

## Chapter 6a Utah Procurement Code

### Part 1 General Procurement Provisions

#### **63G-6a-101 Title.**

- (1) This chapter is known as the "Utah Procurement Code."
- (2) This part is known as "General Procurement Provisions."

Renumbered and Amended by Chapter 347, 2012 General Session

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

The underlying purposes and policies of this chapter are:

- (1) to ensure transparency in the public procurement process;
- (2) to ensure the fair and equitable treatment of all persons who participate in the public procurement process;
- (3) to provide increased economy in state procurement activities; and
- (4) to foster effective broad-based competition within the free enterprise system.

Amended by Chapter 348, 2017 General Session

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

As used in this chapter:

- (1) "Approved vendor" means a person who has been approved for inclusion on an approved vendor list through the approved vendor list process.
- (2) "Approved vendor list" means a list of approved vendors established under Section 63G-6a-507.
- (3) "Approved vendor list process" means the procurement process described in Section 63G-6a-507.
- (4) "Bidder" means a person who submits a bid or price quote in response to an invitation for bids.
- (5) "Bidding process" means the procurement process described in Part 6, Bidding.
- (6) "Board" means the Utah State Procurement Policy Board, created in Section 63G-6a-202.
- (7) "Change directive" means a written order signed by the procurement officer that directs the contractor to suspend work or make changes, as authorized by contract, without the consent of the contractor.
- (8) "Change order" means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract, upon mutual agreement of the parties to the contract.
- (9) "Chief procurement officer" means the individual appointed under Section 63A-2-102.
- (10) "Conducting procurement unit" means a procurement unit that conducts all aspects of a procurement:
  - (a) except:
    - (i) reviewing a solicitation to verify that it is in proper form; and
    - (ii) causing the publication of a notice of a solicitation; and
  - (b) including:
    - (i) preparing any solicitation document;

- (ii) appointing an evaluation committee;
  - (iii) conducting the evaluation process, except the process relating to scores calculated for costs of proposals;
  - (iv) selecting and recommending the person to be awarded a contract;
  - (v) negotiating the terms and conditions of a contract, subject to the issuing procurement unit's approval; and
  - (vi) contract administration.
- (11) "Conservation district" means the same as that term is defined in Section 17D-3-102.
- (12) "Construction project":
- (a) means a project for the construction, renovation, alteration, improvement, or repair of a public facility on real property, including all services, labor, supplies, and materials for the project; and
  - (b) does not include services and supplies for the routine, day-to-day operation, repair, or maintenance of an existing public facility.
- (13) "Construction manager/general contractor":
- (a) means a contractor who enters into a contract:
    - (i) for the management of a construction project; and
    - (ii) that allows the contractor to subcontract for additional labor and materials that are not included in the contractor's cost proposal submitted at the time of the procurement of the contractor's services; and
  - (b) does not include a contractor whose only subcontract work not included in the contractor's cost proposal submitted as part of the procurement of the contractor's services is to meet subcontracted portions of change orders approved within the scope of the project.
- (14) "Construction subcontractor":
- (a) means a person under contract with a contractor or another subcontractor to provide services or labor for the design or construction of a construction project;
  - (b) includes a general contractor or specialty contractor licensed or exempt from licensing under Title 58, Chapter 55, Utah Construction Trades Licensing Act; and
  - (c) does not include a supplier who provides only materials, equipment, or supplies to a contractor or subcontractor for a construction project.
- (15) "Contract" means an agreement for a procurement.
- (16) "Contract administration" means all functions, duties, and responsibilities associated with managing, overseeing, and carrying out a contract between a procurement unit and a contractor, including:
- (a) implementing the contract;
  - (b) ensuring compliance with the contract terms and conditions by the conducting procurement unit and the contractor;
  - (c) executing change orders;
  - (d) processing contract amendments;
  - (e) resolving, to the extent practicable, contract disputes;
  - (f) curing contract errors and deficiencies;
  - (g) terminating a contract;
  - (h) measuring or evaluating completed work and contractor performance;
  - (i) computing payments under the contract; and
  - (j) closing out a contract.
- (17) "Contractor" means a person who is awarded a contract with a procurement unit.
- (18) "Cooperative procurement" means procurement conducted by, or on behalf of:
- (a) more than one procurement unit; or

- (b) a procurement unit and a cooperative purchasing organization.
- (19) "Cooperative purchasing organization" means an organization, association, or alliance of purchasers established to combine purchasing power in order to obtain the best value for the purchasers by engaging in procurements in accordance with Section 63G-6a-2105.
- (20) "Cost-plus-a-percentage-of-cost contract" means a contract under which the contractor is paid a percentage of the total actual expenses or costs in addition to the contractor's actual expenses or costs.
- (21) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowed and allocated in accordance with the contract terms and the provisions of this chapter, and a fee, if any.
- (22) "Days" means calendar days, unless expressly provided otherwise.
- (23) "Definite quantity contract" means a fixed price contract that provides for a specified amount of supplies over a specified period, with deliveries scheduled according to a specified schedule.
- (24) "Design professional" means:
  - (a) an individual licensed as an architect under Title 58, Chapter 3a, Architects Licensing Act;
  - (b) an individual licensed as a professional engineer or professional land surveyor under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act; or
  - (c) an individual certified as a commercial interior designer under Title 58, Chapter 86, State Certification of Commercial Interior Designers Act.
- (25) "Design professional procurement process" means the procurement process described in Part 15, Design Professional Services.
- (26) "Design professional services" means:
  - (a) professional services within the scope of the practice of architecture as defined in Section 58-3a-102;
  - (b) professional engineering as defined in Section 58-22-102;
  - (c) master planning and programming services; or
  - (d) services within the scope of the practice of commercial interior design, as defined in Section 58-86-102.
- (27) "Design-build" means the procurement of design professional services and construction by the use of a single contract.
- (28) "Division" means the Division of Purchasing and General Services, created in Section 63A-2-101.
- (29) "Educational procurement unit" means:
  - (a) a school district;
  - (b) a public school, including a local school board or a charter school;
  - (c) the Utah Schools for the Deaf and the Blind;
  - (d) the Utah Education and Telehealth Network;
  - (e) an institution of higher education of the state described in Section 53B-1-102; or
  - (f) the State Board of Education.
- (30) "Established catalogue price" means the price included in a catalogue, price list, schedule, or other form that:
  - (a) is regularly maintained by a manufacturer or contractor;
  - (b) is published or otherwise available for inspection by customers; and
  - (c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.
- (31)

- (a) "Executive branch procurement unit" means a department, division, office, bureau, agency, or other organization within the state executive branch.
- (b) "Executive branch procurement unit" does not include the Colorado River Authority of Utah as provided in Section 63M-14-210.
- (32) "Facilities division" means the Division of Facilities Construction and Management, created in Section 63A-5b-301.
- (33) "Fixed price contract" means a contract that provides a price, for each procurement item obtained under the contract, that is not subject to adjustment except to the extent that:
  - (a) the contract provides, under circumstances specified in the contract, for an adjustment in price that is not based on cost to the contractor; or
  - (b) an adjustment is required by law.
- (34) "Fixed price contract with price adjustment" means a fixed price contract that provides for an upward or downward revision of price, precisely described in the contract, that:
  - (a) is based on the consumer price index or another commercially acceptable index, source, or formula; and
  - (b) is not based on a percentage of the cost to the contractor.
- (35) "Grant" means an expenditure of public funds or other assistance, or an agreement to expend public funds or other assistance, for a public purpose authorized by law, without acquiring a procurement item in exchange.
- (36) "Immaterial error":
  - (a) means an irregularity or abnormality that is:
    - (i) a matter of form that does not affect substance; or
    - (ii) an inconsequential variation from a requirement of a solicitation that has no, little, or a trivial effect on the procurement process and that is not prejudicial to other vendors; and
  - (b) includes:
    - (i) a missing signature, missing acknowledgment of an addendum, or missing copy of a professional license, bond, or insurance certificate;
    - (ii) a typographical error;
    - (iii) an error resulting from an inaccuracy or omission in the solicitation; and
    - (iv) any other error that the procurement official reasonably considers to be immaterial.
- (37) "Indefinite quantity contract" means a fixed price contract that:
  - (a) is for an indefinite amount of procurement items to be supplied as ordered by a procurement unit; and
  - (b)
    - (i) does not require a minimum purchase amount; or
    - (ii) provides a maximum purchase limit.
- (38) "Independent procurement unit" means:
  - (a)
    - (i) a legislative procurement unit;
    - (ii) a judicial branch procurement unit;
    - (iii) an educational procurement unit;
    - (iv) a local government procurement unit;
    - (v) a conservation district;
    - (vi) a local building authority;
    - (vii) a special district;
    - (viii) a public corporation;
    - (ix) a special service district; or
    - (x) the Utah Communications Authority, established in Section 63H-7a-201;

- (b) the facilities division, but only to the extent of the procurement authority provided under Title 63A, Chapter 5b, Administration of State Facilities;
  - (c) the attorney general, but only to the extent of the procurement authority provided under Title 67, Chapter 5, Attorney General;
  - (d) the Department of Transportation, but only to the extent of the procurement authority provided under Title 72, Transportation Code; or
  - (e) any other executive branch department, division, office, or entity that has statutory procurement authority outside this chapter, but only to the extent of that statutory procurement authority.
- (39) "Invitation for bids":
- (a) means a document used to solicit:
    - (i) bids to provide a procurement item to a procurement unit; or
    - (ii) quotes for a price of a procurement item to be provided to a procurement unit; and
  - (b) includes all documents attached to or incorporated by reference in a document described in Subsection (39)(a).
- (40) "Issuing procurement unit" means a procurement unit that:
- (a) reviews a solicitation to verify that it is in proper form;
  - (b) causes the notice of a solicitation to be published; and
  - (c) negotiates and approves the terms and conditions of a contract.
- (41) "Judicial procurement unit" means:
- (a) the Utah Supreme Court;
  - (b) the Utah Court of Appeals;
  - (c) the Judicial Council;
  - (d) a state judicial district; or
  - (e) an office, committee, subcommittee, or other organization within the state judicial branch.
- (42) "Labor hour contract" is a contract under which:
- (a) the supplies and materials are not provided by, or through, the contractor; and
  - (b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and profit for a specified number of labor hours or days.
- (43) "Legislative procurement unit" means:
- (a) the Legislature;
  - (b) the Senate;
  - (c) the House of Representatives;
  - (d) a staff office of the Legislature, the Senate, or the House of Representatives; or
  - (e) a committee, subcommittee, commission, or other organization:
    - (i) within the state legislative branch; or
    - (ii)
      - (A) that is created by statute to advise or make recommendations to the Legislature;
      - (B) the membership of which includes legislators; and
      - (C) for which the Office of Legislative Research and General Counsel provides staff support.
- (44) "Local building authority" means the same as that term is defined in Section 17D-2-102.
- (45) "Local government procurement unit" means:
- (a) a county, municipality, or project entity, and each office of the county, municipality, or project entity, unless:
    - (i) the county or municipality adopts a procurement code by ordinance; or
    - (ii) the project entity adopts a procurement code through the process described in Section 11-13-316;
  - (b)

- (i) a county or municipality that has adopted this entire chapter by ordinance, and each office or agency of that county or municipality; and
- (ii) a project entity that has adopted this entire chapter through the process described in Subsection 11-13-316; or
- (c) a county, municipality, or project entity, and each office of the county, municipality, or project entity that has adopted a portion of this chapter to the extent that:
  - (i) a term in the ordinance is used in the adopted chapter; or
  - (ii) a term in the ordinance is used in the language a project entity adopts in its procurement code through the process described in Section 11-13-316.
- (46) "Multiple award contracts" means the award of a contract for an indefinite quantity of a procurement item to more than one person.
- (47) "Multiyear contract" means a contract that extends beyond a one-year period, including a contract that permits renewal of the contract, without competition, beyond the first year of the contract.
- (48) "Municipality" means a city, town, or metro township.
- (49) "Nonadopting local government procurement unit" means:
  - (a) a county or municipality that has not adopted Part 16, Protests, Part 17, Procurement Appeals Board, Part 18, Appeals to Court and Court Proceedings, and Part 19, General Provisions Related to Protest or Appeal; and
  - (b) each office or agency of a county or municipality described in Subsection (49)(a).
- (50) "Offeror" means a person who submits a proposal in response to a request for proposals.
- (51) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference under the requirements of this chapter.
- (52) "Procure" means to acquire a procurement item through a procurement.
- (53) "Procurement" means the acquisition of a procurement item through an expenditure of public funds, or an agreement to expend public funds, including an acquisition through a public-private partnership.
- (54) "Procurement item" means an item of personal property, a technology, a service, or a construction project.
- (55) "Procurement official" means:
  - (a) for a procurement unit other than an independent procurement unit, the chief procurement officer;
  - (b) for a legislative procurement unit, the individual, individuals, or body designated in a policy adopted by the Legislative Management Committee;
  - (c) for a judicial procurement unit, the Judicial Council or an individual or body designated by the Judicial Council by rule;
  - (d) for a local government procurement unit:
    - (i) the legislative body of the local government procurement unit; or
    - (ii) an individual or body designated by the local government procurement unit;
  - (e) for a special district, the board of trustees of the special district or the board of trustees' designee;
  - (f) for a special service district, the governing body of the special service district or the governing body's designee;
  - (g) for a local building authority, the board of directors of the local building authority or the board of directors' designee;
  - (h) for a conservation district, the board of supervisors of the conservation district or the board of supervisors' designee;

- (i) for a public corporation, the board of directors of the public corporation or the board of directors' designee;
  - (j) for a school district or any school or entity within a school district, the board of the school district or the board's designee;
  - (k) for a charter school, the individual or body with executive authority over the charter school or the designee of the individual or body;
  - (l) for an institution of higher education described in Section 53B-2-101, the president of the institution of higher education or the president's designee;
  - (m) for the State Board of Education, the State Board of Education or the State Board of Education's designee;
  - (n) for the Utah Board of Higher Education, the Commissioner of Higher Education or the designee of the Commissioner of Higher Education;
  - (o) for the Utah Communications Authority, established in Section 63H-7a-201, the executive director of the Utah Communications Authority or the executive director's designee; or
  - (p)
    - (i) for the facilities division, and only to the extent of procurement activities of the facilities division as an independent procurement unit under the procurement authority provided under Title 63A, Chapter 5b, Administration of State Facilities, the director of the facilities division or the director's designee;
    - (ii) for the attorney general, and only to the extent of procurement activities of the attorney general as an independent procurement unit under the procurement authority provided under Title 67, Chapter 5, Attorney General, the attorney general or the attorney general's designee;
    - (iii) for the Department of Transportation created in Section 72-1-201, and only to the extent of procurement activities of the Department of Transportation as an independent procurement unit under the procurement authority provided under Title 72, Transportation Code, the executive director of the Department of Transportation or the executive director's designee; or
    - (iv) for any other executive branch department, division, office, or entity that has statutory procurement authority outside this chapter, and only to the extent of the procurement activities of the department, division, office, or entity as an independent procurement unit under the procurement authority provided outside this chapter for the department, division, office, or entity, the chief executive officer of the department, division, office, or entity or the chief executive officer's designee.
- (56) "Procurement unit":
- (a) means:
    - (i) a legislative procurement unit;
    - (ii) an executive branch procurement unit;
    - (iii) a judicial procurement unit;
    - (iv) an educational procurement unit;
    - (v) the Utah Communications Authority, established in Section 63H-7a-201;
    - (vi) a local government procurement unit;
    - (vii) a special district;
    - (viii) a special service district;
    - (ix) a local building authority;
    - (x) a conservation district; and
    - (xi) a public corporation; and

- (b) except for a project entity, to the extent that a project entity is subject to this chapter as described in Section 11-13-316, does not include a political subdivision created under Title 11, Chapter 13, Interlocal Cooperation Act.
- (57) "Professional service" means labor, effort, or work that requires specialized knowledge, expertise, and discretion, including labor, effort, or work in the field of:
  - (a) accounting;
  - (b) administrative law judge service;
  - (c) architecture;
  - (d) construction design and management;
  - (e) engineering;
  - (f) financial services;
  - (g) information technology;
  - (h) the law;
  - (i) medicine;
  - (j) psychiatry; or
  - (k) underwriting.
- (58) "Protest officer" means:
  - (a) for the division or an independent procurement unit:
    - (i) the procurement official;
    - (ii) the procurement official's designee who is an employee of the procurement unit; or
    - (iii) a person designated by rule made by the rulemaking authority; or
  - (b) for a procurement unit other than an independent procurement unit, the chief procurement officer or the chief procurement officer's designee who is an employee of the division .
- (59) "Public corporation" means the same as that term is defined in Section 63E-1-102.
- (60) "Project entity" means the same as that term is defined in Section 11-13-103.
- (61) "Public entity" means the state or any other government entity within the state that expends public funds.
- (62) "Public facility" means a building, structure, infrastructure, improvement, or other facility of a public entity.
- (63) "Public funds" means money, regardless of its source, including from the federal government, that is owned or held by a procurement unit.
- (64) "Public transit district" means a public transit district organized under Title 17B, Chapter 2a, Part 8, Public Transit District Act.
- (65) "Public-private partnership" means an arrangement or agreement, occurring on or after January 1, 2017, between a procurement unit and one or more contractors to provide for a public need through the development or operation of a project in which the contractor or contractors share with the procurement unit the responsibility or risk of developing, owning, maintaining, financing, or operating the project.
- (66) "Qualified vendor" means a vendor who:
  - (a) is responsible; and
  - (b) submits a responsive statement of qualifications under Section 63G-6a-410 that meets the minimum mandatory requirements, evaluation criteria, and any applicable score thresholds set forth in the request for statement of qualifications.
- (67) "Real property" means land and any building, fixture, improvement, appurtenance, structure, or other development that is permanently affixed to land.
- (68) "Request for information" means a nonbinding process through which a procurement unit requests information relating to a procurement item.



