

**Effective 5/12/2020**

**Part 6  
Design and Construction**

**63A-5b-601 Definitions.**

As used in this part:

- (1)
  - (a) "Facility" means any building, structure, or other improvement that is constructed:
    - (i) on property that the state or any of the state's departments, commissions, institutions, or agencies owns; or
    - (ii) by the state or any of the state's departments, commissions, institutions, or agencies on property that the state does not own.
  - (b) "Facility" does not mean an unoccupied structure that is a component of the state highway system.
- (2) "Local government" means the county, municipality, or local school district that would have jurisdiction to act as the compliance agency if the division did not have jurisdiction to act as the compliance agency.

Amended by Chapter 421, 2022 General Session

**63A-5b-602 Design criteria, standards, and procedures.**

- (1) The director shall establish design criteria, standards, and procedures for the planning, design, and construction of a new facility and for improvements to an existing facility, including life-cycle costing, cost-effectiveness studies, and other methods and procedures that address:
  - (a) the need for the facility;
  - (b) the effectiveness of the facility's design;
  - (c) the efficiency of energy use; and
  - (d) the usefulness of the facility over the facility's lifetime.
- (2) Before proceeding with construction, the director and the officials charged with the administration of the affairs of the particular agency shall approve the location, design, plans, and specifications.
- (3) The director shall prepare or have prepared by one or more private persons the designs, plans, and specifications for the projects administered by the division.
- (4) Before construction may begin, the director shall review the design of projects exempted from the division's administration under Section 63A-5b-604 to determine if the design:
  - (a) complies with any restrictions placed on the project by the director; and
  - (b) is appropriate for the purpose and setting of the project.
- (5) Notwithstanding the requirements of Title 63J, Chapter 1, Budgetary Procedures Act, the director may:
  - (a) accelerate the design of a project funded by an appropriation act passed by the Legislature in the Legislature's annual general session;
  - (b) use an unencumbered existing account balance to fund that design work; and
  - (c) reimburse the account balance from the amount funded for the project when the appropriation act funding the project becomes effective.

Enacted by Chapter 152, 2020 General Session

**63A-5b-603 Contracting powers of director -- Bids -- Retainage.**

- (1) In accordance with Title 63G, Chapter 6a, Utah Procurement Code, the director may enter into a contract for any work or professional service that the division may do or have done.
- (2)
  - (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the director may make rules establishing circumstances under which bids may be modified when all bids for a construction project exceed available funds as determined by the director.
  - (b) In making the rules described in Subsection (2)(a), the director shall provide for the fair and equitable treatment of bidders.
  - (c) The judgment of the director as to the responsibility and qualifications of a bidder is conclusive, except in case of fraud or bad faith.
- (3) The division shall make all payments to the contractor for completed work in accordance with Section 15-6-2 and pay the interest specified in Section 15-6-3 on any payments that are late.
- (4) If the division retains or withholds a payment on a contract with a private contractor to do work for the division, the division shall retain or withhold and release the payment as provided in Section 13-8-5.

Amended by Chapter 421, 2022 General Session

**63A-5b-604 Construction, alteration, and repair of state facilities -- Powers of director -- Exceptions -- Expenditure of appropriations -- Compliance agency role.**

- (1)
  - (a) Except as provided in this section and Section 63A-5b-1101, the director shall exercise direct supervision over the design and construction of all new facilities, and all alterations, repairs, and improvements to existing facilities, if the total project construction cost, regardless of the funding source, is greater than \$100,000.
  - (b) A state entity may exercise direct supervision over the design and construction of all new facilities, and over all alterations, repairs, and improvements to existing facilities, if:
    - (i) the total project construction cost, regardless of the funding sources, is \$100,000 or less; and
    - (ii) the state entity assures compliance with the division's forms and contracts and the division's design, construction, alteration, repair, improvement, and code inspection standards.
- (2) The director may enter into a capital improvement partnering agreement with an institution of higher education that permits the institution of higher education to exercise direct supervision for a capital improvement project with oversight from the division.
- (3)
  - (a) Subject to Subsection (3)(b), the director may delegate control over design, construction, and other aspects of any project to entities of state government on a project-by-project basis.
  - (b) With respect to a delegation of control under Subsection (3)(a), the director may:
    - (i) impose terms and conditions on the delegation that the director considers necessary or advisable to protect the interests of the state; and
    - (ii) revoke the delegation and assume control of the design, construction, or other aspect of a delegated project if the director considers the revocation and assumption of control to be necessary to protect the interests of the state.
- (4)
  - (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the director may delegate control over design, construction, and all other aspects of any project to entities of state government on a categorical basis for projects within a particular dollar range and a particular project type.

