attorney determines in writing that the contract extension does not violate this chapter or
1885 state or federal antitrust laws.

1886 Section 30. Section **63G-6a-803** is amended to read:

1887 **63G-6a-803. Emergency procurement.**

1888 (1) Notwithstanding any other provision of this chapter, ~~[a] the chief procurement~~
 1889 officer or the ~~[procurement officer's designee may authorize]~~ head of a procurement unit with
 1890 independent procurement authority may authorize a procurement unit to engage in an
 1891 emergency procurement without using a standard procurement process ~~[when an emergency~~
 1892 ~~condition exists]~~ if the procurement is necessary to:

1893 (a) avoid a lapse in a critical government service;

1894 (b) mitigate a circumstance that is likely to have a negative impact on public health,
 1895 safety, welfare, or property; or

1896 (c) protect the legal interests of a public entity.

1897 (2) A procurement ~~[officer who authorizes]~~ unit conducting an emergency procurement
 1898 under Subsection (1) shall ~~[-(a) make the authorization in writing, stating the emergency~~
 1899 ~~condition upon which the emergency procurement is made; and (b)]~~ ensure that the
 1900 procurement is made with as much competition as reasonably practicable while:

1901 (a) avoiding a lapse in a critical government service;

1902 (b) avoiding harm, or a risk of harm, to the public health, safety, welfare, or
 1903 property[-]; or

1904 (c) protecting the legal interests of a public entity.

1905 Section 31. Section **63G-6a-806** is amended to read:

1906 **63G-6a-806. Exception for public transit district contracting with a county or**
 1907 **municipality.**

1908 A public transit district, organized under Title 17B, Chapter 2a, Part 8, Public Transit
 1909 District Act, may, without going through a standard procurement process or ~~[an]~~ another
 1910 exception to a standard procurement process described in ~~[Part 8, Exception to Procurement~~
 1911 ~~Requirements]~~ this part:

1912 (1) contract with a county or municipality to receive money from the county or
 1913 municipality; and

1914 (2) use the money described in Subsection (1) to fund a transportation project or a
 1915 transit-related program in accordance with rules made by the applicable rulemaking authority.

1916 Section 32. Section **63G-6a-906** is enacted to read:

1917 **63G-6a-906. Attorney general enforcement.**

1918 The attorney general may enforce a remedy available under this part to a procurement

1919 unit with independent procurement authority to the same extent as if the attorney general were
1920 the head of the procurement unit.

1921 Section 33. Section **63G-6a-1206** is amended to read:

1922 **63G-6a-1206. Rules and regulations to determine allowable incurred costs --**
1923 **Required information.**

1924 (1) (a) The applicable rulemaking authority may, by rule, establish the cost principles
1925 to be included in a cost-reimbursement contract to determine incurred costs for the purpose of
1926 calculating a reimbursement.

1927 (b) The cost principles established by rule under Subsection (1)(a) may be modified, by
1928 contract, if the procurement officer or the head of the issuing procurement unit approves the
1929 modification.

1930 (2) Except as provided in Subsection (5), a person who seeks to be, or is, a party in a
1931 cost-based contract with a procurement unit shall:

1932 (a) submit cost or pricing data relating to determining the cost or pricing amount; and

1933 (b) certify that, to the best of the contractor's knowledge and belief, the cost or pricing
1934 data submitted is accurate and complete as of the date specified by the procurement unit.

1935 (3) The procurement officer shall ensure that the date specified under Subsection (2)(b)
1936 is before:

1937 (a) the pricing of any contract awarded by a standard procurement process or pursuant
1938 to a sole source procurement, if the total contract price is expected to exceed an amount
1939 established by rule made by the applicable rulemaking authority; or

1940 (b) the pricing of any change order that is expected to exceed an amount established by
1941 rule made by the applicable rulemaking authority.

1942 (4) A contract or change order that requires a certification described in Subsection (2)
1943 shall include a provision that the price to the procurement unit, including profit or fee, shall be
1944 adjusted to exclude any significant sums by which the procurement unit finds that the price was
1945 increased because the contractor provided cost or pricing data that was inaccurate, incomplete,
1946 or not current as of the date specified by the procurement officer.