- (69) "Request for proposals" means a document used to solicit proposals to provide a procurement item to a procurement unit, including all other documents that are attached to that document or incorporated in that document by reference.
- (70) "Request for proposals process" means the procurement process described in Part 7, Request for Proposals.
- (71) "Request for statement of qualifications" means a document used to solicit information about the qualifications of a person interested in responding to a potential procurement, including all other documents attached to that document or incorporated in that document by reference.
- (72) "Requirements contract" means a contract:
  - (a) under which a contractor agrees to provide a procurement unit's entire requirements for certain procurement items at prices specified in the contract during the contract period; and
  - (b) that:
    - (i) does not require a minimum purchase amount; or
    - (ii) provides a maximum purchase limit.
- (73) "Responsible" means being capable, in all respects, of:
  - (a) meeting all the requirements of a solicitation; and
  - (b) fully performing all the requirements of the contract resulting from the solicitation, including being financially solvent with sufficient financial resources to perform the contract.
- (74) "Responsive" means conforming in all material respects to the requirements of a solicitation.
- (75) "Rule" includes a policy or regulation adopted by the rulemaking authority, if adopting a policy or regulation is the method the rulemaking authority uses to adopt provisions that govern the applicable procurement unit.
- (76) "Rulemaking authority" means:
  - (a) for a legislative procurement unit, the Legislative Management Committee;
  - (b) for a judicial procurement unit, the Judicial Council;
  - (c)
    - (i) only to the extent of the procurement authority expressly granted to the procurement unit by statute:
      - (A) for the facilities division, the facilities division;
      - (B) for the Office of the Attorney General, the attorney general;
      - (C) for the Department of Transportation created in Section 72-1-201, the executive director of the Department of Transportation; and
      - (D) for any other executive branch department, division, office, or entity that has statutory procurement authority outside this chapter, the governing authority of the department, division, office, or entity; and
    - (ii) for each other executive branch procurement unit, the board;
  - (d) for a local government procurement unit:
    - (i) the governing body of the local government unit; or
    - (ii) an individual or body designated by the local government procurement unit;
  - (e) for a school district or a public school, the board, except to the extent of a school district's own nonadministrative rules that do not conflict with the provisions of this chapter;
  - (f) for a state institution of higher education, the Utah Board of Higher Education;
  - (g) for the State Board of Education or the Utah Schools for the Deaf and the Blind, the State Board of Education;
  - (h) for a public transit district, the chief executive of the public transit district;
  - (i) for a special district other than a public transit district or for a special service district, the board, except to the extent that the board of trustees of the special district or the governing body of the special service district makes its own rules:

- (i) with respect to a subject addressed by board rules; or
  - (ii) that are in addition to board rules;
  - (j) for the Utah Educational Savings Plan, created in Section 53B-8a-103, the Utah Board of Higher Education;
  - (k) for the School and Institutional Trust Lands Administration, created in Section 53C-1-201, the School and Institutional Trust Lands Board of Trustees;
  - (l) for the School and Institutional Trust Fund Office, created in Section 53D-1-201, the School and Institutional Trust Fund Board of Trustees;
  - (m) for the Utah Communications Authority, established in Section 63H-7a-201, the Utah Communications Authority board, created in Section 63H-7a-203; or
  - (n) for any other procurement unit, the board.
- (77) "Service":
- (a) means labor, effort, or work to produce a result that is beneficial to a procurement unit;
  - (b) includes a professional service; and
  - (c) does not include labor, effort, or work provided under an employment agreement or a collective bargaining agreement.
- (78) "Small purchase process" means the procurement process described in Section 63G-6a-506.
- (79) "Sole source contract" means a contract resulting from a sole source procurement.
- (80) "Sole source procurement" means a procurement without competition pursuant to a determination under Subsection 63G-6a-802(1)(a) that there is only one source for the procurement item.
- (81) "Solicitation" means an invitation for bids, request for proposals, or request for statement of qualifications.
- (82) "Solicitation response" means:
- (a) a bid submitted in response to an invitation for bids;
  - (b) a proposal submitted in response to a request for proposals; or
  - (c) a statement of qualifications submitted in response to a request for statement of qualifications.
- (83) "Special district" means the same as that term is defined in Section 17B-1-102.
- (84) "Special service district" means the same as that term is defined in Section 17D-1-102.
- (85) "Specification" means any description of the physical or functional characteristics or of the nature of a procurement item included in an invitation for bids or a request for proposals, or otherwise specified or agreed to by a procurement unit, including a description of:
- (a) a requirement for inspecting or testing a procurement item; or
  - (b) preparing a procurement item for delivery.
- (86) "Standard procurement process" means:
- (a) the bidding process;
  - (b) the request for proposals process;
  - (c) the approved vendor list process;
  - (d) the small purchase process; or
  - (e) the design professional procurement process.
- (87) "State cooperative contract" means a contract awarded by the division for and in behalf of all public entities.
- (88) "Statement of qualifications" means a written statement submitted to a procurement unit in response to a request for statement of qualifications.
- (89) "Subcontractor":
- (a) means a person under contract to perform part of a contractual obligation under the control of the contractor, whether the person's contract is with the contractor directly or with another

- person who is under contract to perform part of a contractual obligation under the control of the contractor; and
  - (b) includes a supplier, distributor, or other vendor that furnishes supplies or services to a contractor.
- (90) "Technology" means the same as "information technology," as defined in Section 63A-16-102.
- (91) "Tie bid" means that the lowest responsive bids of responsible bidders are identical in price.
- (92) "Time and materials contract" means a contract under which the contractor is paid:
- (a) the actual cost of direct labor at specified hourly rates;
  - (b) the actual cost of materials and equipment usage; and
  - (c) an additional amount, expressly described in the contract, to cover overhead and profit, that is not based on a percentage of the cost to the contractor.
- (93) "Transitional costs":
- (a) means the costs of changing:
    - (i) from an existing provider of a procurement item to another provider of that procurement item; or
    - (ii) from an existing type of procurement item to another type;
  - (b) includes:
    - (i) training costs;
    - (ii) conversion costs;
    - (iii) compatibility costs;
    - (iv) costs associated with system downtime;
    - (v) disruption of service costs;
    - (vi) staff time necessary to implement the change;
    - (vii) installation costs; and
    - (viii) ancillary software, hardware, equipment, or construction costs; and
  - (c) does not include:
    - (i) the costs of preparing for or engaging in a procurement process; or
    - (ii) contract negotiation or drafting costs.
- (94) "Vendor":
- (a) means a person who is seeking to enter into a contract with a procurement unit to provide a procurement item; and
  - (b) includes:
    - (i) a bidder;
    - (ii) an offeror;
    - (iii) an approved vendor;
    - (iv) a design professional; and
    - (v) a person who submits an unsolicited proposal under Section 63G-6a-712.

Amended by Chapter 16, 2023 General Session

**63G-6a-106 Independent procurement units.**

- (1) An independent procurement unit may, without the supervision, interference, oversight, control, or involvement of the division or the chief procurement officer, but in accordance with the requirements of this chapter:
- (a) engage in a standard procurement process;
  - (b) acquire a procurement item under an exception, as provided in this chapter, to the requirement to use a standard procurement process; or
  - (c) otherwise engage in an act authorized or required by this chapter.

- (2) Notwithstanding Subsection (1), an independent procurement unit may agree in writing with the division to extend the authority of the division or the chief procurement officer to the procurement unit, as provided in the agreement.
- (3) With respect to a procurement or contract over which an independent procurement unit's procurement official has authority, the procurement official may:
  - (a) manage and supervise the procurement to ensure to the extent practicable that taxpayers receive the best value;
  - (b) prepare and issue standard specifications for procurement items;
  - (c) review contracts, coordinate contract compliance, conduct contract audits, and approve change orders;
  - (d) delegate duties and authority to an employee of the procurement unit, as the independent procurement unit's procurement official considers appropriate;
  - (e) for the procurement official of an executive branch procurement unit that is an independent procurement unit, coordinate with the Division of Technology Services, created in Section 63A-16-103, with respect to the procurement unit's procurement of information technology services;
  - (f) correct, amend, or cancel a procurement at any stage of the procurement process if the procurement is out of compliance with this chapter or a rule adopted by the rulemaking authority;
  - (g) attempt to resolve a contract dispute in coordination with the legal counsel of the independent procurement unit; and
  - (h) at any time during the term of a contract awarded by the independent procurement unit, correct or amend a contract to bring it into compliance or cancel the contract:
    - (i) if the procurement official determines that correcting, amending, or canceling the contract is in the best interest of the procurement unit; and
    - (ii) after consulting with, as applicable, the attorney general's office or the procurement unit's legal counsel.
- (4) The attorney general may, in accordance with the provisions of this chapter, but without involvement by the division or the chief procurement officer:
  - (a) retain outside counsel, subject to Section 67-5-33 if the attorney general retains outside counsel under a contingent fee contract, as defined in that section; or
  - (b) procure litigation support services, including retaining an expert witness.
- (5) An independent procurement unit that is not represented by the attorney general's office may, in accordance with the provisions of this chapter, but without involvement by the division or the chief procurement officer:
  - (a) retain outside counsel; or
  - (b) procure litigation support services, including retaining an expert witness.
- (6) The state auditor's office may, in accordance with the provisions of this chapter, but without involvement by the division or the chief procurement officer, procure audit services.
- (7) The state treasurer may, in accordance with the provisions of this chapter, but without involvement by the division or the chief procurement officer, procure:
  - (a) deposit services; and
  - (b) services related to issuing bonds.

Amended by Chapter 344, 2021 General Session

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

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

Enacted by Chapter 355, 2016 General Session

**63G-6a-107.2 Application of chapter in general.**

- (1) Except as provided in Section 63G-6a-107.6, this chapter applies to every procurement.
- (2) Notwithstanding any other provision of this chapter:
  - (a) a procurement unit may administer a procurement in accordance with the requirements imposed by the source of the funds used to procure the procurement item; and
  - (b) if a procurement involves the expenditure of federal or state assistance, federal contract funds, local matching funds, or federal financial participation funds, the procurement unit shall comply with mandatory applicable federal or state law and regulations not reflected in this chapter.
- (3) A procurement unit that is subject to this chapter may not obtain a procurement item unless:
  - (a) the procurement unit complies with:
    - (i) all applicable requirements of this chapter; and
    - (ii) the applicable rules that the rulemaking authority makes pursuant to this chapter; and
  - (b) if the procurement unit is not the division or an independent procurement unit, the procurement unit obtains the procurement item under the direction and approval of the division, unless otherwise provided by a rule made by the board.

Enacted by Chapter 257, 2020 General Session

**63G-6a-107.4 Application of chapter to counties and municipalities and the Utah Housing Corporation.**

- A county or municipality or the Utah Housing Corporation:
- (1) may adopt:
    - (a) any or all provisions of this chapter; or
    - (b) any or all rules adopted by the board under this chapter; and
  - (2) is subject to and shall comply with the provisions of this chapter and the rules that are adopted by the county or municipality or the Utah Housing Corporation, respectively.

Enacted by Chapter 257, 2020 General Session

**63G-6a-107.5 Application of chapter to project entities.**

This chapter applies to a project entity to the extent described in Section 11-13-316.

Enacted by Chapter 422, 2022 General Session

**63G-6a-107.6 Exemptions from chapter.**

- (1) Except for this Subsection (1), the provisions of this chapter do not apply to:
  - (a) a public entity's acquisition of a procurement item from another public entity; or
  - (b) a public entity that is not a procurement unit, including the Colorado River Authority of Utah as provided in Section 63M-14-210.
- (2) Unless otherwise provided by statute and except for this Subsection (2), the provisions of this chapter do not apply to the acquisition or disposal of real property or an interest in real property.

- (3) Except for this Subsection (3) and Part 24, Unlawful Conduct and Penalties, the provisions of this chapter do not apply to:
  - (a) funds administered under the Percent-for-Art Program of the Utah Percent-for-Art Act;
  - (b) a grant;
  - (c) medical supplies or medical equipment, including service agreements for medical equipment, obtained by the University of Utah Hospital through a purchasing consortium if:
    - (i) the consortium uses a competitive procurement process; and
    - (ii) the chief administrative officer of the hospital makes a written finding that the prices for purchasing medical supplies and medical equipment through the consortium are competitive with market prices;
  - (d) the purchase of firefighting supplies or equipment by the Division of Forestry, Fire, and State Lands, created in Section 65A-1-4, through the federal General Services Administration or the National Fire Cache system;
  - (e) supplies purchased for resale to the public; or
  - (f) activities related to the management of investments by a public entity granted investment authority by law.
- (4) This chapter does not supersede the requirements for retention or withholding of construction proceeds and release of construction proceeds as provided in Section 13-8-5.
- (5) Except for this Subsection (5), the provisions of this chapter do not apply to a procurement unit's hiring a mediator, arbitrator, or arbitration panel member to participate in the procurement unit's dispute resolution efforts.