- (b) Rules adopted by the director under Subsection (4)(a) may:
  - (i) impose the terms and conditions on categorical delegation that the director considers necessary or advisable to protect the interests of the state;
  - (ii) provide for the revocation of the delegation on a categorical basis and for the division to assume control of the design, construction, or other aspect of a category of delegated projects or a specific delegated project if the director considers revocation of the delegation and assumption of control to be necessary to protect the interests of the state;
  - (iii) require that a categorical delegation be renewed by the director on an annual basis; and
  - (iv) require the division's oversight of delegated projects.
- (5)
  - (a) A state entity to which project control is delegated under this section shall:
    - (i) assume fiduciary control over project finances;
    - (ii) assume all responsibility for project budgets and expenditures; and
    - (iii) receive all funds appropriated for the project, including any contingency funds contained in the appropriated project budget.
  - (b) Notwithstanding a delegation of project control under this section, a state entity to which control is delegated is required to comply with the division's codes and guidelines for design and construction.
  - (c) A state entity to which project control is delegated under this section may not access, for the delegated project, the division's statewide contingency reserve and project reserve authorized in Section 63A-5b-609.
  - (d) For a facility that will be owned, operated, maintained, and repaired by an entity that is not an agency and that is located on property that the state owns or leases as a tenant, the director may authorize the facility's owner to administer the design and construction of the project relating to that facility.
- (6)
  - (a) A project for the construction of a new facility and a project for alterations, repairs, and improvements to an existing facility are not subject to Subsection (1) if the project:
    - (i) occurs on property under the jurisdiction of the State Capitol Preservation Board;
    - (ii) is within a designated research park at the University of Utah or Utah State University;
    - (iii) occurs within the boundaries of This is the Place State Park and is administered by This is the Place Foundation; or
    - (iv) is for the creation and installation of art under Title 9, Chapter 6, Part 4, Utah Percent-for-Art Act.
  - (b) Notwithstanding Subsection (6)(a)(iii), the This is the Place Foundation may request the director to administer the design and construction of a project within the boundaries of This is the Place State Park.
- (7)
  - (a) The role of compliance agency under Title 15A, State Construction and Fire Codes Act, shall be filled by:
    - (i) the director, for a project administered by the division;
    - (ii) the entity designated by the State Capitol Preservation Board, for a project under Subsection (6)(a)(i);
    - (iii) the local government, for a project that is:
      - (A) not subject to the division's administration under Subsection (6)(a)(ii); or
      - (B) administered by This is the Place Foundation under Subsection (6)(a)(iii);
    - (iv) the compliance agency designated by the director, for a project under Subsection (2), (3), (4), or (5)(d); and

- (v) for the installation of art under Subsection (6)(a)(iv), the entity that is acting as the compliance officer for the balance of the project for which the art is being installed.
  - (b) A local government acting as the compliance agency under Subsection (7)(a)(iii) may:
    - (i) only review plans and inspect construction to enforce the state construction code or an approved code under Title 15A, State Construction and Fire Codes Act; and
    - (ii) charge a building permit fee of no more than the amount the local government could have charged if the land upon which the improvements are located were not owned by the state.
- (8)
- (a) The zoning authority of a local government under Title 10, Chapter 9a, Municipal Land Use, Development, and Management Act, or Title 17, Chapter 27a, County Land Use, Development, and Management Act, does not apply to the use of property that the state owns or any improvements constructed on property that the state owns, including improvements constructed by an entity other than a state entity.
  - (b) A state entity controlling the use of property that the state owns shall consider any input received from a local government in determining how the property is to be used.

Amended by Chapter 421, 2022 General Session

**63A-5b-605 Requirement for bidders to list subcontractors -- Changing subcontractors -- Bidders as subcontractors.**

- (1) As used in this section:
- (a) "First-tier subcontractor" means a subcontractor who contracts directly with the prime contractor.
  - (b)
    - (i) "Subcontractor" means a person under contract with a contractor or another subcontractor to provide services or labor for the construction, installation, or repair of an improvement to real property.
    - (ii) "Subcontractor" includes a trade contractor or specialty contractor.
    - (iii) "Subcontractor" does not include a supplier that provides only materials, equipment, or supplies to a contractor or subcontractor.
- (2) The director shall apply the provisions of this section to achieve fair and competitive bidding and to discourage bid-shopping by contractors.
- (3)
- (a)
    - (i)
      - (A) On a public construction project, the director shall, except as provided in Subsection (3)(a)(ii), require the apparent lowest three bidders to submit a list of their first-tier subcontractors indicating each first-tier each subcontractor's name, bid amount, and other information required by rule.
      - (B) A bidder that is not one of the apparent lowest three bidders may also submit a list of the bidder's first-tier subcontractors containing the information required by this Subsection (3).
    - (ii) A bidder is not required to list a first-tier subcontractor if:
      - (A) the bidder's total bid is less than \$500,000 and the first-tier subcontractor's bid is less than \$20,000; or
      - (B) the bidder's total bid is \$500,000 or more and the first-tier subcontractor's bid is less than \$35,000.
  - (b) A bidder shall submit the list required under this section within 24 hours after the bid opening time, not including Saturday, Sunday, and any state holiday.