1947 (5) A procurement unit is not required to comply with Subsection (2) if:

1948 (a) the contract price is based on adequate price competition;

1949 (b) the contract price is based on established catalogue prices or market prices;

- 1950 (c) the contract price is set by law or rule; or
1951 (d) the procurement states, in writing:
1952 (i) that, in accordance with rules made by the applicable rulemaking authority, the
1953 requirements of Subsection (2) may be waived; and
1954 (ii) the reasons for the waiver.
- 1955 ~~[(6) The procurement officer or audit entity under contract with the procurement unit
1956 may, at reasonable times and places, only to the extent that the books and records relate to the
1957 applicable cost or pricing data, audit the books and records of:]~~
- 1958 ~~[(a) a person who has submitted cost or pricing data pursuant to this section; or]
1959 [(b) a contractor or subcontractor under a contract or subcontract other than a firm
1960 fixed price contract.]~~
- 1961 ~~[(7) Unless a shorter time is provided for by contract:]~~
- 1962 ~~[(a) a person described in Subsection (6)(a) shall maintain the books and records
1963 described in Subsection (6) for three years after the day on which the fiscal year in which final
1964 payment is made under the contract ends;]~~
- 1965 ~~[(b) a contractor shall maintain the books and records described in Subsection (6) for
1966 three years after the day on which the fiscal year in which final payment under the prime
1967 contract ends; and]~~
- 1968 ~~[(c) a subcontractor shall maintain the books and records described in Subsection (6)
1969 for three years after the day on which the fiscal year in which final payment is made under the
1970 subcontract ends.]~~
- 1971 Section 34. Section **63G-6a-1206.3** is enacted to read:
1972 **63G-6a-1206.3. Auditing of books.**
- 1973 (1) The procurement officer or audit entity under contract with the procurement unit
1974 may, at reasonable times and places, and only to the extent that the books and records relate to
1975 the applicable contract, audit the books and records of:
- 1976 (a) a person who has submitted cost or pricing data pursuant to Section [63G-6a-1206](#);
1977 or
- 1978 (b) a contractor or subcontractor under a contract or subcontract other than a firm fixed
1979 price contract.
- 1980 (2) Unless a shorter time is provided for by contract:

1981 (a) a person described in Subsection (1)(a) shall maintain all records related to a
1982 contract described in Subsection (1) for six years after the day on which the fiscal year in which
1983 final payment is made under the contract ends, or until all audits initiated within the six-year
1984 period have been completed, whichever is later;

1985 (b) a contractor shall maintain all records related to a contract described in Subsection
1986 (1) for six years after the day on which the fiscal year in which final payment under the prime
1987 contract ends, or until all audits initiated within the six-year period have been completed,
1988 whichever is later; and

1989 (c) a subcontractor shall maintain all records related to the contract described in
1990 Subsection (1) for six years after the day on which the fiscal year in which final payment is
1991 made under the subcontract ends, or until all audits initiated within the six-year period have
1992 been completed, whichever is later.

1993 Section 35. Section **63G-6a-1206.5** is amended to read:

1994 **63G-6a-1206.5. Change in contract price.**

1995 A contractor may:

1996 (1) increase the contract price only in accordance with the terms of the contract[-]; and

1997 (2) lower the contract price at any time during the time a contract is in effect.

1998 Section 36. Section **63G-6a-1601** is amended to read:

1999 **Part 16. Protests**

2000 **63G-6a-1601. Title.**

2001 This part is known as "~~Controversies and~~ Protests."

2002 Section 37. Section **63G-6a-1601.5** is enacted to read:

2003 **63G-6a-1601.5. Definitions.**

2004 As used in this part:

2005 (1) "Constructive knowledge":

2006 (a) means knowledge or information that:

2007 (i) a protestor should have if the protestor exercises reasonable care or diligence,
2008 regardless of whether the protestor actually has the knowledge or information; or

2009 (ii) the law presumes a protestor to have, regardless of whether the protestor actually
2010 has the knowledge or information; and

2011 (b) includes knowledge of:

2012 (i) applicable provisions of this chapter and other law and administrative rule;
2013 (ii) instructions, criteria, deadlines, and requirements contained in the solicitation or in
2014 other documents made available to persons interested in the solicitation or provided in a
2015 mandatory pre-solicitation meeting;
2016 (iii) relevant facts and evidence supporting the protest or leading the protestor to
2017 contend that the protestor has been aggrieved in connection with a procurement;
2018 (iv) communications or actions, pertaining to the procurement, of all persons within the
2019 protestor's organization or under the supervision of the protestor; and
2020 (v) any other applicable information discoverable by the exercise of reasonable care or
2021 diligence.
2022 (2) "Protest deadline" means:
2023 (a) (i) (A) for a protest relating to a procurement under a bidding process, the opening
2024 of bids;
2025 (B) for a protest relating to another standard procurement process, the deadline for
2026 submitting responses to the solicitation; or
2027 (C) for a protest relating to a multiple-stage procurement, the closing of the stage of the
2028 procurement that is the subject of the protest; or
2029 (ii) if the protestor did not know and did not have constructive knowledge of the facts
2030 giving rise to the protest before, as applicable, the opening of bids, the deadline for submitting
2031 responses, or the closing of the stage of the procurement that is the subject of the protest, the
2032 day that is seven days after the day on which the person knows or first had constructive
2033 knowledge of the facts giving rise to the protest; and
2034 (b) for a protest relating to a procurement process not described in Subsection (1)(a)(i),
2035 the day that is seven days after the day on which the protestor knows or first has constructive
2036 knowledge of the facts giving rise to the protest.
2037 (3) "Protestor" means a person who files a protest under this part.
2038 (4) "Standing" means to have suffered an injury or harm or to be about to suffer
2039 imminent injury or harm, if:
2040 (a) the cause of the injury or harm is:
2041 (i) an infringement of the protestor's own right and not the right of another person who
2042 is not a party to the procurement;