Amended by Chapter 179, 2021 General Session

**63G-6a-107.7 Procurement rules.**

- (1)
  - (a) Subject to Subsection (1)(b), the rulemaking authority for a procurement unit shall make rules relating to the management and control of procurements and procurement procedures by the procurement unit.
  - (b) Facilities division rules governing procurement of construction projects, design professional services, and leases apply to the procurement of construction projects, design professional services, and leases of real property, respectively, by the facilities division.
- (2) A rulemaking authority may not adopt rules, policies, or regulations that are inconsistent with this chapter.
- (3) An individual or body that makes rules as required or authorized in this chapter shall make the rules:
  - (a) in accordance with Chapter 3, Utah Administrative Rulemaking Act, if the individual or body is subject to Chapter 3, Utah Administrative Rulemaking Act; or
  - (b) in accordance with the established process for making rules or their equivalent, if the individual or body is not subject to Chapter 3, Utah Administrative Rulemaking Act.
- (4) The rules of the rulemaking authority for the executive branch procurement unit shall require, for each contract and request for proposals, the inclusion of a clause that requires the issuing procurement unit, for the duration of the contract, to make available contact information of the winning contractor to the Department of Workforce Services in accordance with Section 35A-2-203. This requirement does not preclude a contractor from advertising job openings in other forums throughout the state.
- (5) The Department of Transportation may make rules governing the procurement of a highway construction project or highway improvement project.

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

Amended by Chapter 369, 2023 General Session

**63G-6a-107.8 Facilities division report to legislative interim committee.**

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

Amended by Chapter 369, 2023 General Session

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

- (1) An executive branch procurement unit may not engage in a procurement unless:
  - (a) the procurement is made under the direction and control of the division; or
  - (b) the procurement is made under Section 63G-6a-106.
- (2) An executive branch procurement unit that conducts any part of a procurement under this chapter is responsible to conduct that part of the procurement in compliance with this chapter.

Amended by Chapter 196, 2014 General Session

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

- (1) With respect to a procurement by an executive branch procurement unit, except for a procurement by an executive branch procurement unit that, under Subsection 63G-6a-103(38) (b), (c), (d), or (e), is designated as an independent procurement unit:
  - (a) the division is the issuing procurement unit; and
  - (b) the executive branch procurement unit is the conducting procurement unit and is responsible to ensure that the procurement is conducted in compliance with this chapter.
- (2) With respect to a procurement by any other procurement unit, the procurement unit is both the issuing procurement unit and the conducting procurement unit.
- (3) A conducting procurement unit is responsible for contract administration.

Amended by Chapter 421, 2022 General Session

**63G-6a-109.5 Approval of acquisitions of information technology.**

- (1) As used in this section:
  - (a) "Chief information officer" means the director of the Division of Technology Services, created in Section 63A-16-103.
  - (b) "Department" means the Department of Government Operations, created in Section 63A-1-104.
- (2)
  - (a) In accordance with Subsection (3), the chief information officer shall approve the acquisition by an executive branch agency of:
    - (i) information technology equipment;
    - (ii) telecommunications equipment;
    - (iii) software;
    - (iv) services related to the items described in Subsections (2)(a)(i) through (iii); and

- (v) data acquisition.
- (b) The chief information officer may negotiate the purchase, lease, or rental of private or public information technology or telecommunication services or facilities in accordance with this section.
- (c) Where practical, efficient, and economically beneficial, the chief information officer shall use existing private and public information technology or telecommunication resources.
- (d) In accordance with Section 63A-16-206, the chief information officer may recommend coordination of acquisitions between two or more executive branch agencies if the coordination is in the best interests of the state.
- (e) An acquisition approved under this section shall comply with rules made by the applicable rulemaking authority under Chapter 6a, Utah Procurement Code.
- (3) Before a conducting procurement unit negotiates a purchase, lease, or rental under Subsection (2) for an amount that exceeds the value established by the chief information officer by rule made in accordance with Section 63A-16-205, the chief information officer shall:
  - (a) conduct an analysis of the needs of executive branch agencies and subscribers of services and the ability of the proposed information technology or telecommunications services or supplies to meet those needs; and
  - (b) for purchases, leases, or rentals not covered by an existing statewide contract, certify in writing to the chief procurement officer in the Division of Purchasing and General Services that:
    - (i) the analysis required in Subsection (3)(a) was completed; and
    - (ii) based on the analysis, the proposed purchase, lease, rental, or master contract of services, products, or supplies is practical, efficient, and economically beneficial to the state and the executive branch agency or subscriber of services.
- (4) The chief information officer shall approve an acquisition described in Subsection (2) or (3) if the acquisition complies with:
  - (a) the applicable rules and policies described in Section 63A-16-205;
  - (b) the executive branch strategic plan;
  - (c) the applicable agency information technology plan;
  - (d) the budget for the executive branch agency or department as adopted by the Legislature;
  - (e) Chapter 6a, Utah Procurement Code; and
  - (f) the information technology accessibility standards described in Section 63A-16-209.
- (5) Each executive branch agency shall provide the chief information officer with complete access to all information technology records, documents, and reports:
  - (a) at the request of the chief information officer; and
  - (b) related to the executive branch agency's acquisition of an item described in Subsection (2).
- (6)
  - (a) In accordance with administrative rules established by the chief information officer under Section 63A-16-205, an executive branch agency and the department may not initiate a new technology project unless the technology project is described in a formal project plan and a business case analysis is approved by the chief information officer and the highest ranking executive branch agency official.
  - (b) The project plan and business case analysis required under this Subsection (6) shall include:
    - (i) a statement of work to be done and existing work to be modified or displaced;
    - (ii) the total cost of the system development and conversion effort, including system analysis and programming costs, establishment of master files, testing, documentation, special equipment cost, and all other costs, including overhead;
    - (iii) the savings or added operating costs that will result after conversion;



- (iv) a description of the other advantages or reasons that justify the work;
  - (v) the source of funding of the work, including ongoing costs;
  - (vi) a description of the project's consistency with budget submissions and planning components of budgets; and
  - (vii) a statement regarding whether the work is within the scope of projects or initiatives envisioned when the current fiscal year budget was approved.
- (c) The chief information officer shall determine the required form of the project plan and business case analysis described in this Subsection (6).
- (7) Subject to Subsection (9), the chief information officer and the Division of Purchasing and General Services within the department shall work cooperatively to establish procedures under which the chief information officer shall monitor and approve acquisitions under this section.
- (8) In addition to the requirement that the chief information officer approve the acquisitions described in Subsections (2) and (3), the Division of Technology Services shall, subject to Subsection (9), assist and support executive branch agencies in the acquisition of all technology services and products.
- (9) In relation to the acquisition of technology services or products:
- (a) the requirement of approval by the chief information officer, as described in this section, and the assistance and support of the Division of Technology Services described in Subsection (8), do not make the chief information officer, the department, or the Division of Technology Services responsible to manage the contract or fund the procurement;
  - (b) contract management is the responsibility of the conducting procurement unit; and
  - (c) funding of the procurement is the responsibility of the executive branch agency acquiring the technology services or products.

Renumbered and Amended by Chapter 43, 2023 General Session

**63G-6a-111 Purpose of specifications.**

- (1) All specifications shall seek to promote the overall economy and best use for the purposes intended and encourage competition in satisfying the needs of the procurement unit, and may not be unduly restrictive.
- (2) The requirements of this part regarding the purposes and nonrestrictiveness of specifications shall apply to all specifications, including those prepared by architects, engineers, designers, and draftsmen for public contracts.

Renumbered and Amended by Chapter 355, 2016 General Session

**63G-6a-112 Required public notice.**

- (1) A procurement unit that issues a solicitation shall post notice of the solicitation:
  - (a) at least seven days before the day of the deadline for submission of a solicitation response; and
  - (b)
    - (i) on the main website for the procurement unit; or
    - (ii) on a state website that is owned, managed by, or provided under contract with, the division for posting a public procurement notice.
- (2) A procurement unit may reduce the seven-day period described in Subsection (1), if the procurement unit's procurement official signs a written statement that:
  - (a) states that a shorter time is needed; and

- (b) determines that competition from multiple sources may be obtained within the shorter period of time.
- (3)
  - (a) It is the responsibility of a person seeking information provided by a notice published under this section to seek out, find, and respond to the notice.
  - (b) As a courtesy and in order to promote competition, a procurement unit may provide, but is not required to provide, individual notice.

Amended by Chapter 355, 2021 General Session

**63G-6a-113 Price based on established terms.**

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

- (1) a price list, rate schedule, or price catalog:
  - (a) submitted by a vendor and accepted by the procurement unit; or
  - (b) mandated by the procurement unit or a federal agency; or
- (2) a federal regulation for a health and human services program.

Enacted by Chapter 355, 2016 General Session

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

- (1) A procurement unit may allow a vendor to correct an immaterial error in a responsive solicitation response as provided in this section.
- (2)
  - (a) A procurement unit that allows a vendor to correct an immaterial error in a responsive solicitation response shall:
    - (i) require the vendor to submit the correction in writing; and
    - (ii) establish a deadline by which the vendor is required to correct the immaterial error.
  - (b) A procurement unit may not allow a vendor to correct an immaterial error in a responsive solicitation response after the deadline established under Subsection (2)(a).

Amended by Chapter 257, 2020 General Session

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

- (1) A procurement unit may at any time make a written request to a vendor to:
  - (a) clarify information contained in a responsive solicitation response; or
  - (b) provide additional information that the procurement unit determines the procurement unit needs to determine whether the vendor is responsible.
- (2)
  - (a) A procurement unit that requests a vendor to clarify or provide additional information under this section shall establish a deadline by which the vendor is required to submit the clarifying or additional information.
  - (b) A procurement unit may not allow a vendor to submit clarifying or additional information after the deadline established under Subsection (2)(a).

Amended by Chapter 257, 2020 General Session

**63G-6a-116 Procurement of administrative law judge service.**

- (1) As used in this section:
  - (a) "Administrative law judge" means the same as that term is defined in Section 63A-17-701.
  - (b) "Administrative law judge service" means service provided by an administrative law judge.
- (2) A procurement unit shall use a standard procurement process under this chapter for the procurement of administrative law judge service.
- (3) For a procurement of administrative law judge service, an evaluation committee shall consist of:
  - (a) the head of the conducting procurement unit, or the head's designee;
  - (b) the head of an executive branch procurement unit other than the conducting procurement unit, appointed by the director of the Division of Human Resource Management, or the head's designee; and
  - (c) the director of the Division of Human Resource Management, or the director's designee.
- (4) Within 30 days after the day on which a conducting procurement unit awards a contract for administrative law judge service, the conducting procurement unit shall give written notice to the Division of Human Resource Management that states:
  - (a) that the conducting procurement unit awarded a contract for administrative law judge service;
  - (b) the name of the conducting procurement unit; and
  - (c) the expected term of the contract.
- (5) A procurement of administrative law judge service using a small purchase process is subject to rules made pursuant to Subsection 63G-6a-506(2)(c).

Amended by Chapter 344, 2021 General Session

**63G-6a-117 Sale of previously purchased procurement item -- Limitations.**

- (1) As used in this section:
  - (a) "Buyback purchaser" means a person who buys a procurement item from the procurement unit to which the person previously sold the procurement item.
  - (b) "Excess repurchase amount" means the difference between:
    - (i) the amount a buyback purchaser pays to a procurement unit to purchase a procurement item that the buyback purchaser previously sold to the procurement unit; and
    - (ii) the amount the procurement unit paid to the buyback purchaser to purchase the procurement item.
- (2) A procurement unit that sells a procurement item to a buyback purchaser for an amount that exceeds the amount the procurement unit paid for the procurement item:
  - (a) shall require the buyback purchaser to pay cash for the procurement item;
  - (b) may not accept the excess repurchase amount in the form of a credit, discount, or other incentive on a future purchase that the procurement unit makes from the buyback purchaser; and
  - (c) may not use the excess repurchase amount to acquire an additional procurement item from the person who paid the excess repurchase amount.

Enacted by Chapter 180, 2016 General Session

**63G-6a-118 Adoption of rule relating to the procurement of design professional services.**

Each of the following shall adopt a rule relating to the procurement of design professional services, not inconsistent with the provisions of Part 15, Design Professional Services:

- (1) an educational procurement unit;
- (2) a conservation district;
- (3) a local building authority;

- (4) a special district;
- (5) a special service district; and
- (6) a public corporation.

Amended by Chapter 16, 2023 General Session

**63G-6a-119 Cancelling a solicitation.**

- (1) A procurement unit may cancel a solicitation if the procurement official determines that cancellation is in the best interests of the procurement unit.
- (2) If a procurement unit cancels a solicitation:
  - (a) the procurement official shall explain in writing the reasons for the cancellation; and
  - (b) the procurement unit shall make the written explanation described in Subsection (2)(a) available to the public for a period of one year after the cancellation.

Enacted by Chapter 257, 2020 General Session

**63G-6a-120 Rejecting a solicitation response.**

- (1) A procurement unit may reject a solicitation response if:
  - (a) the solicitation response:
    - (i) is not responsive;
    - (ii) violates a requirement of the solicitation; or
    - (iii) is not submitted before the deadline specified in the solicitation;
  - (b) the vendor who submitted the solicitation response:
    - (i) is not responsible;
    - (ii) is in violation of a provision of this chapter;
    - (iii) has had a previous contract with the procurement unit canceled;
    - (iv) has engaged in unethical conduct;
    - (v) is subject to an outstanding tax lien; or
    - (vi) fails to sign a contract awarded as a result of the solicitation response within:
      - (A) 90 days after the contract award, if the solicitation does not specify a deadline for the signing of the contract; or
      - (B) the time specified in the solicitation, if the solicitation specifies a deadline for the signing of the contract; or
  - (c) after the vendor submits a solicitation response there is a change in the vendor's circumstances that, if known at the time the solicitation response was submitted, would have caused the procurement unit to reject the solicitation response.
- (2) A procurement unit that rejects a solicitation response under Subsection (1) shall provide the vendor who submitted the rejected solicitation response a written statement of the reasons for the rejection.

Enacted by Chapter 257, 2020 General Session

**Part 2**  
**Utah State Procurement Policy Board**

**63G-6a-201 Title.**

This part is known as "Utah State Procurement Policy Board."

Amended by Chapter 445, 2013 General Session

**63G-6a-202 Creation of Utah State Procurement Policy Board.**

- (1) There is created the Utah State Procurement Policy Board.
- (2) The board consists of up to 15 members as follows:
  - (a) two representatives of state institutions of higher education, appointed by the Utah Board of Higher Education;
  - (b) a representative of the Department of Human Services, appointed by the executive director of that department;
  - (c) a representative of the Department of Transportation, appointed by the executive director of that department;
  - (d) two representatives of school districts, appointed by the State Board of Education;
  - (e) a representative of the Division of Facilities Construction and Management, appointed by the director of that division;
  - (f) one representative of a county, appointed by the Utah Association of Counties;
  - (g) one representative of a city or town, appointed by the Utah League of Cities and Towns;
  - (h) two representatives of special districts or special service districts, appointed by the Utah Association of Special Districts;
  - (i) the director of the Division of Technology Services or the executive director's designee;
  - (j) the chief procurement officer or the chief procurement officer's designee; and
  - (k) two representatives of state agencies, other than a state agency already represented on the board, appointed by the executive director of the Department of Government Operations, with the approval of the executive director of the state agency that employs the employee.
- (3) Members of the board shall be knowledgeable and experienced in, and have supervisory responsibility for, procurement in their official positions.
- (4) A board member may serve as long as the member meets the description in Subsection (2) unless removed by the person or entity with the authority to appoint the board member.
- (5)
  - (a) The board shall:
    - (i) adopt rules of procedure for conducting its business; and
    - (ii) elect a chair to serve for one year.
  - (b) The chair of the board shall be selected by a majority of the members of the board and may be elected to succeeding terms.
  - (c) The chief procurement officer shall designate an employee of the division to serve as the nonvoting secretary to the policy board.
- (6) A member of the board may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
  - (a) Section 63A-3-106;
  - (b) Section 63A-3-107; and
  - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 16, 2023 General Session

**63G-6a-203 Powers and duties of board.**

- (1) In addition to making rules in accordance with Section 63G-6a-107.7 and the other provisions of this chapter, the board shall consider and decide matters of policy within the provisions of this chapter, including those referred to it by the chief procurement officer.
- (2)
  - (a) The board may:
    - (i) audit and monitor the implementation of its rules and the requirements of this chapter;
    - (ii) upon the request of a procurement unit with a rulemaking authority other than the board, review the procurement unit's proposed rules to ensure that they are not inconsistent with the provisions of this chapter or rules made by the board; and
    - (iii) approve the use of innovative procurement processes.
  - (b) Except as provided in Section 63G-6a-1702, the board may not exercise authority over:
    - (i) the award or administration of any particular contract; or
    - (ii) any dispute, claim, or litigation pertaining to any particular contract.
- (3) Except as otherwise expressly provided in this chapter, the board does not have authority over a matter involving an independent procurement unit.