- (c) A list submitted under this section does not limit the director's right to authorize a change in the listing of any subcontractor.
- (4) The director may not consider a bid submitted by a bidder that fails to submit a list meeting the requirements of this section.
- (5) A bidder shall verify that all subcontractors listed as part of the bidder's bid are licensed as required by state law.
- (6)
  - (a) After 24 hours after the bid opening, a bidder may change the bidder's subcontractors only after:
    - (i) receiving permission from the director; and
    - (ii) establishing:
      - (A) that the change is in the best interest of the state; and
      - (B) the reasons for the change that meet the standards established by the director.
  - (b) If the director approves a change in subcontractors that results in a net lower contract price for subcontracted work, the director may require the bidder to reduce the total of the prime contract to reflect the change.
- (7)
  - (a) A bidder may list the bidder as a subcontractor if:
    - (i) the bidder is currently licensed to perform the portion of the work for which the bidder lists the bidder as a subcontractor; and
    - (ii)
      - (A) the bidder intends to perform the work of a subcontractor; or
      - (B) the bidder intends to obtain a subcontractor at a later date to perform the work because the bidder was unable to obtain a bid from a qualified subcontractor or from a qualified subcontractor at a cost that the bidder considers to be reasonable.
  - (b)
    - (i) If the bidder intends to perform the work of a subcontractor, the director may, by written request, require that the bidder provide the director with information indicating the bidder's:
      - (A) previous experience in the type of work to be performed; and
      - (B) qualifications for performing the work.
    - (ii) A bidder shall respond in writing within five business days after receiving the director's written request under Subsection (7)(b)(i).
    - (iii) If the information a bidder submits under Subsection (7)(b)(ii) causes the director to reasonably believe that the bidder's performance of the portion of the work is likely to result in a substandard finished product, the director shall:
      - (A) require the bidder to use a subcontractor for the portion of the work in question and obtain the subcontractor bid under the supervision of the director; or
      - (B) reject the bidder's bid.
- (8)
  - (a) If a bidder intends to obtain a subcontractor at a later date to perform work described in the bidder's bid, the bidder shall provide documentation with the subcontractor list required under this section:
    - (i) describing the bidder's efforts to obtain a bid of a qualified subcontractor at a reasonable cost; and
    - (ii) explaining why the bidder was unable to obtain a qualified subcontractor bid.
  - (b) If a bidder who intends to obtain a subcontractor at a later date to perform the work described in a bid is awarded a contract, the director:
    - (i) shall supervise the bidder's efforts to obtain a qualified subcontractor bid; and

- (ii) may not adjust the amount of the contract awarded in order to reflect the actual amount of the subcontractor's bid.
- (9) The division may not disclose any subcontractor bid amounts obtained under this section until the division has awarded the project to a contractor.
- (10) In addition to all other reasons allowed by statute or rule, the director may reject all bids if all of the bidders whose bids are within the budget of the project fail to submit a subcontractor list as required under this section.

Renumbered and Amended by Chapter 152, 2020 General Session

**63A-5b-606 Dispute resolution process -- Penalties for fraud or bad faith claim.**

- (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the director shall make rules for the division establishing a process for resolving disputes involved with contracts under the division's procurement authority.
- (2) The director shall consider, and the rules may include:
  - (a) requirements regarding preliminary resolution efforts between the parties directly involved with the dispute;
  - (b) requirements for the filing of a claim, including notification, time frames, and documentation;
  - (c) identification of the types of costs eligible for allocation and a method for allocating costs among the parties to the dispute;
  - (d) a required time period, not to exceed 60 days, for the resolution of the claim;
  - (e) a provision for an independent hearing officer, panel, or arbitrator to extend the time period for resolution of the claim by not to exceed 60 additional days for good cause;
  - (f) a provision for the extension of required time periods if the claimant agrees;
  - (g) requirements that decisions be issued in writing;
  - (h) provisions for an administrative appeal of a decision;
  - (i) provisions for the timely payment of claims after resolution of the dispute, including any appeals;
  - (j) a requirement that the final determination resulting from the dispute resolution process provided for in the rules is a final agency action subject to judicial review as provided in Sections 63G-4-401 and 63G-4-402;
  - (k) a requirement that a claim or dispute that does not include a monetary claim against the division or an agent of the division is not limited to the dispute resolution process provided for in this section;
  - (l) requirements for claims and disputes to be eligible for the dispute resolution process under this section;
  - (m) the use of an independent hearing officer or panel or the use of arbitration or mediation; and
  - (n) the circumstances under which a subcontractor may file a claim directly with the division.
- (3) A person pursuing a claim under the process established as provided in this section:
  - (a) is bound by the decision reached under this process, subject to any modification of the decision on appeal; and
  - (b) may not pursue a claim, protest, or dispute under the dispute resolution process established in Title 63G, Chapter 6a, Utah Procurement Code.
- (4) A fraudulent misrepresentation made by or bad faith claim pursued by a contractor, subcontractor, or supplier, may be grounds for:
  - (a) the director to suspend or debar the contractor, subcontractor, or supplier; or
  - (b) the contractor, subcontractor, or supplier to be disciplined by the Division of Professional and Occupational Licensing.