2043 (ii) reasonably connected to the procurement unit's conduct; and
 2044 (iii) the sole reason the protestor is not considered, or is no longer considered, for an
 2045 award of a contract under the procurement that is the subject of the protest;
 2046 (b) a decision on the protest in favor of the protestor:
 2047 (i) is likely to redress the injury or harm; and
 2048 (ii) would give the protestor a reasonable likelihood of being awarded a contract; and
 2049 (c) the protestor has the legal authority to file the protest on behalf of the actual or
 2050 prospective bidder or offeror or prospective contractor involved in the procurement that is the
 2051 subject of the protest.

2052 Section 38. Section **63G-6a-1602** is amended to read:

2053 **63G-6a-1602. Protest -- Time for filing -- Authority to resolve protest.**

2054 (1) ~~[(a)]~~ A protest may be filed with the protest officer by ~~[(i) an actual or prospective~~
 2055 ~~bidder or offeror]~~ a person who:

2056 (a) has standing; and

2057 (b) is aggrieved in connection with a procurement[;] or an award of a contract.

2058 ~~[(ii) a prospective contractor who]~~

2059 ~~[is aggrieved in connection with an award of a contract.]~~

2060 ~~[(b) (i) A protest under Subsection (1)(a) relating to an invitation for bids or a request~~
 2061 ~~for proposals shall be filed:]~~

2062 ~~[(A) before the opening of bids or the closing date for proposals; or]~~

2063 ~~[(B) if the person filing the protest did not know and should not have known of the~~
 2064 ~~facts giving rise to the protest before the bid opening or the closing date for proposals, within~~
 2065 ~~seven days after the day on which the person knows or should have known of the facts giving~~
 2066 ~~rise to the protest.]~~

2067 ~~[(ii) A protest under Subsection (1)(a) relating to a form of procurement not described~~
 2068 ~~in Subsection (1)(b)(i) but involving a deadline established for the submission of a price or~~
 2069 ~~response shall be filed:]~~

2070 ~~[(A) before the deadline for the submission of a price or response; or]~~

2071 ~~[(B) if the person filing the protest did not know and reasonably should not have~~
 2072 ~~known of the facts giving rise to the protest before the deadline for the submission of a price or~~
 2073 ~~response, within seven days after the day on which the person knows or reasonably should have~~

2074 ~~known of the facts giving rise to the protest.]~~

2075 ~~[(iii) A protest under Subsection (1)(a) relating to a form of procurement not described~~
2076 ~~in Subsection (1)(b)(i) or (ii) shall be filed within seven days after the day on which the person~~
2077 ~~filing the protest knows or should have known of the facts giving rise to the protest.]~~

2078 ~~[(2) A person who files a protest under this section shall include in the filing~~
2079 ~~document:]~~

2080 (2) A protest may not be filed after the protest deadline.

2081 (3) (a) A protestor shall include in a protest:

2082 [(a)] (i) the [person's] protestor's mailing address [of record] and email address [of
2083 record]; and

2084 [(b)] (ii) a concise statement of the [grounds upon which the protest is made.] facts and
2085 evidence:

2086 (A) leading the protestor to claim that the protestor has been aggrieved in connection
2087 with a procurement and providing the grounds for the protestor's protest; and

2088 (B) supporting the protestor's claim of standing.

2089 (b) A protest may not be considered unless it contains facts and evidence that, if true,
2090 would establish:

2091 (i) a violation of this chapter or applicable administrative rule;

2092 (ii) the procurement unit's failure to follow a provision of a solicitation;

2093 (iii) an error made by an evaluation committee or conducting procurement unit;

2094 (iv) a bias exercised by an evaluation committee or an individual committee member,
2095 unless the bias is based on the review of a response to a solicitation in regard to criteria in the
2096 solicitation;

2097 (v) a failure to correctly apply or calculate a scoring criterion; or

2098 (vi) other grounds that the chief procurement officer or the head of a procurement unit
2099 with independent procurement authority considers appropriate.