Amended by Chapter 257, 2020 General Session

**63G-6a-204 Applicability of rules of Utah State Procurement Policy Board and Division of Facilities Construction and Management -- Report to interim committee.**

- (1) Except as provided in Subsection (2), rules made by the board under this chapter shall govern all procurement units for which the board is the rulemaking authority.
- (2) The facilities division rules governing procurement of construction, design professional services, and leases apply to the procurement of construction, design professional services, and leases of real property by the facilities division.
- (3) A rulemaking authority may make its own rules, consistent with this chapter, governing procurement by a person over which the rulemaking authority has rulemaking authority.
- (4) The board shall make a report on or before July 1 of each year to a legislative interim committee, designated by the Legislative Management Committee created under Section 36-12-6, on the establishment, implementation, and enforcement of the rules made under Section 63G-6a-203.

Amended by Chapter 421, 2022 General Session

**63G-6a-205 Procurement advisory councils.**

The chief procurement officer may appoint advisory councils to provide advice regarding any matters within the authority of the chief procurement officer.

Renumbered and Amended by Chapter 347, 2012 General Session

**Part 3  
Chief Procurement Officer**

**63G-6a-301 Title.**

This part is known as "Chief Procurement Officer."

Enacted by Chapter 347, 2012 General Session

**63G-6a-302 Chief procurement officer -- Qualifications -- Authority.**

- (1) The chief procurement officer shall:
  - (a) have a minimum of eight years' experience:
    - (i)
      - (A) in the large-scale procurement of supplies, services, or construction; or
      - (B) negotiating contract terms and conditions; and
    - (ii) at least five years of which shall have been in public or comparable private procurement within 12 years preceding the date of appointment; and
  - (b) be a person with demonstrated executive and organizational ability.
- (2) The chief procurement officer is also the director of the Division of Purchasing and General Services.
- (3) The chief procurement officer has authority over a procurement by a procurement unit, except:
  - (a) an independent procurement unit; or
  - (b) as otherwise expressly provided in this chapter.

Amended by Chapter 344, 2021 General Session

**63G-6a-303 Role, duties, and authority of chief procurement officer.**

- (1) The chief procurement officer:
  - (a) is the director of the division;
  - (b) serves as the central procurement officer of the state;
  - (c) serves as a voting member of the board; and
  - (d) serves as the protest officer for a protest relating to a procurement of an executive branch procurement, except an executive branch procurement unit designated under Subsection 63G-6a-103(38)(b), (c), (d), or (e) as an independent procurement unit, or a state cooperative contract procurement, unless the chief procurement officer designates another to serve as protest officer, as authorized in this chapter.
- (2) Except as otherwise provided in this chapter, the chief procurement officer shall:
  - (a) develop procurement policies and procedures supporting ethical procurement practices, fair and open competition among vendors, and transparency within the state's procurement process;
  - (b) administer the state's cooperative purchasing program, including state cooperative contracts and associated administrative fees;
  - (c) enter into an agreement with a public entity for services provided by the division, if the agreement is in the best interest of the state;
  - (d) ensure the division's compliance with any applicable law, rule, or policy, including a law, rule, or policy applicable to the division's role as an issuing procurement unit or conducting procurement unit, or as the state's central procurement organization;
  - (e) manage the division's electronic procurement system;
  - (f) oversee the recruitment, training, career development, certification requirements, and performance evaluation of the division's procurement personnel;
  - (g) make procurement training available to procurement units and persons who do business with procurement units;
  - (h) provide exemplary customer service and continually improve the division's procurement operations;

- (i) exercise all other authority, fulfill all other duties and responsibilities, and perform all other functions authorized under this chapter; and
  - (j) ensure that any training described in this Subsection (2) complies with Chapter 22, State Training and Certification Requirements.
- (3) With respect to a procurement or contract over which the chief procurement officer has authority under this chapter, the chief procurement officer, except as otherwise provided in this chapter:
- (a) shall:
    - (i) manage and supervise a procurement to ensure to the extent practicable that taxpayers receive the best value;
    - (ii) prepare and issue standard specifications for procurement items;
    - (iii) review contracts, coordinate contract compliance, conduct contract audits, and approve change orders;
    - (iv) in accordance with Section 63G-6a-109.5, coordinate with the Division of Technology Services, created in Section 63A-16-103, with respect to the procurement of information technology services by an executive branch procurement unit;
    - (v) correct, amend, or cancel a procurement at any stage of the procurement process if the procurement is out of compliance with this chapter or a board rule;
    - (vi) after consultation with the attorney general's office, correct, amend, or cancel a contract at any time during the term of the contract if:
      - (A) the contract is out of compliance with this chapter or a board rule; and
      - (B) the chief procurement officer determines that correcting, amending, or canceling the contract is in the best interest of the state; and
    - (vii) make a reasonable attempt to resolve a contract dispute, in coordination with the attorney general's office; and
  - (b) may:
    - (i) delegate limited purchasing authority to a state agency, with appropriate oversight and control to ensure compliance with this chapter;
    - (ii) delegate duties and authority to an employee of the division, as the chief procurement officer considers appropriate;
    - (iii) negotiate and settle contract overcharges, undercharges, and claims, in accordance with the law and after consultation with the attorney general's office;
    - (iv) authorize a procurement unit to make a procurement pursuant to a regional solicitation, as defined in Subsection 63G-6a-2105(7), even if the procurement item is also offered under a state cooperative contract, if the chief procurement officer determines that the procurement pursuant to a regional solicitation is in the best interest of the acquiring procurement unit; and
    - (v) remove an individual from the procurement process or contract administration for:
      - (A) having a conflict of interest or the appearance of a conflict of interest with a person responding to a solicitation or with a contractor;
      - (B) having a bias or the appearance of bias for or against a person responding to a solicitation or for or against a contractor;
      - (C) making an inconsistent or unexplainable score for a solicitation response;
      - (D) having inappropriate contact or communication with a person responding to a solicitation;
      - (E) socializing inappropriately with a person responding to a solicitation or with a contractor;
      - (F) engaging in any other action or having any other association that causes the chief procurement officer to conclude that the individual cannot fairly evaluate a solicitation response or administer a contract; or



- (G) any other violation of a law, rule, or policy.
- (4) The chief procurement officer may not delegate to an individual outside the division the chief procurement officer's authority over a procurement described in Subsection (3)(a)(iv).
  - (5) The chief procurement officer has final authority to determine whether an executive branch procurement unit's anticipated expenditure of public funds, anticipated agreement to expend public funds, or provision of a benefit constitutes a procurement that is subject to this chapter.
  - (6) Except as otherwise provided in this chapter, the chief procurement officer shall review, monitor, and audit the procurement activities and delegated procurement authority of an executive branch procurement unit, except to the extent that an executive branch procurement unit is designated under Subsection 63G-6a-103(38)(b), (c), (d), or (e) as an independent procurement unit, to ensure compliance with this chapter, rules made by the applicable rulemaking authority, and division policies.

Amended by Chapter 43, 2023 General Session

**63G-6a-304 Delegation of authority.**

In accordance with rules made by the board, the chief procurement officer may delegate authority to designees or to any department, agency, or official.

Amended by Chapter 81, 2018 General Session

**63G-6a-305 Duty of chief procurement officer in maintaining specifications.**

- (1) The chief procurement officer may prepare, issue, revise, maintain, and monitor the use of specifications for each procurement over which the chief procurement officer has authority.
- (2) The chief procurement officer shall obtain expert advice and assistance from personnel of procurement units in the development of specifications and may delegate in writing to a procurement unit the authority to prepare and utilize its own specifications.

Amended by Chapter 81, 2018 General Session

**Part 4**  
**Supplemental Procurement Procedures**

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

This part is known as "Supplemental Procurement Procedures."

Amended by Chapter 355, 2016 General Session

**63G-6a-409 Request for information.**

- (1) A procurement unit may issue a request for information to obtain information, comments, or suggestions before issuing a solicitation.
- (2)
  - (a) A request for information is not a procurement process and may not be used to:
    - (i) negotiate fees;
    - (ii) make a purchase;

- (iii) determine whether a procurement may be made under Part 8, Exceptions to Procurement Requirements; or
- (iv) enter into a contract.
- (b) To make a purchase or enter into a contract, a procurement unit is required to:
  - (i) use a standard procurement process; or
  - (ii) comply with an exception to the requirement to use a standard procurement process, as described in Part 8, Exceptions to Procurement Requirements.
- (3) A response to a request for information is not an offer and may not be accepted to form a binding contract.
- (4) A procurement unit that receives pricing information in response to a request for information shall ensure that an individual who serves on an evaluation committee to evaluate proposals that include a proposal as to which the pricing information applies does not have access to the pricing information, except as provided in Subsection 63G-6a-707(7).
- (5) A record containing information submitted to or by a governmental entity in response to a request for information is a protected record under Section 63G-2-305.

Amended by Chapter 257, 2020 General Session

**63G-6a-410 Request for statement of qualifications -- Process.**

- (1)
  - (a) A procurement unit may use the process described in this section:
    - (i) as one of the stages of a multiple-stage standard procurement process; and
    - (ii) to identify qualified vendors to participate in other stages of the multiple-stage procurement process.
  - (b) A procurement unit shall use the process described in this section as part of the approved vendor list process, if the procurement unit intends to establish an approved vendor list.
- (2) A procurement unit may not:
  - (a) award a contract based solely on the process described in this section; or
  - (b) solicit costs, pricing, or rates or negotiate fees through the process described in this section.
- (3) The process of identifying qualified vendors in a multiple-stage standard procurement process or of establishing an approved vendor list under Section 63G-6a-507 is initiated by a procurement unit issuing a request for statement of qualifications.
- (4) A request for statement of qualifications in a multiple-stage standard procurement process shall include:
  - (a) a statement indicating that participation in other stages of the multiple-stage standard procurement process will be limited to qualified vendors;
  - (b) the minimum mandatory requirements, evaluation criteria, and applicable score thresholds that will be used to identify qualified vendors, including, as applicable:
    - (i) experience and work history;
    - (ii) management and staff requirements or standards;
    - (iii) licenses, certifications, and other qualifications;
    - (iv) performance ratings or references;
    - (v) financial stability; and
    - (vi) other information pertaining to vendor qualifications that the procurement official considers relevant or important; and
  - (c) the deadline by which a vendor is required to submit a statement of qualifications.
- (5) A request for statement of qualifications in an approved vendor list process under Section 63G-6a-507 shall include:

- (a) a general description of, as applicable:
    - (i) the procurement item that the procurement unit seeks to acquire;
    - (ii) the type of project or scope or category of work that will be the subject of a procurement by the procurement unit;
    - (iii) the procurement process the procurement unit will use to acquire the procurement item; and
    - (iv) the type of vendor the procurement unit seeks to provide the procurement item;
  - (b) the minimum mandatory requirements, evaluation criteria, and applicable score thresholds that vendors are required to meet to be included on the approved vendor list;
  - (c) a statement indicating that the approved vendor list will include only responsible vendors that:
    - (i) submit a responsive statement of qualifications; and
    - (ii) meet the minimum mandatory requirements, evaluation criteria, and applicable score thresholds described in the request for statement of qualifications;
  - (d) a statement indicating that only vendors on the approved vendor list will be able to participate in the procurements identified in the request for statement of qualifications;
  - (e) a statement indicating whether the procurement unit will use a performance rating system for evaluating the performance of vendors on the approved vendor list, including whether a vendor on the approved vendor list may be disqualified and removed from the list;
  - (f)
    - (i) a statement indicating whether the procurement unit uses a closed-ended approved vendor list, as defined in Section 63G-6a-507, or an open-ended approved vendor list, as defined in Section 63G-6a-507; and
    - (ii)
      - (A) if the procurement unit uses a closed-ended approved vendor list, the deadline by which a vendor is required to submit a statement of qualifications and a specified period of time after which the approved vendor list will expire; or
      - (B) if the procurement unit uses an open-ended approved vendor list, the deadline by which a vendor is required to submit a statement of qualifications to be considered for the initial approved vendor list, a schedule indicating when a vendor not on the initial approved vendor list may submit a statement of qualifications to be considered to be added to the approved vendor list, and the specified period of time after which a vendor is required to submit a new statement of qualifications for evaluation before the vendor's status as an approved vendor on the approved vendor list may be renewed; and
  - (g) a description of any other criteria or requirements specific to the procurement item or scope of work that is the subject of the procurement.
- (6) A procurement unit issuing a request for statement of qualifications shall publish the request as provided in Section 63G-6a-112.
- (7) After the deadline for submitting a statement of qualifications, the procurement official may allow a vendor to correct an immaterial error in a statement of qualifications, as provided in Section 63G-6a-114.
- (8)
- (a) A conducting procurement unit may reject a statement of qualifications if the conducting procurement unit determines that:
    - (i) the vendor who submitted the statement of qualifications:
      - (A) is not responsible;
      - (B) is in violation of a provision of this chapter;
      - (C) has engaged in unethical conduct; or
      - (D) receives a performance rating below the satisfactory performance threshold specified in the request for statement of qualifications;

- (ii) there has been a change in the vendor's circumstances after the vendor submits a statement of qualifications that, if the change had been known at the time the statement of qualifications was evaluated, would have caused the statement of qualifications not to have received a qualifying score; or
    - (iii) the statement of qualifications:
      - (A) is not responsive; or
      - (B) does not meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds stated in the request for statement of qualifications.
  - (b) A procurement unit that rejects a statement of qualifications under Subsection (8)(a) shall:
    - (i) make a written finding, stating the reasons for the rejection; and
    - (ii) provide a copy of the written finding to the vendor that submitted the rejected statement of qualifications.
- (9)
  - (a)
    - (i) After the issuance of a request for statement of qualifications, the conducting procurement unit shall appoint an evaluation committee consisting, subject to Subsection (9)(b), of at least three individuals with at least a general familiarity with or basic understanding of:
      - (A) the technical requirements relating to the type of procurement item that is the subject of the request for statement of qualifications; or
      - (B) the need that the procurement item is intended to address.
    - (ii) The conducting procurement unit shall ensure that each member of an evaluation committee and each individual participating in the evaluation committee process:
      - (A) does not have a conflict of interest with any vendor that submits a statement of qualifications;
      - (B) can fairly evaluate each statement of qualifications;
      - (C) does not contact or communicate with a vendor concerning the evaluation process or procurement outside the official evaluation committee process; and
      - (D) conducts or participates in the evaluation in a manner that ensures a fair and competitive process and avoids the appearance of impropriety.
  - (b) A procurement unit may reduce the number of individuals appointed to an evaluation committee if the procurement official determines in writing that the evaluation criteria:
    - (i) consist of only objective criteria; and
    - (ii) do not include any subjective criterion that requires analysis, assessment, or deliberation.
  - (c) A conducting procurement unit may authorize an evaluation committee to receive assistance:
    - (i) from an expert or consultant who:
      - (A) is not a member of the evaluation committee; and
      - (B) does not participate in the evaluation scoring; and
    - (ii) to better understand a technical issue involved in the procurement.
  - (d) An evaluation committee appointed under this Subsection (9):
    - (i) shall evaluate and score statements of qualifications submitted in response to a request for statement of qualifications using the minimum mandatory requirements, evaluation criteria, and applicable score thresholds set forth in the request for statement of qualifications;
    - (ii) may not evaluate or score a statement of qualifications using criteria not included in the request for statement of qualifications; and
    - (iii) may, with the approval of the procurement official, enter into discussions or conduct interviews with or attend presentations by vendors, for the purpose of clarifying information contained in statements of qualifications.
  - (e) In a discussion, interview, or presentation under Subsection (9)(c)(ii), a vendor:

- (i) may only explain, illustrate, or interpret the contents of the vendor's original statement of qualifications; and
- (ii) may not:
  - (A) address criteria or specifications not contained in the vendor's original statement of qualifications;
  - (B) correct a deficiency, inaccuracy, or mistake in a statement of qualifications that is not an immaterial error;
  - (C) correct an incomplete submission of documents that the request for statement of qualifications required to be submitted with the statement of qualifications;
  - (D) correct a failure to submit a timely statement of qualifications;
  - (E) substitute or alter a required form or other document specified in the statement of qualifications;
  - (F) remedy a cause for a vendor being considered to be not responsible or a statement of qualifications not responsive; or
  - (G) correct a defect or inadequacy resulting in a determination that a vendor does not meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds established in the statement of qualifications.
- (f) After the evaluation committee completes its evaluation and scoring of the statements of qualifications, the evaluation committee shall submit the statements of qualifications and evaluation scores to the procurement official for review and final determination of:
  - (i) qualified vendors, if the request for statement of qualifications process is used as one of the stages of a multiple-stage process; or
  - (ii) vendors to be included on an approved vendor list, if the request for statement of qualifications process is used as part of the approved vendor list process.
- (g) The issuing procurement unit shall review the evaluation committee's scores and correct any errors, scoring inconsistencies, and reported noncompliance with this chapter.
- (h)
  - (i) The deliberations of an evaluation committee under this Subsection (9) may be held in private.
  - (ii) If the evaluation committee is a public body, as defined in Section 52-4-103, the evaluation committee shall comply with Section 52-4-205 in closing a meeting for its deliberations.
- (10) A procurement unit may at any time request a vendor to clarify information contained in a statement of qualifications, as provided in Section 63G-6a-115.
- (11) A vendor may voluntarily withdraw a statement of qualifications at any time before a contract is awarded with respect to which the statement of qualifications was submitted.
- (12) If only one vendor meets the minimum qualifications, evaluation criteria, and applicable score thresholds set forth in the request for statement of qualifications that the procurement unit is using as part of an approved vendor list process, the conducting procurement unit may:
  - (a) cancel the request for statement of qualifications; or
  - (b) establish an approved vendor list that includes the one vendor if the procurement unit continues to try to identify more vendors to be included on the approved vendor list by:
    - (i) keeping the request for statement of qualifications open; or
    - (ii) immediately reissuing the request for statement of qualifications and repeating the process under this section.
- (13) If a conducting procurement unit cancels a request for statement of qualifications, the conducting procurement unit shall make available for public inspection a written justification for the cancellation.

- (14) After receiving and reviewing the statements of qualifications and evaluation scores submitted by the evaluation committee, the procurement official of the procurement unit using the request for statement of qualifications process under this section as one of the stages of a multiple-stage procurement process shall identify those vendors meeting the minimum mandatory requirements, evaluation criteria, and applicable score thresholds as qualified vendors who are allowed to participate in the remaining stages of the multiple-stage procurement process.
- (15) The rulemaking authority may make rules pertaining to the request for statement of qualifications and the process described in this section.

Amended by Chapter 257, 2020 General Session

## **Part 5**

### **Other Standard Procurement Processes**

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

This part is known as "Other Standard Procurement Processes."

Amended by Chapter 355, 2016 General Session

#### **63G-6a-506 Small purchases.**

- (1) As used in this section:
  - (a) "Annual cumulative threshold" means the maximum total annual amount, established by the rulemaking authority under Subsection (2), that a procurement unit may expend to obtain procurement items from the same source under this section.
  - (b) "Individual procurement threshold" means the maximum amount, established by the rulemaking authority under Subsection (2), for which a procurement unit may purchase a procurement item under this section.
  - (c) "Single procurement aggregate threshold" means the maximum total amount, established by the rulemaking authority under Subsection (2), that a procurement unit may expend to obtain multiple procurement items from one source at one time under this section.
- (2)
  - (a) The rulemaking authority may make rules governing small purchases of any procurement item, including construction, job order contracting, design professional services, other professional services, information technology, and goods.
  - (b) Rules under Subsection (2)(a) may include provisions:
    - (i) establishing expenditure thresholds, including:
      - (A) an annual cumulative threshold;
      - (B) an individual procurement threshold; and
      - (C) a single procurement aggregate threshold;
    - (ii) establishing procurement requirements relating to the thresholds described in Subsection (2)(b)(i); and
    - (iii) providing for the use of electronic, telephone, or written quotes.
  - (c) If a procurement unit obtains administrative law judge service through a small purchase standard procurement process, rules made under Subsection (2)(a) shall provide that the process for the procurement of administrative law judge service include an evaluation committee described in Subsection 63G-6a-116(3).

- (3) Expenditures made under this section by a procurement unit may not exceed a threshold established by the rulemaking authority, unless the procurement official gives written authorization to exceed the threshold that includes the reasons for exceeding the threshold.
- (4) Except as provided in Subsection (5), an executive branch procurement unit may not obtain a procurement item through a small purchase standard procurement process if the procurement item may be obtained through a state cooperative contract or a contract awarded by the chief procurement officer under Subsection 63G-6a-2105(1).
- (5) Subsection (4) does not apply if:
  - (a) the procurement item is obtained for an unanticipated, urgent, or emergency condition, including:
    - (i) an item needed to avoid stopping a public construction project;
    - (ii) an immediate repair to a facility or equipment; or
    - (iii) another emergency condition; or
  - (b) the chief procurement officer or the procurement official of a procurement unit that is an executive branch procurement unit with independent procurement authority:
    - (i) determines in writing that it is in the best interest of the procurement unit to obtain an individual procurement item outside of the state contract, comparing:
      - (A) the contract terms and conditions applicable to the procurement item under the state contract with the contract terms and conditions applicable to the procurement item if the procurement item is obtained outside of the state contract;
      - (B) the maintenance and service applicable to the procurement item under the state contract with the maintenance and service applicable to the procurement item if the procurement item is obtained outside of the state contract;
      - (C) the warranties applicable to the procurement item under the state contract with the warranties applicable to the procurement item if the procurement item is obtained outside of the state contract;
      - (D) the quality of the procurement item under the state contract with the quality of the procurement item if the procurement item is obtained outside of the state contract; and
      - (E) the ability of the vendor under the state contract to match the quoted cost of the procurement item if the procurement item is obtained outside of the state contract;
    - (ii) for a procurement item that, if defective in its manufacture, installation, or performance, may result in serious physical injury, death, or substantial property damage, determines in writing that the terms and conditions, relating to liability for injury, death, or property damage, available from the source other than the contractor who holds the state contract, are similar to, or better than, the terms and conditions available under the state contract; and
    - (iii) grants an exception, in writing, to the requirement described in Subsection (4).
- (6) Except as otherwise expressly provided in this section, a procurement unit:
  - (a) may not use the small purchase standard procurement process described in this section for ongoing, continuous, and regularly scheduled procurements that exceed the annual cumulative threshold; and
  - (b) shall make its ongoing, continuous, and regularly scheduled procurements that exceed the annual cumulative threshold through a contract awarded through another standard procurement process described in this chapter or an applicable exception to another standard procurement process, described in Part 8, Exceptions to Procurement Requirements.
- (7) This section does not prohibit regularly scheduled payments for a procurement item obtained under another provision of this chapter.
- (8)

- (a) It is unlawful for a person knowingly to divide a single procurement into multiple smaller procurements, including by dividing an invoice or purchase order into multiple invoices or purchase orders, if:
  - (i) the single procurement would not have qualified as a small purchase under this section;
  - (ii) one or more of the multiple smaller procurements qualify as a small purchase under this section; and
  - (iii) the division is done with the intent to:
    - (A) avoid having to use a standard procurement process, other than the small purchase process, that the person would otherwise be required to use for the single procurement; or
    - (B) make one or more of the multiple smaller procurements fall below a small purchase expenditure threshold established by rule under Subsection (2)(b) that the single procurement would not have fallen below without the division.
- (b) A violation of Subsection (8)(a) is subject to penalties as provided in Subsection 63G-6a-2404.3(2).
- (9) The Division of Finance within the Department of Government Operations may conduct an audit of an executive branch procurement unit to verify compliance with the requirements of this section.
- (10) An executive branch procurement unit may not make a small purchase after January 1, 2014, unless the chief procurement officer certifies that the person responsible for procurements in the procurement unit has satisfactorily completed training on this section and the rules made under this section.

Amended by Chapter 344, 2021 General Session

**63G-6a-507 Approved vendor list procurement process.**

- (1) As used in this section:
  - (a) "Closed-ended approved vendor list" means an approved vendor list that is subject to:
    - (i) a short period of time, specified by the procurement unit, during which vendors may be added to the list; and
    - (ii) a specified period of time after which the list will expire.
  - (b) "Open-ended approved vendor list" means an approved vendor list that is subject to:
    - (i) an indeterminate period of time during which vendors may be added to the list;
    - (ii) the addition of vendors to the list throughout the term of the list; and
    - (iii) a specified period of time after which the procurement unit is required to verify that vendors on the list continue to meet the minimum mandatory requirements, evaluation criteria, and applicable score thresholds.
- (2) A procurement unit may not establish an approved vendor list unless the procurement unit has first completed the statement of qualifications process described in Section 63G-6a-410.
- (3)
  - (a) A procurement unit may establish an approved vendor list for:
    - (i) a specific, fully defined procurement item; or
    - (ii) a future procurement item that is not specifically and fully defined, if the request for statement of qualifications contains a general description of:
      - (A) the procurement item; and
      - (B) the type of vendor that the procurement unit seeks to provide the procurement item.
  - (b) A procurement unit may not award a contract to a vendor on an approved vendor list for a procurement item that is outside the scope of the general description of the procurement item contained in the request for statement of qualifications.



- (4) After receiving the statements of qualifications and evaluation scores submitted by the evaluation committee under Subsection 63G-6a-410(9)(f), the procurement official of the procurement unit using the request for statement of qualifications process under Section 63G-6a-410 as part of an approved vendor list process shall:
  - (a) include on an approved vendor list those vendors meeting the minimum mandatory requirements, evaluation criteria, and applicable score thresholds; and
  - (b) reject any vendor not meeting the minimum mandatory requirements, evaluation criteria, and applicable score thresholds as ineligible for inclusion on the approved vendor list.
- (5)
  - (a) A procurement unit shall include approved vendors on a closed-ended approved vendor list or an open-ended approved vendor list.
  - (b)
    - (i) A closed-ended approved vendor list shall expire no later than 18 months after the publication of the closed-ended approved vendor list.
    - (ii) A procurement unit shall verify, no less frequently than every 18 months, by a method approved by the procurement official, that each vendor on an open-ended approved vendor list continues to meet the minimum mandatory requirements, evaluation criteria, and applicable score thresholds.
- (6) A procurement unit may:
  - (a)
    - (i) using a bidding process, request for proposals process, small purchase process, or design professional procurement process, award a contract to a vendor on an approved vendor list for any procurement item or type of procurement item specified by the procurement unit in the request for statement of qualifications, including procurement items that the procurement unit intends to acquire in a series of future procurements described in the request for statement of qualifications; and
    - (ii) limit participation in a bidding process, request for proposals process, small purchase process, or design professional procurement process to vendors on an approved vendor list; or
  - (b) award a contract to a vendor on an approved vendor list at a price established as provided in Section 63G-6a-113.
- (7)
  - (a) After establishing an approved vendor list as provided in this section, a conducting procurement unit shall, before using the approved vendor list, submit the approved vendor list to the issuing procurement unit.
  - (b) An issuing procurement unit that receives an approved vendor list under Subsection (7)(a) shall make the approved vendor list available to the public.
- (8) A conducting procurement unit administering an open-ended approved vendor list shall:
  - (a) require a vendor seeking inclusion on the approved vendor list to submit a statement of qualifications that complies with all requirements applicable at the time of the initial request for statement of qualifications; and
  - (b) if modifying the requirements for inclusion on the approved vendor list, apply any new or additional requirement to all vendors equally, whether a vendor is seeking inclusion on the approved vendor list for the first time or is already included on the approved vendor list.
- (9) A rulemaking authority shall make rules pertaining to an approved vendor list process, including:
  - (a) procedures to ensure that all vendors on an approved vendor list have a fair and equitable opportunity to compete for a contract for a procurement item; and

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

Amended by Chapter 257, 2020 General Session

## **Part 6 Bidding**

### **63G-6a-602 Contracts awarded by bidding.**

A procurement unit may award a contract for a procurement item by the bidding process, in accordance with the rules of the rulemaking authority.

Amended by Chapter 257, 2020 General Session

### **63G-6a-603 Invitation for bids -- Requirements -- Publication.**

- (1) A procurement unit that intends to award a contract for a procurement item using the bidding process shall issue an invitation for bids.
- (2) A procurement unit shall include in an invitation for bids:
  - (a) a description of the procurement item that the procurement unit seeks;
  - (b) instructions for submitting a bid, including the deadline for submitting a bid;
  - (c) the objective criteria that the procurement unit will use to evaluate bids;
  - (d) information about the time and manner of opening bids; and
  - (e) terms and conditions that the procurement unit intends to include in a contract resulting from the bidding process.
- (3) A procurement unit shall publish an invitation for bids in accordance with the requirements of Section 63G-6a-112.

Amended by Chapter 257, 2020 General Session

### **63G-6a-604 Processing of bids -- Changes to bids not allowed.**

- (1) A procurement unit:
  - (a) shall accept bids as provided in the invitation for bids; and
  - (b) may not open a bid until after the deadline for submitting bids.
- (2) A person who submits a bid may not, after the deadline for submitting bids, make a change to the bid if the change is prejudicial to:
  - (a) the interest of the procurement unit; or
  - (b) fair competition.

Repealed and Re-enacted by Chapter 257, 2020 General Session

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

- (1) A procurement unit that conducts a procurement using a bidding process shall evaluate bids:
  - (a) using the objective criteria described in the invitation for bids; and
  - (b) to achieve the greatest long-term value to the state and the procurement unit.
- (2) Criteria not described in the invitation for bids may not be used to evaluate a bid.
- (3) After evaluating bids, the procurement unit shall:
  - (a)

- (i) award a contract as soon as practicable to the responsible bidder who submits the lowest responsive bid; and
  - (ii) publish the name and bid amount of the bidder to whom the contract is awarded; or
- (b)
- (i) cancel the invitation for bids without awarding a contract; and
  - (ii) publish a notice of the cancellation that includes an explanation of the reasons for cancelling the invitation for bids.

Amended by Chapter 406, 2021 General Session

**63G-6a-608 Tie bids.**

A procurement unit shall resolve a tie bid in a fair manner, as determined in writing by the procurement official.

Repealed and Re-enacted by Chapter 257, 2020 General Session

## **Part 7 Request for Proposals**

**63G-6a-701 Title.**

This part is known as "Request for Proposals."