Amended by Chapter 169, 2022 General Session

**Effective until 7/1/2024**

**63A-5b-607 Health insurance requirements -- Penalties.**

- (1) As used in this section:
  - (a) "Aggregate amount" means the dollar sum of all contracts, change orders, and modifications for a single project.
  - (b) "Change order" means the same as that term is defined in Section 63G-6a-103.
  - (c) "Eligible employee" means an employee, as defined in Section 34A-2-104, who:
    - (i) works at least 30 hours per calendar week; and
    - (ii) meets the employer eligibility waiting period for qualified health insurance coverage provided by the employer.
  - (d) "Health benefit plan" means:
    - (i) the same as that term is defined in Section 31A-1-301; or
    - (ii) an employee welfare benefit plan:
      - (A) established under the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec. 1001 et seq.;
      - (B) for an employer with 100 or more employees; and
      - (C) in which the employer establishes a self-funded or partially self-funded group health plan to provide medical care for the employer's employees and dependents of the employees.
  - (e) "Qualified health insurance coverage" means the same as that term is defined in Section 26B-3-909.
  - (f) "Subcontractor" means the same as that term is defined in Section 63A-5b-605.
  - (g) "Third party administrator" or "administrator" means the same as that term is defined in Section 31A-1-301.
- (2) Except as provided in Subsection (3), the requirements of this section apply to:
  - (a) a contractor of a design or construction contract with the division if the prime contract is in an aggregate amount of \$2,000,000 or more; and
  - (b) a subcontractor of a contractor of a design or construction contract with the division if the subcontract is in an aggregate amount of \$1,000,000 or more.
- (3) The requirements of this section do not apply to a contractor or subcontractor if:
  - (a) the application of this section jeopardizes the division's receipt of federal funds;
  - (b) the contract is a sole source contract, as defined in Section 63G-6a-103; or
  - (c) the contract is the result of an emergency procurement.
- (4) A person who intentionally uses a change order, contract modification, or multiple contracts to circumvent the requirements of this section is guilty of an infraction.
- (5)
  - (a) A contractor that is subject to the requirements of this section shall:
    - (i) make and maintain an offer of qualified health coverage for the contractor's eligible employees and the eligible employees' dependents; and
    - (ii) submit to the director a written statement demonstrating that the contractor is in compliance with Subsection (5)(a)(i).
  - (b) A statement under Subsection (5)(a)(ii):
    - (i) shall be from:
      - (A) an actuary selected by the contractor or the contractor's insurer;
      - (B) an underwriter who is responsible for developing the employer group's premium rates; or

- (C) if the contractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or underwriter selected by a third party administrator; and
  - (ii) may not be created more than one year before the day on which the contractor submits the statement to the director.
- (c)
  - (i) A contractor that provides a health benefit plan described in Subsection (1)(d)(ii) shall provide the actuary or underwriter selected by an administrator, as described in Subsection (5)(b)(i)(C), sufficient information to determine whether the contractor's contribution to the health benefit plan and the actuarial value of the health benefit plan meet the requirements of qualified health coverage.
  - (ii) A contractor may not make a change to the contractor's contribution to the health benefit plan, unless the contractor provides notice to:
    - (A) the actuary or underwriter selected by an administrator, as described in Subsection (5)(b)(i)(C), for the actuary or underwriter to update the written statement described in Subsection (5)(a) in compliance with this section; and
    - (B) the division.
- (6)
  - (a) A contractor that is subject to the requirements of this section shall:
    - (i) ensure that each contract the contractor enters with a subcontractor that is subject to the requirements of this section requires the subcontractor to obtain and maintain an offer of qualified health coverage for the subcontractor's eligible employees and the eligible employees' dependents during the duration of the subcontract; and
    - (ii) obtain from a subcontractor referred to in Subsection (6)(a)(i) a written statement demonstrating that the subcontractor offers qualified health coverage to eligible employees and eligible employees' dependents.
  - (b) A statement under Subsection (6)(a)(ii):
    - (i) shall be from:
      - (A) an actuary selected by the subcontractor or the subcontractor's insurer;
      - (B) an underwriter who is responsible for developing the employer group's premium rates; or
      - (C) if the subcontractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or underwriter selected by an administrator; and
    - (ii) may not be created more than one year before the day on which the contractor obtains the statement from the subcontractor.
- (7)
  - (a)
    - (i) A contractor that fails to maintain an offer of qualified health coverage during the duration of the contract as required in this section is subject to penalties in accordance with administrative rules made by the division under this section, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
    - (ii) A contractor is not subject to penalties for the failure of a subcontractor to obtain and maintain an offer of qualified health coverage as required in this section.
  - (b)
    - (i) A subcontractor that fails to obtain and maintain an offer of qualified health coverage during the duration of the subcontract as required in this section is subject to penalties in accordance with administrative rules made by the division under this section, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
    - (ii) A subcontractor is not subject to penalties for the failure of a contractor to maintain an offer of qualified health coverage as required in this section.