2100 (4) A protest may not be based on a vague or unsubstantiated allegation.

2101 (5) A protest may not include a request for:

2102 (a) an explanation of the rationale or scoring of evaluation committee members;

2103 (b) the disclosure of a protected record or protected information in addition to the
2104 information provided under the disclosure provisions of this chapter; or

2105 (c) other information, documents, or explanations not explicitly provided for in this
2106 chapter.

2107 ~~[(3)]~~ (6) A person ~~[described in Subsection (1)]~~ who fails to file a protest ~~[within the~~
2108 ~~time prescribed in Subsection (1)(b)]~~ by the protest deadline may not:

2109 (a) protest to the protest officer a solicitation or award of a contract; or

2110 (b) file an action or appeal challenging a solicitation or award of a contract before an
2111 appeals panel, a court, or any other forum.

2112 ~~[(4)]~~ (7) Subject to the applicable requirements of Section 63G-10-403, a protest
2113 officer or the head of a procurement unit may enter into a settlement agreement to resolve a
2114 protest.

2115 Section 39. Section 63G-6a-1603 is amended to read:

2116 **63G-6a-1603. Protest officer responsibilities and authority -- Proceedings on**
2117 **protest -- Effect of decision.**

2118 (1) After a protest is filed, the protest officer shall determine whether the protest is
2119 timely filed and complies fully with the requirements of Section 63G-6a-1602.

2120 (2) If the protest officer determines that the protest is not timely filed or that the protest
2121 does not fully comply with Section 63G-6a-1602, the protest officer shall dismiss the protest.

2122 (3) If the protest officer determines that the protest is timely filed and complies fully
2123 with Section 63G-6a-1602, the protest officer shall:

2124 (a) dismiss the protest if the protest officer determines that the protest alleges facts that,
2125 if true, do not provide an adequate basis for the protest;

2126 (b) uphold the protest without holding a hearing if the protest officer determines that
2127 the undisputed facts of the protest indicate that the protest should be upheld; or

2128 (c) hold a hearing on the protest if there is a genuine issue of material fact that needs to
2129 be resolved in order to determine whether the protest should be upheld.

2130 (4) (a) If a hearing is held on a protest, the protest officer may:

2131 (i) subpoena witnesses and compel their attendance at the protest hearing;

2132 (ii) subpoena documents for production at the protest hearing;

2133 (iii) obtain additional factual information; and

2134 (iv) obtain testimony from experts, the person filing the protest, representatives of the
2135 procurement unit, or others to assist the protest officer to make a decision on the protest.

- 2136 (b) The Rules of Evidence do not apply to a protest hearing.
- 2137 (c) The applicable rulemaking authority shall make rules relating to intervention in a
- 2138 protest, including designating:
 - 2139 (i) who may intervene; and
 - 2140 (ii) the time and manner of intervention.
- 2141 (d) A protest officer shall:
 - 2142 (i) record each hearing held on a protest under this section;
 - 2143 (ii) regardless of whether a hearing on a protest is held under this section, preserve all
 - 2144 records and other evidence relied upon in reaching the protest officer's written decision until
 - 2145 the decision, and any appeal of the decision, becomes final; and
 - 2146 (iii) submit to the procurement policy board chair a copy of the protest officer's written
 - 2147 decision and all records and other evidence relied upon in reaching the decision, within seven
 - 2148 days after receiving:
 - 2149 (A) notice that an appeal of the protest officer's decision has been filed under Section
 - 2150 [63G-6a-1702](#); or
 - 2151 (B) a request from the chair of the procurement policy board.
 - 2152 (e) A protest officer's holding a hearing, considering a protest, or issuing a written
 - 2153 decision under this section does not affect a person's right to later question or challenge the
 - 2154 protest officer's jurisdiction to hold the hearing, consider the protest, or issue the decision.
 - 2155 (5) (a) The deliberations of a protest officer may be held in private.
 - 2156 (b) If the protest officer is a public body, as defined in Section [52-4-103](#), the protest
 - 2157 officer shall comply with Section [52-4-205](#) in closing a meeting for its deliberations.
 - 2158 (6) (a) A protest officer, or the protest officer's designee, shall promptly issue a written
 - 2159 decision regarding any protest, unless the protest is settled by mutual agreement.
 - 2160 (b) The decision shall:
 - 2161 (i) state the reasons for the action taken;
 - 2162 (ii) inform the protestor of the right to judicial or administrative review as provided in
 - 2163 this chapter; and
 - 2164 (iii) indicate the amount of the security deposit or bond required under Section
 - 2165 [63G-6a-1703](#).
 - 2166 (c) A person who issues a decision under Subsection (6)(a) shall mail, email, or

2167 otherwise immediately furnish a copy of the decision to the protestor.