Enacted by Chapter 347, 2012 General Session

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

- (1) A procurement unit may award a contract for a procurement item by the request for proposals process, in accordance with rulemaking authority rules.
- (2) The procurement of architect-engineer services is governed by Part 15, Design Professional Services.

Amended by Chapter 257, 2020 General Session

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

- (1) A procurement unit that intends to award a contract for a procurement item using the request for proposals process shall issue a request for proposals.
- (2) A procurement unit shall include in a request for proposals:
  - (a) a description of the procurement item that the procurement unit seeks;
  - (b) instructions for submitting a proposal, including the deadline for submitting a proposal;
  - (c) the objective criteria, including, if applicable, cost, and subjective criteria that the procurement unit will use to evaluate proposals;
  - (d) information about the time and manner of opening proposals; and
  - (e) terms and conditions that the procurement unit intends to include in a contract resulting from the request for proposals process.
- (3) A procurement unit shall publish a request for proposals in accordance with the requirements of Section 63G-6a-112.

Amended by Chapter 257, 2020 General Session

**63G-6a-704 Processing of proposals -- Changes to proposals not allowed.**

- (1) A procurement unit:
  - (a) shall accept proposals as provided in the request for proposals;
  - (b) may not open a proposal until after the deadline for submitting proposals; and
  - (c) may not disclose the contents of a proposal to the public or to another offeror, except as provided in Subsection 63G-2-305(6).
- (2) A person who submits a proposal may not, after the deadline for submitting proposals, make a change to the proposal if the change is prejudicial to:
  - (a) the interest of the procurement unit; or
  - (b) fair competition.

Repealed and Re-enacted by Chapter 257, 2020 General Session

**63G-6a-704.4 Limited addenda to requests for proposals.**

After the deadline for submitting proposals, a procurement unit may, at the discretion of the procurement official, issue a request for proposals addendum that has limited application only to offerors that have submitted proposals, if the addendum does not change the request for proposals in a way that, in the opinion of the procurement official, would likely have affected the number of proposals submitted in response to the request for proposals had the addendum been included in the original request for proposals.

Enacted by Chapter 257, 2020 General Session

**63G-6a-704.6 Discussions with a person who submits a proposal.**

- (1) A procurement unit may have discussions with an offeror to obtain a more complete understanding of whether the offeror is responsible or the offeror's proposal is responsive.
- (2) A procurement unit may reject a proposal following discussions under Subsection (1) if the procurement unit determines that the offeror is not responsible or the proposal is not responsive.

Enacted by Chapter 257, 2020 General Session

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

- (1) A procurement unit shall appoint an evaluation committee of at least three members to evaluate proposals received in response to a request for proposals issued by the procurement unit.
- (2) The evaluation committee shall evaluate proposals in accordance with the process described in the request for proposals.
- (3) To determine which proposal provides the best value to the procurement unit, the evaluation committee shall evaluate each responsible offeror's responsive proposal that has not been disqualified from consideration under the provisions of this chapter, using the evaluation criteria described in the request for proposals.
- (4) Criteria not described in the request for proposals may not be used to evaluate a proposal.
- (5) A procurement unit shall:
  - (a) appoint evaluation committee members who have at least a general familiarity with or basic understanding of:

- (i) the technical requirements relating to the type of procurement item that is the subject of the procurement; or
- (ii) the need that the procurement item is intended to address; and
- (b) ensure that the evaluation committee and each individual participating in the evaluation committee process:
  - (i) does not have a conflict of interest with any of the offerors;
  - (ii) can fairly evaluate each proposal;
  - (iii) does not contact or communicate with an offeror concerning the procurement outside the official evaluation committee process; and
  - (iv) conducts or participates in the evaluation in a manner that ensures a fair and competitive process and avoids the appearance of impropriety.
- (6) A procurement unit may authorize an evaluation committee to receive assistance from an expert or consultant to better understand a technical issue involved in the procurement.
- (7)
  - (a) Except as provided in Subsection (7)(b), an evaluation committee member is prohibited from knowing or having access to information relating to the cost of a proposal until after the evaluation committee submits its recommendation to the procurement unit based on the scores of all criteria other than cost.
  - (b) A procurement official may waive the prohibition of Subsection (7)(a) by signing a written statement indicating why waiving the prohibition is in the best interests of the procurement unit.
- (8) An evaluation committee may not change its final recommended scores after the evaluation committee has submitted those scores to the procurement unit.
- (9)
  - (a) The deliberations and other proceedings of an evaluation committee may be held in private.
  - (b) If the evaluation committee is a public body, as defined in Section 52-4-103, the evaluation committee shall comply with Section 52-4-205 in closing a meeting for its deliberations and other proceedings.
- (10)
  - (a) At the conclusion of the evaluation process, an evaluation committee shall prepare and submit to the procurement unit a written statement that:
    - (i) recommends a proposal for an award of a contract, if the evaluation committee decides to recommend a proposal;
    - (ii) contains the score awarded to the recommended proposal based on the criteria stated in the request for proposals; and
    - (iii) explains how the recommended proposal provides the best value to the procurement unit.
  - (b) A procurement unit is not required to comply with Subsection (10)(a) for a contract with a construction manager/general contractor if the contract is awarded based solely on:
    - (i) the qualifications of the construction manager/general contractor; and
    - (ii) the management fee to be paid to the construction manager/general contractor.

Amended by Chapter 9, 2020 Special Session 5

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

- (1) The best and final offer process described in this section:
  - (a) may be used only in a request for proposals process, whether the request for proposals process is used independently or after the establishment of an approved vendor list through the approved vendor list process; and

- (b) may not be used in any other standard procurement process, whether the other standard procurement process is used independently or after the establishment of an approved vendor list through the approved vendor list process.
- (2) Subject to Subsection (3), a conducting procurement unit may request best and final offers from responsible offerors:
  - (a) only with the approval of the procurement official; and
  - (b) if:
    - (i) no single proposal adequately addresses all the specifications stated in the request for proposals;
    - (ii) all proposals are unclear or deficient in one or more respects;
    - (iii) all cost proposals exceed the identified budget or the procurement unit's available funding;  
or
    - (iv) two or more proposals receive an identical evaluation score that is the highest score.
- (3) A conducting procurement unit may request a best and final offer from, and a best and final offer may be submitted to the conducting procurement unit by, only a responsible offeror that has submitted a responsive proposal that meets the minimum mandatory criteria stated in the request for proposals required to be considered in the stage of the procurement process at which best and final offers are being requested.
- (4) The best and final offer process may not be used to change:
  - (a) a determination that an offeror is not responsible to a determination that the offeror is responsible; or
  - (b) a determination that a proposal is not responsive to a determination that the proposal is responsive.
- (5)
  - (a) This Subsection (5) applies if a request for best and final offers is issued because all cost proposals exceed the identified budget or the procurement unit's available funding.
  - (b)
    - (i) The conducting procurement unit may, in the request for best and final offers:
      - (A) specify the scope of work reductions the procurement unit is making in order to generate proposals that are within the identified budget or the procurement unit's available funding;  
or
      - (B) invite offerors submitting best and final offers to specify the scope of work reductions being made so that the reduced cost proposal is within the identified budget or the procurement unit's available funding.
    - (ii) The conducting procurement unit is not required to accept a scope of work reduction that an offeror has specified in the offeror's best and final offer.
  - (c) A best and final offer submitted with a reduced cost proposal shall include an itemized list identifying specific reductions in the offeror's proposed scope of work that correspond to the offeror's reduced cost proposal.
  - (d) A reduction in the scope of work may not:
    - (i) eliminate a component identified in the request for proposals as a minimum mandatory requirement; or
    - (ii) alter the nature of the original request for proposals to the extent that a request for proposals for the reduced scope of work would have likely attracted a significantly different set of offerors submitting proposals in response to the request for proposals.
- (6) If a request for best and final offers is issued because two or more proposals received an identical evaluation score that is the highest score:

- (a) the request may be issued only to offerors who submitted a proposal receiving the highest score; and
- (b) an offeror submitting a best and final offer may revise:
  - (i) the technical aspects of the offeror's proposal;
  - (ii) the offeror's cost proposal, as provided in Subsection (5); or
  - (iii) both the technical aspects of the offeror's proposal and, as provided in Subsection (5), the offeror's cost proposal.
- (7) In a request for best and final offers, the conducting procurement unit shall:
  - (a) clearly specify:
    - (i) the issues that the procurement unit requests the offerors to address in their best and final offers; and
    - (ii) how best and final offers will be evaluated and scored in accordance with Section 63G-6a-707.5;
  - (b) establish a deadline for an offeror to submit a best and final offer; and
  - (c) if applicable, establish a schedule and procedure for conducting discussions with offerors concerning the best and final offers.
- (8) In conducting a best and final offer process under this section, a conducting procurement unit shall:
  - (a) maintain confidential the information the procurement unit receives from an offeror, including any cost information, until a contract has been awarded or the request for proposals canceled;
  - (b) ensure that each offeror receives fair and equal treatment; and
  - (c) safeguard the integrity of the scope of the original request for proposals, except as specifically provided otherwise in this section.
- (9) In a best and final offer, an offeror:
  - (a) may address only the issues described in the request for best and final offers; and
  - (b) may not correct a material error or deficiency in the offeror's proposal or address any issue not described in the request for best and final offers.
- (10) If an offeror fails to submit a best and final offer, the conducting procurement unit shall treat the offeror's original proposal as the offeror's best and final offer.
- (11) After the deadline for submitting best and final offers has passed, the evaluation committee shall evaluate the best and final offers submitted using the criteria described in the request for proposals.
- (12) An offeror may not make and a conducting procurement unit may not consider a best and final offer that the conducting procurement unit has not requested under this section.
- (13) To implement the best and final offer process described in this section, a rulemaking authority may make rules consistent with this section and the other provisions of this chapter.

Amended by Chapter 257, 2020 General Session

**63G-6a-712 Unsolicited proposals.**

- (1) As used in this section, "unsolicited proposal" means a written proposal:
  - (a) for a public-private partnership for:
    - (i) an infrastructure project; or
    - (ii) a project to collect, analyze, and distribute health data to improve health and health care and to facilitate interaction regarding health and health care issues; and
  - (b) that is not submitted in response to a solicitation.
- (2)

- (a) Subject to Subsection (2)(b), a person may submit an unsolicited proposal to a procurement unit at any time.
  - (b) An unsolicited proposal may not be used to seek a procurement unit's consideration of a proposal after the expiration of the time for submitting proposals in response to a request for proposals.
- (3) An unsolicited proposal shall include:
- (a) a reference to this section and a statement that the unsolicited proposal is submitted under this section;
  - (b) a conceptual description of the project that constitutes the procurement item that is the subject of the proposed public-private partnership;
  - (c) a description of the economic benefit of the project to the state and the procurement unit;
  - (d) information concerning the services or facilities currently being provided by the state or procurement unit that are similar to the project;
  - (e) an estimate of the project costs for:
    - (i) design;
    - (ii) implementation;
    - (iii) operation and maintenance; and
    - (iv) any other related project cost; and
  - (f) the name, address, telephone number, and email address of an individual who may be contacted for further information concerning the unsolicited proposal.
- (4) A procurement unit is not required to consider an unsolicited proposal.
- (5) A procurement unit may charge a person submitting an unsolicited proposal a fee to cover the actual cost of processing, considering, and evaluating the unsolicited proposal.
- (6) A procurement unit that receives an unsolicited proposal may not award a contract for the procurement item described in the unsolicited proposal unless:
- (a) the procurement unit first engages in a standard procurement process for proposals to provide the procurement item described in the unsolicited proposal; or
  - (b) awarding the contract without the procurement unit engaging in a standard procurement process is allowed under Section 63G-6a-802.
- (7) If a procurement unit engages in a standard procurement process pursuant to Subsection (6) (a):
- (a) the procurement unit shall treat an unsolicited proposal as though it were submitted as a proposal in response to the solicitation; and
  - (b) a person who has submitted an unsolicited proposal may, within the time provided in the solicitation for the submission of proposals, modify the unsolicited proposal to the extent necessary to address matters raised in the solicitation that were not addressed in the initial unsolicited proposal.
- (8) A rulemaking authority may make rules to govern the submission, processing, consideration, and evaluation of an unsolicited proposal, including fees relating to the unsolicited proposal.
- (9) An unsolicited proposal is subject to Chapter 2, Government Records Access and Management Act, including, if applicable, provisions relating to a written claim of business confidentiality, as provided in Section 63G-2-309, for trade secrets, commercial information, or nonindividual financial information described in Subsection 63G-2-305(1) or (2).

Amended by Chapter 257, 2020 General Session  
Amended by Chapter 354, 2020 General Session



## Part 8 Exceptions to Procurement Requirements

### **63G-6a-801 Title.**

This part is known as "Exceptions to Procurement Requirements."

Enacted by Chapter 347, 2012 General Session

### **63G-6a-802 Award of contract without engaging in a standard procurement process -- Notice -- Duty to negotiate contract terms in best interest of procurement unit.**

- (1) A procurement unit may award a contract for a procurement item without engaging in a standard procurement process if the procurement official determines in writing that:
  - (a) there is only one source for the procurement item;
  - (b)
    - (i) transitional costs are a significant consideration in selecting a procurement item; and
    - (ii) the results of a cost-benefit analysis demonstrate that transitional costs are unreasonable or cost-prohibitive, and that the award of a contract without engaging in a standard procurement process is in the best interest of the procurement unit;
  - (c) the award of a contract is under circumstances, described in rules adopted by the rulemaking authority, that make awarding the contract through a standard procurement process impractical and not in the best interest of the procurement unit; or
  - (d) the procurement item is intended to be used for, or in connection with the establishment of, a state store, as defined in Section 32B-1-102.
- (2) Transitional costs associated with a trial use or testing of a procurement item under a trial use contract awarded under Section 63G-6a-802.3 may not be included in a consideration of transitional costs under Subsection (1)(b).
- (3)
  - (a) Subject to Subsection (3)(b), a rulemaking authority shall make rules regarding the publication of notice for a procurement under this section that, at a minimum, require publication of notice of the procurement, in accordance with Section 63G-6a-112, if the cost of the procurement exceeds \$50,000.
  - (b) Publication of notice under Section 63G-6a-112 is not required for:
    - (i) the procurement of public utility services pursuant to a sole source contract; or
    - (ii) other procurements under this section for which an applicable rule provides that notice is not required.
- (4) A procurement official who awards a contract under this section shall negotiate with the contractor to ensure that the terms of the contract, including price and delivery, are in the best interest of the procurement unit.