- (8) The division shall make rules:
  - (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
  - (b) in coordination with:
    - (i) the Department of Environmental Quality in accordance with Section 19-1-206;
    - (ii) the Department of Natural Resources in accordance with Section 79-2-404;
    - (iii) a public transit district in accordance with Section 17B-2a-818.5;
    - (iv) the State Capitol Preservation Board in accordance with Section 63O-2-403;
    - (v) the Department of Transportation in accordance with Section 72-6-107.5; and
    - (vi) the Legislature's Rules Review and General Oversight Committee created under Section 36-35-102; and
  - (c) that establish:
    - (i) the requirements and procedures for a contractor and a subcontractor to demonstrate compliance with this section, including:
      - (A) a provision that a contractor or subcontractor's compliance with this section is subject to an audit by the division or the Office of the Legislative Auditor General;
      - (B) a provision that a contractor that is subject to the requirements of this section obtain a written statement as provided in Subsection (5); and
      - (C) a provision that a subcontractor that is subject to the requirements of this section obtain a written statement as provided in Subsection (6);
    - (ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:
      - (A) a three-month suspension of the contractor or subcontractor from entering into a future contract with the state upon the first violation;
      - (B) a six-month suspension of the contractor or subcontractor from entering into a future contract with the state upon the second violation;
      - (C) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6a-904 upon the third or subsequent violation; and
      - (D) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health coverage for eligible employees and dependents of eligible employees of the contractor or subcontractor who were not offered qualified health coverage during the duration of the contract; and
    - (iii) a website for the department to post the commercially equivalent benchmark for the qualified health coverage that is provided by the Department of Health and Human Services in accordance with Subsection 26B-3-909(2).
- (9) During the duration of a contract, the division may perform an audit to verify a contractor or subcontractor's compliance with this section.
- (10)
  - (a) Upon the division's request, a contractor or subcontractor shall provide the division:
    - (i) a signed actuarial certification that the coverage the contractor or subcontractor offers is qualified health coverage; or
    - (ii) all relevant documents and information necessary for the division to determine compliance with this section.
  - (b) If a contractor or subcontractor provides the documents and information described in Subsection (10)(a)(i), the Insurance Department shall assist the division in determining if the coverage the contractor or subcontractor offers is qualified health coverage.
- (11)
  - (a)

- (i) In addition to the penalties imposed under Subsection (7), a contractor or subcontractor that intentionally violates the provisions of this section is liable to an eligible employee for health care costs that would have been covered by qualified health coverage.
  - (ii) An employer has an affirmative defense to a cause of action under Subsection (11)(a)(i) if:
    - (A) the employer relied in good faith on a written statement described in Subsection (5) or (6);
    - or
    - (B) the department determines that compliance with this section is not required under the provisions of Subsection (3).
  - (b) An eligible employee has a private right of action against the employee's employer only as provided in this Subsection (11).
- (12) The director shall cause money collected from the imposition and collection of a penalty under this section to be deposited into the Medicaid Restricted Account created by Section 26B-1-309.
- (13) The failure of a contractor or subcontractor to provide qualified health coverage as required by this section:
- (a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under:
    - (i) Section 63G-6a-1602; or
    - (ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and
  - (b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.
- (14) An employer's waiting period for an employee to become eligible for qualified health coverage may not extend beyond the first day of the calendar month following 60 days after the day on which the employee is hired.
- (15) An administrator, including an administrator's actuary or underwriter, who provides a written statement under Subsection (5)(a) or (c) regarding the qualified health coverage of a contractor or subcontractor who provides a health benefit plan described in Subsection (1)(d)(ii):
- (a) subject to Subsection (11)(b), is not liable for an error in the written statement, unless the administrator commits gross negligence in preparing the written statement;
  - (b) is not liable for any error in the written statement if the administrator relied in good faith on information from the contractor or subcontractor; and
  - (c) may require as a condition of providing the written statement that a contractor or subcontractor hold the administrator harmless for an action arising under this section.