2168 (7) A decision described in this section is effective until stayed or reversed on appeal,
2169 except to the extent provided in Section [63G-6a-1903](#).

2170 (8) (a) A decision described in Subsection (6)(a) that is issued in relation to a
2171 procurement unit other than a legislative procurement unit, a judicial procurement unit, a
2172 nonadopting local government procurement unit, or a public transit district is final and
2173 conclusive unless the protestor files an appeal under Section [63G-6a-1702](#).

2174 (b) A decision described in Subsection (6)(a) that is issued in relation to a legislative
2175 procurement unit, a judicial procurement unit, a nonadopting local government procurement
2176 unit, or a public transit district is final and conclusive unless the protestor files an appeal under
2177 Section [63G-6a-1802](#).

2178 (9) If the protest officer does not issue the written decision regarding a protest [~~or a~~
2179 ~~contract controversy~~] within 30 calendar days after the day on which [~~a written request for a~~
2180 ~~final decision is~~] the protest was filed with the protest officer, or within a longer period as may
2181 be agreed upon by the parties, the protestor [~~, prospective contractor, or contractor~~] may proceed
2182 as if an adverse decision had been received.

2183 (10) A determination under this section by the protest officer regarding an issue of fact
2184 may not be overturned on appeal unless the decision is arbitrary and capricious or clearly
2185 erroneous.

2186 Section 40. Section [63G-6a-1703](#) is amended to read:

2187 **[63G-6a-1703. Requirement to pay a security deposit or post a bond -- Exceptions](#)**
2188 **-- Amount -- Forfeiture of security deposit or bond.**

2189 (1) [~~Except as provided by rule made under Subsection (2)(a), a~~] A person who files a
2190 notice of appeal under Section [63G-6a-1702](#) shall, before the expiration of the time provided
2191 under Subsection [63G-6a-1702](#)(2) for filing a notice of appeal, pay a security deposit or post a
2192 bond with the office of the protest officer.

2193 (2) The amount of a security deposit or bond required under Subsection (1) is:

2194 (a) for an appeal relating to an invitation for bids or request for proposals and except as
2195 provided in Subsection (2)(b)(ii):

2196 (i) \$20,000, if the total contract value is under \$500,000;

2197 (ii) \$25,000, if the total contract value is \$500,000 or more but less than \$1,000,000;

- 2198 (iii) \$50,000, if the total contract value is \$1,000,000 or more but less than \$2,000,000;
- 2199 (iv) \$95,000, if the total contract value is \$2,000,000 or more but less than \$4,000,000;
- 2200 (v) \$180,000, if the total contract value is \$4,000,000 or more but less than \$8,000,000;
- 2201 (vi) \$320,000, if the total contract value is \$8,000,000 or more but less than
- 2202 \$16,000,000;
- 2203 (vii) \$600,000, if the total contract value is \$16,000,000 or more but less than
- 2204 \$32,000,000;
- 2205 (viii) \$1,100,000, if the total contract value is \$32,000,000 or more but less than
- 2206 \$64,000,000;
- 2207 (ix) \$1,900,000, if the total contract value is \$64,000,000 or more but less than
- 2208 \$128,000,000;
- 2209 (x) \$3,500,000, if the total contract value is \$128,000,000 or more but less than
- 2210 \$256,000,000;
- 2211 (xi) \$6,400,000, if the total contract value is \$256,000,000 or more but less than
- 2212 \$512,000,000; and
- 2213 (xii) \$10,200,000, if the total contract value is \$512,000,000 or more; or
- 2214 (b) \$20,000, for an appeal:
 - 2215 (i) relating to any type of procurement process other than an invitation for bids or
 - 2216 request for proposals;
 - 2217 (ii) relating to an invitation for bids or request for proposals, if the estimated total
 - 2218 contract value cannot be determined; or
 - 2219 (iii) of a debarment or suspension.
- 2220 (3) (a) For an appeal relating to an invitation for bids, the estimated total contract value
- 2221 shall be based on:
 - 2222 (i) the lowest responsible and responsive bid amount for the entire term of the contract,
 - 2223 excluding any renewal period, if the bid opening has occurred;
 - 2224 (ii) the total budget for the procurement item for the entire term of the contract,
 - 2225 excluding any renewal period, if bids are based on unit or rate pricing; or
 - 2226 (iii) if the contract is being rebid, the historical usage and amount spent on the contract
 - 2227 over the life of the contract.
- 2228 (b) For an appeal relating to a request for proposals, the estimated total contract value

2229 shall be based on:

2230 (i) the lowest cost proposed in a response to a request for proposals, considering the
2231 entire term of the contract, excluding any renewal period, if the opening of proposals has
2232 occurred;

2233 (ii) the total budget for the procurement item over the entire term of the contract,
2234 excluding any renewal period, if opened cost proposals are based on unit or rate pricing; or

2235 (iii) if the contract is being reissued, the historical usage and amount spent on the
2236 contract over the life of the contract that is being reissued.