Amended by Chapter 406, 2021 General Session

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

- (1) A procurement unit may award a trial use contract without engaging in a standard procurement process if:
  - (a) the purpose of the contract is to:
    - (i) determine whether the procurement item will benefit the procurement unit;
    - (ii) assess the feasibility of a procurement item that:

- (A) is new or innovative; or
- (B) has a proposed use or application that is novel or unproven; or
- (iii) evaluate whether to conduct a standard procurement process for the procurement item being tested; and
- (b) the contract is:
  - (i) awarded for a procurement item that is not already available to the procurement unit under an existing contract;
  - (ii) restricted to the procurement of a procurement item in the minimum quantity and for the minimum period of time necessary to test the procurement item;
  - (iii) the only trial use contract for that procurement unit for the same procurement item; and
  - (iv) not used to circumvent the purposes and policies of this chapter as set forth in Section 63G-6a-102.
- (2) The period of trial use or testing of a procurement item under a trial use contract may not exceed 24 months, unless the procurement official provides a written exception documenting the reason for a longer period.
- (3) A trial use contract shall:
  - (a) state that the contract is strictly for the trial use or testing of a procurement item;
  - (b) state that the contract terminates upon completion of the trial use or testing period;
  - (c) state that the procurement unit is not obligated to purchase or enter into a contract for the procurement item, regardless of the trial use or testing result;
  - (d) state that any purchase of the procurement item that is the subject of the trial use contract will be made in accordance with this chapter; and
  - (e) include, as applicable:
    - (i) test schedules;
    - (ii) deadlines and a termination date;
    - (iii) measures that will be used to evaluate the performance of the procurement item;
    - (iv) any fees and associated expenses or an explanation of the circumstances warranting a waiver of those fees and expenses;
    - (v) the obligations of the procurement unit and vendor;
    - (vi) provisions regarding the ownership of the procurement item during and after the trial use or testing period;
    - (vii) an explanation of the grounds upon which the contract may be terminated;
    - (viii) a provision relating to any required bond or security deposit; and
    - (ix) other requirements unique to the procurement item for trial use or testing.
- (4) Publication of notice under Section 63G-6a-112 is not required for a trial use contract.
- (5) A rulemaking authority may make rules pertaining to a trial use contract.

Amended by Chapter 257, 2020 General Session

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

A procurement official may extend an existing contract without engaging in a standard procurement process:

- (1) for a period of time not to exceed 120 days, if:
  - (a) an extension of the contract is necessary to:
    - (i) avoid a lapse in a critical government service; or
    - (ii) to mitigate a circumstance that is likely to have a negative impact on public health, safety, welfare, or property; and
  - (b)

- (i)
  - (A) the procurement unit is engaged in a standard procurement process for a procurement item that is the subject of the contract being extended; and
  - (B) the standard procurement process is delayed due to an unintentional error;
- (ii) a change in an industry standard requires one or more significant changes to specifications for the procurement item; or
- (iii) an extension is necessary:
  - (A) to prevent the loss of federal funds;
  - (B) to mitigate the effects of a delay of a state or federal appropriation;
  - (C) to enable the procurement unit to continue to receive a procurement item during a delay in the implementation of a contract awarded pursuant to a procurement that has already been conducted; or
  - (D) to enable the procurement unit to continue to receive a procurement item during a period of time during which negotiations with a vendor under a new contract for the procurement item are being conducted;
- (2) for the period of a protest, appeal, or court action, if the protest, appeal, or court action is the reason for delaying the award of a new contract; or
- (3) for a period of time exceeding 120 days, if, after consulting with the attorney general or the procurement unit's attorney, the procurement official determines in writing that the contract extension does not violate state or federal antitrust laws and is consistent with the purpose of ensuring the fair and equitable treatment of all persons who deal with the procurement system.

Amended by Chapter 257, 2020 General Session

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

- (1) As used in this section, "natural disaster" means an event where:
  - (a) one or more of the following has caused widespread damage:
    - (i) an explosion;
    - (ii) fire;
    - (iii) a flood;
    - (iv) a storm;
    - (v) a tornado;
    - (vi) winds;
    - (vii) an earthquake;
    - (viii) lightning; or
    - (ix) other adverse weather event; and
  - (b) the president of the United States has declared an emergency or major disaster in the state, or the governor has declared a state of emergency under Title 53, Chapter 2a, Part 2, Disaster Response and Recovery Act.
- (2) Notwithstanding any other provision of this chapter and subject to Subsection (4), a procurement official may authorize a procurement unit to engage in an emergency procurement without using a standard procurement process if the procurement is necessary to:
  - (a) avoid a lapse in a critical government service;
  - (b) mitigate a circumstance that is likely to have a negative impact on public health, safety, welfare, or property, including a natural disaster; or
  - (c) protect the legal interests of a public entity.
- (3) A procurement unit conducting an emergency procurement under Subsection (2) shall:

- (a) ensure that the procurement is made with as much competition as reasonably practicable while:
    - (i) avoiding a lapse in a critical government service;
    - (ii) avoiding harm, or a risk of harm, to the public health, safety, welfare, or property; or
    - (iii) protecting the legal interests of a public entity; and
  - (b) make the following publicly available on the procurement unit's website within 14 days of the emergency procurement:
    - (i) a written document describing the specific emergency that necessitated the emergency procurement;
    - (ii) the name of the highest ranking government official that approved the emergency procurement; and
    - (iii) each written contract related to the emergency procurement.
- (4)
- (a) Except as provided in Subsections (4)(b), (5), and (6), the term of a contract entered into for an emergency procurement under this section may be no longer than 30 days.
  - (b) The term of a contract entered into for an emergency procurement under this section related to a natural disaster may be no longer than 60 days.
- (5)
- (a) Subject to Subsection (5)(b), the requirements described in Subsection (4) do not apply to an emergency procurement for legal services.
  - (b) A person hired through an emergency procurement to provide legal services may not, under the contract entered into through the emergency procurement, hire or otherwise provide remuneration to a consultant for services related to any topic that is not directly related to the legal services for which the person was hired.
- (6) The requirements described in Subsection (4) do not apply to an emergency procurement by the Department of Human Services related to the:
- (a) placement of a client with a residential service provider; or
  - (b) provision of medical services for a client.

Amended by Chapter 30, 2021 General Session

**63G-6a-804 Purchase of prison industry goods.**

- (1) As used in this section:
- (a) "Applicable procurement unit" means a procurement unit that is not:
    - (i) a political subdivision of the state; or
    - (ii) the Utah Schools for the Deaf and the Blind.
  - (b) "Correctional industries division" means the Division of Correctional Industries, created in Section 64-13a-4.
  - (c) "Correctional industries director" means the director of the correctional industries division, appointed under Section 64-13a-4.
- (2)
- (a) An applicable procurement unit shall purchase goods and services produced by the correctional industries division as provided in this section.
  - (b) A procurement unit that is not an applicable procurement unit may, and is encouraged to, purchase goods and services under this section.
  - (c) A procurement unit is not required to use a standard procurement process to purchase goods or services under this section.
- (3) On or before July 1 of each year, the correctional industries director shall:

- (a) publish and distribute to all procurement units and other interested public entities a catalog of goods and services produced by the correctional industries division, including a description and price of each item offered for sale; and
  - (b) update and revise the catalog described in Subsection (3)(a) during the year as the correctional industries director considers necessary.
- (4)
- (a) An applicable procurement unit may not purchase any goods or services provided by the correctional industries division from any other source unless the correctional industries director and the procurement official or, in the case of institutions of higher education, the institutional procurement officer, determine in writing that purchase from the correctional industries division is not feasible due to one of the following circumstances:
    - (i) the good or service offered by the correctional industries division does not meet the reasonable requirements of the procurement unit;
    - (ii) the good or service cannot be supplied within a reasonable time by the correctional industries division; or
    - (iii) the cost of the good or service, including basic price, transportation costs, and other expenses of acquisition, is not competitive with the cost of procuring the item from another source.
  - (b) In cases of disagreement under Subsection (4)(a):
    - (i) the decision may be appealed to a board consisting of:
      - (A) the director of the Department of Corrections;
      - (B) the director of Administrative Services; and
      - (C) a neutral third party agreed upon by the other two members of the board;
    - (ii) in the case of an institution of higher education of the state, the president of the institution, or the president's designee, shall make the final decision; or
    - (iii) in the case of any of the following entities, a person designated by the rulemaking authority shall make the final decision:
      - (A) a legislative procurement unit;
      - (B) a judicial procurement unit; or
      - (C) a public transit district.

Amended by Chapter 257, 2020 General Session

**63G-6a-805 Purchase from community rehabilitation programs.**

- (1) As used in this section:
- (a) "Advisory board" means the Purchasing from Persons with Disabilities Advisory Board created under this section.
  - (b) "Central not-for-profit association" means a group of experts designated by the advisory board to do the following, under guidelines established by the advisory board:
    - (i) assist the advisory board with its functions; and
    - (ii) facilitate the implementation of advisory board policies.
  - (c)
    - (i) "Community rehabilitation program" means a program that is operated primarily for the purpose of the employment and training of persons with a disability by a government agency or qualified nonprofit organization which is an income tax exempt organization under 26 U.S.C. Sec. 501(c)(3) of the Internal Revenue Code.
    - (ii) A community rehabilitation program:

- (A) maintains an employment ratio of at least 75% of the program employees under the procurement contract in question have severe disabilities;
  - (B)
    - (I) complies with any applicable occupational health and safety standards prescribed by the United States Department of Labor; or
    - (II) is a supported employment program approved by the Utah State Office of Rehabilitation created in Section 35A-1-202;
  - (C) has its principal place of business in Utah;
  - (D) produces any good provided under this section in Utah; and
  - (E) provides any service that is provided by individuals with a majority of whom domiciled in Utah.
- (d) "Person with a disability" means a person with any disability as defined by and covered under the Americans with Disabilities Act of 1990, 42 U.S.C. 12102.
- (2) There is created within the division the Purchasing from Persons with Disabilities Advisory Board.
- (3) The advisory board shall consist of three members, as follows:
- (a) the director of the division or the director's designee;
  - (b) the director of the Utah State Office of Rehabilitation or the director's designee; and
  - (c) a representative of the private business community who shall be appointed to a three-year term by the governor with the advice and consent of the Senate.
- (4) The advisory board shall meet, as needed, to facilitate the procurement of goods and services from community rehabilitation programs by a procurement unit under this chapter by:
- (a) identifying goods and services that are available from community rehabilitation programs in accordance with the requirements of Subsection (7);
  - (b) approving prices in accordance with Subsection (7)(c) for goods and services that are identified under Subsection (4)(a);
  - (c) developing, maintaining, and approving a preferred procurement contract list of goods and services identified and priced under Subsections (4)(a) and (b);
  - (d) reviewing bids received by a community rehabilitation program; and
  - (e) awarding and renewing specified contracts for set contract times, without competitive bidding, for the purchase of goods and services under Subsection (7).
- (5) The provisions of Subsections (4) and (7)(a) are an exception to the procurement provisions under this chapter.
- (6)
- (a) The advisory board may designate a central not-for-profit association, appoint its members, and establish guidelines for its duties.
  - (b) The designated central not-for-profit association serves at the pleasure of the advisory board. The central not-for-profit association or its individual members may be removed by the advisory board at any time by a majority vote of the advisory board.
  - (c) Subject to the advisory board guidelines and discretion, a designated central not-for-profit association may be assigned to perform the following duties:
    - (i) identify qualified community rehabilitation programs and the goods and services that they provide or have the potential to provide;
    - (ii) help ensure that goods and services are provided at reasonable quality and delivery levels;
    - (iii) recommend pricing for goods and services;
    - (iv) review bids and recommend the award of contracts under the advisory board's direction;
    - (v) collect and report program data to the advisory board and to the division; and
    - (vi) other duties specified by the advisory board.

- (7) Except as provided under Subsection (9), notwithstanding any provision of this chapter to the contrary, each procurement unit shall purchase goods and services produced by a community rehabilitation program using the preferred procurement contract list approved under Subsection (4)(c) if:
  - (a) the good or service offered for sale by a community rehabilitation program reasonably conforms to the needs and specifications of the procurement unit;
  - (b) the community rehabilitation program can supply the good or service within a reasonable time; and
  - (c) the price of the good or service is reasonably competitive with the cost of procuring the good or service from another source.
- (8) Each community rehabilitation program:
  - (a) may submit a bid to the advisory board at any time and not necessarily in response to an invitation for bids; and
  - (b) shall certify on any bid it submits to the advisory board or to a procurement unit under this section that it is claiming a preference under this section.
- (9) During a fiscal year, the requirement for a procurement unit to purchase goods and services produced by a community rehabilitation program under the preferred procurement list under Subsection (7) does not apply if the division determines that the total amount of procurement contracts with community rehabilitation programs has reached \$5 million for that fiscal year.
- (10) In the case of conflict between a purchase under this section and a purchase under Section 63G-6a-804, this section prevails.

Amended by Chapter 271, 2016 General Session

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

A public transit district, organized under Title 17B, Chapter 2a, Part 8, Public Transit District Act, may, without going through a standard procurement process or another exception to a standard procurement process described in this part:

- (1) contract with a county or municipality to receive money from the county or municipality; and
- (2) use the money described in Subsection (1) to fund a transportation project or a transit-related program in accordance with rules made by the rulemaking authority.

Amended by Chapter 257, 2020 General Session

**Part 9**  
**Cancellations, Rejections, and Debarment**

**63G-6a-901 Title.**

This part is known as "Cancellations, Rejections, and Debarment."

Enacted by Chapter 347, 2012 General Session

**63G-6a-902 Cancellation and rejection of bids and proposals.**

- (1) An issuing procurement unit may cancel an invitation for bids, a request for proposals, or other solicitation or reject any or all bids or proposal responses, in whole or in part, as may

be specified in the solicitation, when it is in the best interests of the procurement unit in accordance with the rules of the rulemaking authority.

- (2) The reasons for a cancellation or rejection described in Subsection (1) shall be made part of the contract file.

Amended by Chapter 257, 2020 General Session

**63G-6a-903 Determination of nonresponsibility.**

- (1) A determination of nonresponsibility of a person made by an issuing procurement unit shall be made in writing, in accordance with the rules of the rulemaking authority.
- (2) A person's unreasonable failure to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to the person.
- (3) Subject to Title 63G, Chapter 2, Government Records Access and Management Act, information furnished by a person pursuant to this section may not be disclosed outside of a procurement unit without the person's prior written consent.

Amended by Chapter 257, 2020 General Session

**63G-6a-904 Debarment or suspension from consideration for award of contracts -- Process -- Causes for debarment -- Judicial review.**

- (1)
  - (a) Subject to Subsection (1)(b), a procurement official may:
    - (i) debar a person for cause from consideration for award of contracts for a period not to exceed three years; or
    - (ii) suspend a person from consideration for award of contracts if there is cause to believe that the person has engaged in any activity that might lead to debarment.
  - (b) Before debarring or suspending a person under Subsection (1)(a), a procurement official shall:
    - (i) consult with:
      - (A) the procurement unit involved in the matter for which debarment or suspension is sought; and
      - (B) the attorney general, if the procurement unit is in the state executive branch, or the procurement unit's attorney, if the procurement unit is not in the state executive branch;
    - (ii) give the person at least 10 days' prior written notice of:
      - (A) the reasons for which debarment or suspension is being considered; and
      - (B) the hearing under Subsection (1)(b)(iii); and
    - (iii) hold an informal hearing in accordance with Subsection (1)(c).
  - (c)
    - (i) At an informal hearing under Subsection (1)(b)(iii), a procurement official may:
      - (A) subpoena witnesses and compel their attendance at the hearing;
      - (B) subpoena documents for production at the hearing;
      - (C) obtain additional factual information; and
      - (D) obtain testimony from experts, the person who is the subject of the proposed debarment or suspension, representatives of the procurement unit, or others to assist the procurement official to make a decision on the proposed debarment or suspension.
    - (ii) The Rules of Evidence do not apply to an informal hearing under Subsection (1)(b)(iii).
    - (iii) A procurement official shall:



- (A) record a hearing under Subsection (1)(b)(iii); and
- (B) preserve all records and other evidence relied upon in reaching a decision until the decision becomes final.
- (iv) The holding of an informal hearing under Subsection (1)(b)(iii) or the issuing of a decision under Subsection (1)(c)(v) does not affect a person's right to later question or challenge the jurisdiction of the procurement official to hold a hearing or issue a decision.
- (v) A procurement official shall:
  - (A) promptly issue a written decision regarding a proposed debarment or suspension, unless the matter is settled by mutual agreement; and
  - (B) mail, email, or otherwise immediately furnish a copy of the decision to the person who is the subject of the decision.
- (vi) A written decision under Subsection (1)(c)(v) shall:
  - (A) state the reasons for the debarment or suspension, if debarment or suspension is ordered; and
  - (B) inform the person who is debarred or suspended of the right to judicial review as provided in this chapter.
- (vii) A decision of debarment or suspension is final and conclusive unless the decision is overturned by a court under Subsection (4).
- (2) A suspension under this section may not be for a period exceeding three months, unless an indictment has been issued for an offense which would be a cause for debarment under Subsection (3), in which case the suspension shall, at the request of the attorney general, if the procurement unit is in the state executive branch, or the procurement unit's attorney, if the procurement unit is not in the state executive branch, remain in effect until after the trial of the suspended person.
- (3) The causes for debarment include the following:
  - (a) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of a public or private contract or subcontract;
  - (b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a contractor for the procurement unit;
  - (c) conviction under state or federal antitrust statutes;
  - (d) failure without good cause to perform in accordance with the terms of the contract;
  - (e) a violation of this chapter; or
  - (f) any other cause that the procurement official determines to be so serious and compelling as to affect responsibility as a contractor for the procurement unit, including debarment by another governmental entity.
- (4)
  - (a) A person who is debarred or suspended under this section may seek judicial review of the debarment or suspension by filing a petition for judicial review in district court.
  - (b) A petition under Subsection (4)(a):
    - (i) is a complaint governed by the Utah Rules of Civil Procedure;
    - (ii) shall name the procurement unit as respondent;
    - (iii) shall be accompanied by a copy of the written decision as to which judicial review is sought; and
    - (iv) is barred unless filed in district court within 30 days after the date of the issuance of the written decision of suspension or debarment under Subsection (1)(c)(v).