Amended by Chapter 178, 2024 General Session

Amended by Chapter 425, 2024 General Session

***Effective 7/1/2024***

**63A-5b-607 Health insurance requirements -- Penalties.**

- (1) As used in this section:
- (a) "Aggregate amount" means the dollar sum of all contracts, change orders, and modifications for a single project.
  - (b) "Change order" means the same as that term is defined in Section 63G-6a-103.
  - (c) "Eligible employee" means an employee, as defined in Section 34A-2-104, who:
    - (i) works at least 30 hours per calendar week; and
    - (ii) meets the employer eligibility waiting period for qualified health insurance coverage provided by the employer.

- (d) "Health benefit plan" means:
    - (i) the same as that term is defined in Section 31A-1-301; or
    - (ii) an employee welfare benefit plan:
      - (A) established under the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec. 1001 et seq.;
      - (B) for an employer with 100 or more employees; and
      - (C) in which the employer establishes a self-funded or partially self-funded group health plan to provide medical care for the employer's employees and dependents of the employees.
  - (e) "Qualified health insurance coverage" means the same as that term is defined in Section 26B-3-909.
  - (f) "Subcontractor" means the same as that term is defined in Section 63A-5b-605.
  - (g) "Third party administrator" or "administrator" means the same as that term is defined in Section 31A-1-301.
- (2) Except as provided in Subsection (3), the requirements of this section apply to:
- (a) a contractor of a design or construction contract with the division if the prime contract is in an aggregate amount of \$2,000,000 or more; and
  - (b) a subcontractor of a contractor of a design or construction contract with the division if the subcontract is in an aggregate amount of \$1,000,000 or more.
- (3) The requirements of this section do not apply to a contractor or subcontractor if:
- (a) the application of this section jeopardizes the division's receipt of federal funds;
  - (b) the contract is a sole source contract, as defined in Section 63G-6a-103; or
  - (c) the contract is the result of an emergency procurement.
- (4) A person who intentionally uses a change order, contract modification, or multiple contracts to circumvent the requirements of this section is guilty of an infraction.
- (5)
- (a) A contractor that is subject to the requirements of this section shall:
    - (i) make and maintain an offer of qualified health coverage for the contractor's eligible employees and the eligible employees' dependents; and
    - (ii) submit to the director a written statement demonstrating that the contractor is in compliance with Subsection (5)(a)(i).
  - (b) A statement under Subsection (5)(a)(ii):
    - (i) shall be from:
      - (A) an actuary selected by the contractor or the contractor's insurer;
      - (B) an underwriter who is responsible for developing the employer group's premium rates; or
      - (C) if the contractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or underwriter selected by a third party administrator; and
    - (ii) may not be created more than one year before the day on which the contractor submits the statement to the director.
  - (c)
    - (i) A contractor that provides a health benefit plan described in Subsection (1)(d)(ii) shall provide the actuary or underwriter selected by an administrator, as described in Subsection (5)(b)(i)(C), sufficient information to determine whether the contractor's contribution to the health benefit plan and the actuarial value of the health benefit plan meet the requirements of qualified health coverage.
    - (ii) A contractor may not make a change to the contractor's contribution to the health benefit plan, unless the contractor provides notice to:

- (A) the actuary or underwriter selected by an administrator, as described in Subsection (5)(b)(i)(C), for the actuary or underwriter to update the written statement described in Subsection (5)(a) in compliance with this section; and
  - (B) the division.
- (6)
- (a) A contractor that is subject to the requirements of this section shall:
    - (i) ensure that each contract the contractor enters with a subcontractor that is subject to the requirements of this section requires the subcontractor to obtain and maintain an offer of qualified health coverage for the subcontractor's eligible employees and the eligible employees' dependents during the duration of the subcontract; and
    - (ii) obtain from a subcontractor referred to in Subsection (6)(a)(i) a written statement demonstrating that the subcontractor offers qualified health coverage to eligible employees and eligible employees' dependents.
  - (b) A statement under Subsection (6)(a)(ii):
    - (i) shall be from:
      - (A) an actuary selected by the subcontractor or the subcontractor's insurer;
      - (B) an underwriter who is responsible for developing the employer group's premium rates; or
      - (C) if the subcontractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or underwriter selected by an administrator; and
    - (ii) may not be created more than one year before the day on which the contractor obtains the statement from the subcontractor.
- (7)
- (a)
    - (i) A contractor that fails to maintain an offer of qualified health coverage during the duration of the contract as required in this section is subject to penalties in accordance with administrative rules made by the division under this section, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
    - (ii) A contractor is not subject to penalties for the failure of a subcontractor to obtain and maintain an offer of qualified health coverage as required in this section.
  - (b)
    - (i) A subcontractor that fails to obtain and maintain an offer of qualified health coverage during the duration of the subcontract as required in this section is subject to penalties in accordance with administrative rules made by the division under this section, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
    - (ii) A subcontractor is not subject to penalties for the failure of a contractor to maintain an offer of qualified health coverage as required in this section.
- (8) The division shall make rules:
- (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
  - (b) in coordination with:
    - (i) the Department of Environmental Quality in accordance with Section 19-1-206;
    - (ii) the Department of Natural Resources in accordance with Section 79-2-404;
    - (iii) a public transit district in accordance with Section 17B-2a-818.5;
    - (iv) the State Capitol Preservation Board in accordance with Section 63O-2-403;
    - (v) the Department of Transportation in accordance with Section 72-6-107.5; and
    - (vi) the Legislature's Rules Review and General Oversight Committee created under Section 36-35-102; and
  - (c) that establish:

- (i) the requirements and procedures for a contractor and a subcontractor to demonstrate compliance with this section, including:
    - (A) a provision that a contractor or subcontractor's compliance with this section is subject to an audit by the division or the Office of the Legislative Auditor General;
    - (B) a provision that a contractor that is subject to the requirements of this section obtain a written statement as provided in Subsection (5); and
    - (C) a provision that a subcontractor that is subject to the requirements of this section obtain a written statement as provided in Subsection (6);
  - (ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:
    - (A) a three-month suspension of the contractor or subcontractor from entering into a future contract with the state upon the first violation;
    - (B) a six-month suspension of the contractor or subcontractor from entering into a future contract with the state upon the second violation;
    - (C) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6a-904 upon the third or subsequent violation; and
    - (D) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health coverage for eligible employees and dependents of eligible employees of the contractor or subcontractor who were not offered qualified health coverage during the duration of the contract; and
  - (iii) a website for the department to post the commercially equivalent benchmark for the qualified health coverage that is provided by the Department of Health and Human Services in accordance with Subsection 26B-3-909(2).
- (9) During the duration of a contract, the division may perform an audit to verify a contractor or subcontractor's compliance with this section.
- (10)
- (a) Upon the division's request, a contractor or subcontractor shall provide the division:
    - (i) a signed actuarial certification that the coverage the contractor or subcontractor offers is qualified health coverage; or
    - (ii) all relevant documents and information necessary for the division to determine compliance with this section.
  - (b) If a contractor or subcontractor provides the documents and information described in Subsection (10)(a)(i), the Insurance Department shall assist the division in determining if the coverage the contractor or subcontractor offers is qualified health coverage.
- (11)
- (a)
    - (i) In addition to the penalties imposed under Subsection (7), a contractor or subcontractor that intentionally violates the provisions of this section is liable to an eligible employee for health care costs that would have been covered by qualified health coverage.
    - (ii) An employer has an affirmative defense to a cause of action under Subsection (11)(a)(i) if:
      - (A) the employer relied in good faith on a written statement described in Subsection (5) or (6); or
      - (B) the department determines that compliance with this section is not required under the provisions of Subsection (3).
  - (b) An eligible employee has a private right of action against the employee's employer only as provided in this Subsection (11).

- (12) The director shall cause money collected from the imposition and collection of a penalty under this section to be deposited into the Medicaid Growth Reduction and Budget Stabilization Account created by Section 63J-1-315.
- (13) The failure of a contractor or subcontractor to provide qualified health coverage as required by this section:
  - (a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under:
    - (i) Section 63G-6a-1602; or
    - (ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and
  - (b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.
- (14) An employer's waiting period for an employee to become eligible for qualified health coverage may not extend beyond the first day of the calendar month following 60 days after the day on which the employee is hired.
- (15) An administrator, including an administrator's actuary or underwriter, who provides a written statement under Subsection (5)(a) or (c) regarding the qualified health coverage of a contractor or subcontractor who provides a health benefit plan described in Subsection (1)(d)(ii):
  - (a) subject to Subsection (11)(b), is not liable for an error in the written statement, unless the administrator commits gross negligence in preparing the written statement;
  - (b) is not liable for any error in the written statement if the administrator relied in good faith on information from the contractor or subcontractor; and
  - (c) may require as a condition of providing the written statement that a contractor or subcontractor hold the administrator harmless for an action arising under this section.

Amended by Chapter 439, 2024 General Session

**63A-5b-608 Obligations beyond authorized funding prohibited -- Exceptions.**

- (1) Unless otherwise specifically instructed by the terms of the appropriation for a particular project, the director shall assure that no obligations beyond the authorized funding are incurred in the construction of any project authorized by the Legislature.
- (2) The director may expend appropriations for statewide projects from funds provided by the Legislature for the purposes and within the guidelines established by the Legislature.
- (3) The director may consent to the drafting of a plan or the awarding of a contract that will exceed in cost the funding currently available for the project only if the Legislature has specifically provided for extending construction of a building or the completion of a project into future fiscal periods.