2237 (4) The protest officer shall:

2238 (a) retain the security deposit or bond until the protest and any appeal of the protest
2239 decision is final;

2240 (b) as it relates to a security deposit:

2241 (i) deposit the security deposit into an interest-bearing account; and

2242 (ii) after any appeal of the protest decision becomes final, return the security deposit
2243 and the interest it accrues to the person who paid the security deposit, unless the security
2244 deposit is forfeited to the general fund of the procurement unit under Subsection (5); and

2245 (c) as it relates to a bond:

2246 (i) retain the bond until the protest and any appeal of the protest decision becomes
2247 final; and

2248 (ii) after the protest and any appeal of the protest decision becomes final, return the
2249 bond to the person who posted the bond, unless the bond is forfeited to the general fund of the
2250 procurement unit under Subsection (5).

2251 (5) A security deposit that is paid, or a bond that is posted, under this section shall
2252 forfeit to the general fund of the procurement unit if:

2253 (a) the person who paid the security deposit or posted the bond fails to ultimately
2254 prevail on appeal; and

2255 (b) the procurement appeals panel finds that the protest or appeal is frivolous or that its
2256 primary purpose is to harass or cause a delay.

2257 Section 41. Section **63G-6a-2105** is amended to read:

2258 **63G-6a-2105. Cooperative procurements -- Contracts with federal government --**
2259 **Regional solicitations.**

2260 (1) The chief procurement officer may, in accordance with the requirements of this
2261 chapter, enter into a cooperative procurement, and a contract that is awarded as a result of a
2262 cooperative procurement, with:

- 2263 (a) another state;
- 2264 (b) a cooperative purchasing organization; or
- 2265 (c) a public entity inside or outside the state.

2266 (2) A public entity, nonprofit organization, or, as permitted under federal law, an
2267 agency of the federal government, may obtain a procurement item from a state cooperative
2268 contract or a contract awarded by the chief procurement officer under Subsection (1), without
2269 signing a participating addendum if the solicitation issued by the chief procurement officer to
2270 obtain the contract includes a statement indicating that the resulting contract will be issued for
2271 the benefit of public entities and, as applicable, nonprofit organizations and agencies of the
2272 federal government.

2273 (3) Except as provided in Section [63G-6a-408](#), or as otherwise provided in this chapter,
2274 an executive branch procurement unit may not obtain a procurement item from a source other
2275 than a state cooperative contract or a contract awarded by the chief procurement officer under
2276 Subsection (1), if the procurement item is available under a state cooperative contract or a
2277 contract awarded by the chief procurement officer under Subsection (1).

2278 (4) A Utah procurement unit may:

2279 (a) contract with the federal government without going through a standard procurement
2280 process or an exception to a standard procurement process, described in Part 8, Exceptions to
2281 Procurement Requirements, if the procurement item obtained under the contract is provided:

2282 (i) directly by the federal government and not by a person contracting with the federal
2283 government; or

2284 (ii) by a person under contract with the federal government that obtained the contract in
2285 a manner that substantially complies with the provisions of this chapter;

2286 (b) participate in, sponsor, conduct, or administer a cooperative procurement with
2287 another Utah procurement unit or another public entity in Utah, if:

2288 (i) each party unit involved in the cooperative procurement enters into an agreement
2289 describing the rights and duties of each party;

2290 (ii) the procurement is conducted, and the contract awarded, in accordance with the

2291 requirements of this chapter;

2292 (iii) the solicitation:

2293 (A) clearly indicates that the procurement is a cooperative procurement; and

2294 (B) identifies each party that may purchase under the resulting contract; and

2295 (iv) each party involved in the cooperative procurement signs a participating addendum

2296 describing its rights and obligations in relation to the resulting contract; or

2297 (c) purchase under, or otherwise participate in, an agreement or contract of a

2298 cooperative purchasing organization, if:

2299 (i) each party involved in the cooperative procurement enters into an agreement

2300 describing the rights and duties of each party;

2301 (ii) the procurement was conducted in accordance with the requirements of this

2302 chapter;

2303 (iii) the solicitation:

2304 (A) clearly indicates that the procurement is a cooperative procurement; and

2305 (B) identifies each party that may purchase under the resulting contract; and

2306 (iv) each party involved in the cooperative procurement signs a participating addendum

2307 describing its rights and obligations in relation to the resulting contract.

2308 (5) A procurement unit may not obtain a procurement item under a contract that results

2309 from a cooperative procurement described in Subsection (4), [if] unless the procurement unit:

2310 (a) is [~~not~~] identified under Subsection (4)(b)(iii)(B) or (4)(c)(iii)(B); [~~or~~] and

2311 (b) [~~does not sign~~] signs a participating addendum to the contract as required by this

2312 section.

2313 (6) A procurement unit, other than a legislative procurement unit or a judicial

2314 procurement unit, may not obtain a procurement item under a contract held by the United

2315 States General Services Administration, unless, based upon documentation provided by the

2316 procurement unit, the Director of the State Division of Purchasing and General Services

2317 determines in writing that the United States General Services Administration procured the

2318 contract in a manner that substantially complies with the provisions of this chapter.

2319 (7) (a) As used in this Subsection (7), "regional solicitation" means a solicitation issued

2320 by the chief procurement officer for the procurement of a procurement item within a specified

2321 geographical region of the state.

2322 (b) In addition to any other duty or authority under this section, the chief procurement
2323 officer shall:

2324 (i) after considering board recommendations, develop a plan for issuing regional
2325 solicitations;

2326 (ii) present the plan to the Government Operations Interim Committee by September 1,
2327 2014; and

2328 (iii) after developing a plan, issue regional solicitations for procurement items in
2329 accordance with the plan and this chapter.

2330 (c) A plan under Subsection (7)(b) shall:

2331 (i) define the proposed regional boundaries for regional solicitations;

2332 (ii) specify the types of procurement items for which a regional solicitation may be
2333 issued; and

2334 (iii) identify the regional solicitations that the chief procurement officer plans to issue.

2335 (d) A regional solicitation shall require that a person responding to the solicitation offer
2336 similar warranties and submit to similar obligations as are standard under other state
2337 cooperative contracts.

2338 (e) [~~A~~] Except as authorized by the chief procurement officer, a procurement item that
2339 is available under a state cooperative contract may not be provided under a contract pursuant to
2340 a regional solicitation until after the expiration of the state cooperative contract.

2341 Section 42. Section **63G-6a-2404** is amended to read:

2342 **63G-6a-2404. Unlawful conduct -- Exceptions -- Classification of offenses.**

2343 (1) (a) It is unlawful for a person who has or is seeking a contract with or a grant from
2344 a public entity knowingly to give, or offer, promise, or pledge to give, a gratuity or kickback to:

2345 (i) the public entity;

2346 (ii) a procurement professional or contract administration professional; or

2347 (iii) an individual who the person knows is a family member of an individual described
2348 in Subsection (1)(a)(ii).

2349 (b) It is not unlawful for a public agency to give, offer, promise, or pledge to give a
2350 contribution to another public agency.

2351 (c) A person is not guilty of unlawful conduct under Subsection (1)(a) for:

2352 (i) giving or offering, promising, or pledging to give a contribution to a public entity,

2353 unless done with the intent to induce the public entity, in exchange, to:

2354 (A) award a contract or grant;

2355 (B) make a procurement decision; or

2356 (C) take an action relating to the administration of a contract or grant; or

2357 (ii) giving or offering, promising, or pledging to give something of value to an

2358 organization to which a procurement professional or contract administration professional

2359 belongs, unless done with the intent to induce a public entity, in exchange, to:

2360 (A) award a contract or grant;

2361 (B) make a procurement decision; or

2362 (C) take an action relating to the administration of a contract or grant.

2363 (2) (a) It is unlawful for a procurement professional or contract administration

2364 professional, or a family member of either, knowingly to receive or accept, offer or agree to

2365 receive or accept, or ask for a promise or pledge of, a gratuity or kickback from a person who

2366 has or is seeking a contract with or a grant from a public entity.

2367 (b) An individual is not guilty of unlawful conduct under Subsection (2)(a) for

2368 receiving or accepting, offering or agreeing to receive or accept, or asking for a promise or

2369 pledge of a contribution on behalf of a public entity, unless done with the intent that the public

2370 entity, in exchange:

2371 (i) award a contract or grant;

2372 (ii) make a procurement decision; or

2373 (iii) take an action relating to the administration of a contract or grant.

2374 (3) Notwithstanding Subsections (1) and (2), it is not unlawful for a person to give or

2375 receive, offer to give or receive, or promise or pledge to give or ask for a promise or pledge of,

2376 a hospitality gift, if:

2377 (a) the total value of the hospitality gift is less than \$10; and

2378 (b) the aggregate value of all hospitality gifts from the person to the recipient in a

2379 calendar year is less than \$50.