Renumbered and Amended by Chapter 152, 2020 General Session

**63A-5b-609 Expenditure of appropriated funds supervised by director -- Contingencies -- Disposition of project reserve funds -- Set aside for Utah Percent-for-Art Program.**

- (1) The director shall:
  - (a)
    - (i) supervise the expenditure of funds in providing plans, engineering specifications, sites, and construction of the buildings for which legislative appropriations are made; and
    - (ii) specifically allocate money appropriated if more than one project is included in any single appropriation without legislative directive;

- (b)
    - (i) expend the amount necessary from appropriations for planning, engineering, and architectural work; and
    - (ii)
      - (A) allocate amounts from appropriations necessary to cover expenditures previously made from the planning fund under Section 63A-5b-503 in the preparation of plans, engineering, and specifications; and
      - (B) return the amounts described in Subsection (1)(b)(ii)(A) to the planning fund; and
  - (c) hold in a statewide contingency reserve the amount budgeted for contingencies:
    - (i) in appropriations for the construction or remodeling of facilities; and
    - (ii) that are over and above all amounts obligated by contract for planning, engineering, architectural work, sites, and construction contracts.
- (2)
- (a) The director shall base the amount budgeted for contingencies on a sliding scale percentage of the construction cost ranging from:
    - (i) 4.5% to 6.5% for new construction; and
    - (ii) 6% to 9.5% for remodeling projects.
  - (b) The director shall hold the statewide contingency funds to cover:
    - (i) costs of change orders; and
    - (ii) unforeseen, necessary costs beyond those specifically budgeted for the project.
  - (c)
    - (i) The Legislature shall annually review the percentage and the amount held in the statewide contingency reserve.
    - (ii) The Legislature may reappropriate to other building needs, including the cost of administering building projects, any amount from the statewide contingency reserve that is in excess of the reserve required to meet future contingency needs.
- (3)
- (a) The director shall hold in a separate project reserve state appropriated funds accrued through bid savings and project residual.
  - (b) The director shall account for the funds accrued under Subsection (3)(a) in separate accounts as follows:
    - (i) bid savings and project residual from a capital improvement project, as defined in Section 63A-5b-401; and
    - (ii) bid savings and project residual from a capital development project, as defined in Section 63A-5b-401.
  - (c) The director may use project reserve funds in the account described in Subsection (3)(b)(i) for a capital improvement project:
    - (i) approved under Section 63A-5b-405; and
    - (ii) for which funds are not allocated.
  - (d) The director may:
    - (i) authorize the use of project reserve funds in the accounts described in Subsection (3)(b) for the award of contracts in excess of a project's construction budget if the use is required to meet the intent of the project;
    - (ii) transfer money from the account described in Subsection (3)(b)(i) to the account described in Subsection (3)(b)(ii) if a capital development project has exceeded its construction budget; and

- (iii) use project reserve funds for any emergency capital improvement project, whether or not the emergency capital improvement project is related to a project that has exceeded its construction budget.
- (e) The director shall report to the Office of the Legislative Fiscal Analyst within 30 days:
  - (i) an expenditure under Subsection (3)(c); or
  - (ii) a transfer under Subsection (3)(d).
- (f) The Legislature shall annually review the amount held in the project reserve for possible reallocation by the Legislature to other building needs, including the cost of administering building projects.
- (4) If any part of the appropriation for a building project, other than the part set aside for the Utah Percent-for-Art Program under Title 9, Chapter 6, Part 4, Utah Percent-for-Art Act, remains unencumbered after the award of construction and professional service contracts and establishing a reserve for fixed and moveable equipment, the balance of the appropriation is dedicated to the project reserve and does not revert to the General Fund.
- (5)
  - (a)
    - (i) One percent of the amount appropriated for the construction of any new state building or facility may be appropriated and set aside for the Utah Percent-for-Art Program administered by the Division of Fine Arts under Title 9, Chapter 6, Part 4, Utah Percent-for-Art Act.
    - (ii) The total amount appropriated and set aside under Subsection (5)(a)(i) may not exceed:
      - (A) \$200,000, if the new state building or facility is not located in a county of the first class; and
      - (B) \$250,000, if the new state building or facility is located in a county of the first class.
  - (b) The director shall release to the Division of Fine Arts any funds included in an appropriation to the division that are designated by the Legislature for the Utah Percent-for-Art Program.
  - (c) Funds from appropriations for a state building or facility may not be set aside:
    - (i) if any part of the funds is derived from the issuance of bonds; and
    - (ii) to the extent the set aside of funds would jeopardize the federal income tax exemption otherwise allowed for interest paid on bonds.

Amended by Chapter 368, 2024 General Session

**63A-5b-610 Transfer from project reserve money.**

- (1) With the approval of and through an appropriation by the Legislature, the division shall transfer at least \$100,000 annually from the project reserve money to the General Fund to pay for personal service expenses associated with the management of construction projects.
- (2) With the approval of and as directed by the Legislature, the division shall transfer additional money from the project reserve money to pay administrative costs associated with the management of construction projects and other division responsibilities.

Renumbered and Amended by Chapter 152, 2020 General Session