2380 (4) A person who engages in the conduct made unlawful under Subsection (1) or (2) is

2381 guilty of:

2382 (a) a second degree felony, if the total value of the gratuity or kickback is \$1,000 or

2383 more;

2384 (b) a third degree felony, if the total value of the gratuity or kickback is \$250 or more
2385 but less than \$1,000;

2386 (c) a class A misdemeanor, if the total value of the gratuity or kickback is \$100 or more
2387 but less than \$250; and

2388 (d) a class B misdemeanor, if the total value of the gratuity or kickback is less than
2389 \$100.

2390 (5) The criminal sanctions described in Subsection (4) do not preclude the imposition
2391 of other penalties for conduct made unlawful under this part, in accordance with other
2392 applicable law, including:

2393 (a) dismissal from employment or other disciplinary action;

2394 (b) for an elected officer listed in Section 77-6-1, removal from office as provided in
2395 Title 77, Chapter 6, Removal by Judicial Proceedings;

2396 (c) requiring the public officer or employee to return the value of the unlawful gratuity
2397 or kickback; and

2398 (d) any other civil penalty provided by law.

2399 (6) The attorney general may prosecute a person for conduct made unlawful under this
2400 section.

2401 Section 43. Section **63G-6a-2407** is amended to read:

2402 **63G-6a-2407. Duty to report unlawful conduct.**

2403 ~~[(1) A procurement professional shall notify the attorney general or other appropriate~~
2404 ~~prosecuting attorney if the procurement professional has actual knowledge that a person has~~
2405 ~~engaged in:]~~

2406 (1) As used in this section, "unlawful conduct" means:

2407 (a) conduct made unlawful under this part; or

2408 (b) conduct, including bid rigging, improperly steering a contract to a favored vendor,
2409 exercising undue influence on an individual involved in the procurement process, or
2410 participating in collusion or other anticompetitive practices, made unlawful under other
2411 applicable law.

2412 (2) (a) A procurement professional with actual knowledge that a person has engaged in
2413 unlawful conduct shall report the person's unlawful conduct to:

2414 (i) the state auditor; or

- 2415 (ii) the attorney general or other appropriate prosecuting attorney.
- 2416 (b) An individual not subject to the requirement of Subsection (2)(a) who has actual
- 2417 knowledge that a person has engaged in unlawful conduct may report the person's unlawful
- 2418 conduct to:
- 2419 (i) the state auditor; or
- 2420 (ii) the attorney general or other appropriate prosecuting attorney.
- 2421 ~~[(2)]~~ (3) A procurement professional who fails to comply with the requirement of
- 2422 Subsection [(+)] (2)(a) is subject to any applicable disciplinary action or civil penalty identified
- 2423 in Subsection [63G-6a-2404\(5\)](#).
- 2424 Section 44. Section **63G-6a-2408** is enacted to read:
- 2425 **63G-6a-2408. Enforcement by attorney general or other attorney.**
- 2426 (1) The attorney general or other appropriate prosecuting attorney may:
- 2427 (a) enforce a remedy available under this part to a procurement unit with independent
- 2428 procurement authority to the same extent as if the attorney general or other appropriate
- 2429 prosecuting attorney were the head of the procurement unit;
- 2430 (b) bring a civil action or enter into a binding consent agreement to remedy past harm
- 2431 or prevent future harm; and
- 2432 (c) bring a civil action to enforce:
- 2433 (i) a provision of this chapter; or
- 2434 (ii) a consent decree.
- 2435 (2) In an action under this section, the attorney general may be awarded:
- 2436 (a) (i) three times the actual damages; or
- 2437 (ii) a civil penalty not exceeding \$10,000 per violation;
- 2438 (b) costs of suit;
- 2439 (c) reasonable attorney fees;
- 2440 (d) injunctive relief; and
- 2441 (e) any other remedy available under other applicable law.
- 2442 (3) The attorney general shall disburse any money recovered in an action under this
- 2443 section in accordance with Section [76-10-3114](#).
- 2444 Section 45. **Repealer.**
- 2445 This bill repeals:

- 2446 Section **63G-6a-104**, **Definitions relating to governmental bodies.**
- 2447 Section **63G-6a-403**, **Prequalification of potential vendors.**
- 2448 Section **63G-6a-404**, **Approved vendor list.**
- 2449 Section **63G-6a-503**, **Request for information and response nonbinding.**
- 2450 Section **63G-6a-504**, **Contents of request for information.**
- 2451 Section **63G-6a-505**, **Protected information.**

Legislative Review Note
Office of Legislative Research and General Counsel