- (c) A district court's review of a petition under Subsection (4)(a) shall be de novo.
- (d) A district court shall, without a jury, determine all questions of fact and law, including any constitutional issue, presented in the pleadings.
- (5) A procurement unit may consider a cause for debarment under Subsection (3) as the basis for determining that a person responding to a solicitation is not responsible:
  - (a) independent of any effort or proceeding under this section to debar or suspend the person; and
  - (b) even if the procurement unit does not choose to seek debarment or suspension.
- (6) A rulemaking authority may make rules pertaining to the suspension and debarment process under this section, including rules governing an informal hearing under Subsection (1)(b)(iii).

Amended by Chapter 257, 2020 General Session

**63G-6a-905 Quote, bid, offer, or contract prohibited by person with outstanding tax lien -- Exceptions -- Rejection of quote, bid, or offer.**

- (1) Except as provided in Subsection (2), a person with an outstanding tax lien in the state may not:
  - (a) submit a quote, bid, or offer to a procurement unit; or
  - (b) contract to provide a procurement item to a procurement unit.
- (2) Subsection (1) does not apply to the extent that a procurement officer determines it is in the public interest to grant an exception to the requirements of Subsection (1) for a particular quote, bid, offer, or contract specified by the procurement officer.
- (3) A procurement unit may reject a quote, bid, or offer submitted in violation of Subsection (1).

Enacted by Chapter 445, 2013 General Session

**Part 10  
Preferences**

**63G-6a-1001 Title.**

This part is known as "Preferences."

Enacted by Chapter 347, 2012 General Session

**63G-6a-1002 Reciprocal preference for providers of state products.**

- (1)
  - (a) An issuing procurement unit shall, for all procurements, give a reciprocal preference to those bidders offering procurement items that are produced, manufactured, mined, grown, or performed in Utah over those bidders offering procurement items that are produced, manufactured, mined, grown, or performed in any state that gives or requires a preference to procurement items that are produced, manufactured, mined, grown, or performed in that state.
  - (b) The amount of reciprocal preference shall be equal to the amount of the preference applied by the other state for that particular procurement item.

- (c) In order to receive a reciprocal preference under this section, the bidder shall certify on the bid that the procurement items offered are produced, manufactured, mined, grown, or performed in Utah.
  - (d) The reciprocal preference is waived if the certification described in Subsection (1)(c) does not appear on the bid.
- (2)
- (a) If the responsible bidder submitting the lowest responsive bid offers procurement items that are produced, manufactured, mined, grown, or performed in a state that gives or requires a preference, and if another responsible bidder has submitted a responsive bid offering procurement items that are produced, manufactured, mined, grown, or performed in Utah, and with the benefit of the reciprocal preference, the bid of the other bidder is equal to or less than the original lowest bid, the issuing procurement unit shall:
    - (i) give notice to the bidder offering procurement items that are produced, manufactured, mined, grown, or performed in Utah that the bidder qualifies as a preferred bidder; and
    - (ii) make the purchase from the preferred bidder if the bidder agrees, in writing, to meet the low bid within 72 hours after notification that the bidder is a preferred bidder.
  - (b) The issuing procurement unit shall include the exact price submitted by the lowest bidder in the notice the issuing procurement unit submits to the preferred bidder.
  - (c) The issuing procurement unit may not enter into a contract with any other bidder for the purchase until 72 hours have elapsed after notification to the preferred bidder.
- (3)
- (a) If there is more than one preferred bidder, the issuing procurement unit shall award the contract to the willing preferred bidder who was the lowest preferred bidder originally.
  - (b) If there were two or more equally low preferred bidders, the issuing procurement unit shall comply with the rules of the rulemaking authority to determine which bidder should be awarded the contract.
- (4) The provisions of this section do not apply if application of this section might jeopardize the receipt of federal funds.

Amended by Chapter 257, 2020 General Session

**63G-6a-1003 Preference for resident contractors.**

- (1) As used in this section, "resident contractor" means a person, partnership, corporation, or other business entity that:
- (a) either has its principal place of business in Utah or that employs workers who are residents of this state when available; and
  - (b) was transacting business on the date when bids for the public contract were first solicited.
- (2)
- (a) When awarding contracts for construction, an issuing procurement unit shall grant a resident contractor a reciprocal preference over a nonresident contractor from any state that gives or requires a preference to contractors from that state.
  - (b) The amount of the reciprocal preference shall be equal to the amount of the preference applied by the state of the nonresident contractor.
- (3)
- (a) In order to receive the reciprocal preference under this section, the bidder shall certify on the bid that the bidder qualifies as a resident contractor.
  - (b) The reciprocal preference is waived if the certification described in Subsection (2)(a) does not appear on the bid.

- (4)
- (a) If the responsible contractor submitting the lowest responsive bid is not a resident contractor whose principal place of business is in a state that gives or requires a preference to contractors from that state, and if a resident responsible contractor has also submitted a responsive bid, and, with the benefit of the reciprocal preference, the resident contractor's bid is equal to or less than the original lowest bid, the issuing procurement unit shall:
    - (i) give notice to the resident contractor that the resident contractor qualifies as a preferred resident contractor; and
    - (ii) issue the contract to the resident contractor if the resident contractor agrees, in writing, to meet the low bid within 72 hours after notification that the resident contractor is a preferred resident contractor.
  - (b) The issuing procurement unit shall include the exact price submitted by the lowest bidder in the notice that the issuing procurement unit submits to the preferred resident contractor.
  - (c) The issuing procurement unit may not enter into a contract with any other bidder for the construction until 72 hours have elapsed after notification to the preferred resident contractor.
- (5)
- (a) If there is more than one preferred resident contractor, the issuing procurement unit shall award the contract to the willing preferred resident contractor who was the lowest preferred resident contractor originally.
  - (b) If there were two or more equally low preferred resident contractors, the issuing procurement unit shall comply with the rules of the rulemaking authority to determine which bidder should be awarded the contract.
- (6) The provisions of this section do not apply if application of this section might jeopardize the receipt of federal funds.

Amended by Chapter 257, 2020 General Session

**63G-6a-1004 Exception for federally funded contracts.**

This part does not apply to the extent it conflicts with federal requirements relating to a procurement that involves the expenditure of federal assistance, federal contract funds, or federal financial participation funds.

Enacted by Chapter 347, 2012 General Session

**Part 11  
Bonds**

**63G-6a-1101 Title.**

This part is known as "Bonds."

Enacted by Chapter 347, 2012 General Session

**63G-6a-1102 Bid security requirements -- Directed suretyship prohibited -- Penalty.**

- (1) Bid security in an amount equal to at least 5% of the amount of the bid shall be required for all competitive bidding for construction contracts. Bid security shall be a bond provided by a

surety company authorized to do business in this state, the equivalent in cash, or any other form satisfactory to the state.

- (2) When a bidder fails to comply with the requirement for bid security described in the invitation for bids, the bid shall be rejected unless, pursuant to rules of the rulemaking authority, the issuing procurement unit determines that the failure to comply with the security requirements is nonsubstantial.
- (3) After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids. If a bidder is permitted to withdraw a bid before award, no action shall be taken against the bidder or the bid security.
- (4)
  - (a) When issuing an invitation for a bid under this chapter, the procurement official responsible for carrying out a construction project may not require a person or entity who is bidding for a contract to obtain a bond of the type described in Subsection (1) from a specific insurance or surety company, producer, agent, or broker.
  - (b) A person who violates Subsection (4)(a) is guilty of an infraction.

Amended by Chapter 257, 2020 General Session

**63G-6a-1103 Bonds or security necessary when contract is awarded -- Waiver -- Action -- Attorney fees.**

- (1) When a construction contract is awarded under this chapter, the contractor to whom the contract is awarded shall deliver the following bonds or security to the procurement unit, which shall become binding on the parties upon the execution of the contract:
  - (a) a performance bond satisfactory to the procurement unit that is in an amount equal to 100% of the price specified in the contract and is executed by a surety company authorized to do business in the state or any other form satisfactory to the procurement unit; and
  - (b) a payment bond satisfactory to the procurement unit that is in an amount equal to 100% of the price specified in the contract and is executed by a surety company authorized to do business in the state or any other form satisfactory to the procurement unit, which is for the protection of each person supplying labor, service, equipment, or material for the performance of the work provided for in the contract.
- (2)
  - (a) When a construction contract is awarded under this chapter, the procurement official responsible for carrying out the construction project may not require a contractor to whom a contract is awarded to obtain a bond of the types referred to in Subsection (1) from a specific insurance or surety company, producer, agent, or broker.
  - (b) A person who violates Subsection (2)(a) is guilty of an infraction.
- (3) Rules of a rulemaking authority may provide for waiver of the requirement of a bid, performance, or payment bond for circumstances in which the procurement official considers any or all of the bonds to be unnecessary to protect the procurement unit.
- (4) A person has a right of action on a payment bond under this section for any unpaid amount due to the person if:
  - (a) the person has furnished labor, service, equipment, or material for the work provided for in the contract for which the payment bond is furnished under this section; and
  - (b) the person has not been paid in full within 90 days after the last day on which the person performed the labor or service or supplied the equipment or material for which the claim is made.

- (5) An action upon a payment bond may only be brought in a court of competent jurisdiction in a county where the construction contract was to be performed. The action is barred if not commenced within one year after the last day on which the claimant performed the labor or service or supplied the equipment or material on which the claim is based. The obligee named in the bond need not be joined as a party to the action.
- (6) In any suit upon a payment bond, the court shall award reasonable attorney fees to the prevailing party, which fees shall be taxed as costs in the action.

Amended by Chapter 257, 2020 General Session

**63G-6a-1104 Preliminary notice requirement.**

- (1) Any person furnishing labor, service, equipment, or material for which a payment bond claim may be made under this chapter shall provide preliminary notice to the designated agent as prescribed by Section 38-1b-202, except that this section does not apply:
  - (a) to an individual performing labor for wages; or
  - (b) if a notice of commencement is not filed as prescribed in Section 38-1b-201 for the project or improvement for which labor, service, equipment, or material is furnished.
- (2) Any person who fails to provide the preliminary notice required by Subsection (1) may not make a payment bond claim under this chapter.
- (3) The preliminary notice required by Subsection (1) must be provided before commencement of any action on the payment bond.
- (4) Subsection (1)(a) does not exempt the following from complying with the requirements of this section:
  - (a) a temporary labor service company or organization;
  - (b) a professional employer company or organization; or
  - (c) any other entity that provides labor.

Amended by Chapter 278, 2012 General Session

Amended by Chapter 330, 2012 General Session

Renumbered and Amended by Chapter 347, 2012 General Session

**63G-6a-1105 Form of bonds -- Effect of certified copy.**

- (1) The form of the bonds required by this part shall be established by rule made by the rulemaking authority.
- (2) Any person may obtain from the procurement unit a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any.
- (3) A certified copy of a bond is prima facie evidence of the contents, execution, and delivery of the original.

Amended by Chapter 257, 2020 General Session

**Part 12**  
**Contracts and Change Orders**

**63G-6a-1201 Title.**

This part is known as "Contracts and Change Orders."

Enacted by Chapter 347, 2012 General Session

**63G-6a-1202 Standard contract clauses encouraged.**

A procurement unit is encouraged to establish standard contract clauses to assist the procurement unit and to help contractors and potential contractors to understand applicable requirements.

Repealed and Re-enacted by Chapter 196, 2014 General Session

**63G-6a-1203 Certain indemnification provisions forbidden -- Exceptions.**

- (1) A contract, including an amendment to an existing contract, entered into under this chapter may not require that a design professional indemnify another from liability claims that arise out of the design professional's services, unless the liability claim arises from the design professional's negligent act, wrongful act, error or omission, or other liability imposed by law.
- (2) Subsection (1) may not be waived by contract.
- (3) Notwithstanding Subsections (1) and (2), a design professional may be required to indemnify a person for whom the design professional has direct or indirect control or responsibility.

Amended by Chapter 218, 2015 General Session

**63G-6a-1204 Multiyear contracts.**

- (1) Except as provided in Subsection (7), a procurement unit may enter into a multiyear contract resulting from an invitation for bids or a request for proposals, if:
  - (a) the procurement official determines, in the discretion of the procurement official, that entering into a multiyear contract is in the best interest of the procurement unit; and
  - (b) the invitation for bids or request for proposals:
    - (i) states the term of the contract, including all possible renewals of the contract;
    - (ii) states the conditions for renewal of the contract; and
    - (iii) includes the provisions of Subsections (3) through (5) that are applicable to the contract.
- (2) In making the determination described in Subsection (1)(a), the procurement official shall consider whether entering into a multiyear contract will:
  - (a) result in significant savings to the procurement unit, including:
    - (i) reduction of the administrative burden in procuring, negotiating, or administering contracts;
    - (ii) continuity in operations of the procurement unit; or
    - (iii) the ability to obtain a volume or term discount;
  - (b) encourage participation by a person who might not otherwise be willing or able to compete for a shorter term contract; or
  - (c) provide an incentive for a bidder or offeror to improve productivity through capital investment or better technology.
- (3)
  - (a) The determination described in Subsection (1)(a) is discretionary and is not required to be in writing or otherwise recorded.
  - (b) Except as provided in Subsections (4) and (5), notwithstanding any provision of an invitation for bids, a request for proposals, or a contract to the contrary, a multiyear contract, including a contract that was awarded outside of an invitation for bids or request for proposals process, may not continue or be renewed for any year after the first year of the multiyear contract if adequate funds are not appropriated or otherwise available to continue or renew the contract.

- (4) A multiyear contract that is funded solely by federal funds may be continued or renewed for any year after the first year of the multiyear contract if:
  - (a) adequate funds to continue or renew the contract have not been, but are expected to be appropriated by, and received from, the federal government;
  - (b) continuation or renewal of the contract before the money is appropriated or received is permitted by the federal government; and
  - (c) the contract states that it may be cancelled or suspended, without penalty, if the anticipated federal funds are not appropriated or received.
- (5) A multiyear contract that is funded in part by federal funds may be continued or renewed for any year after the first year of the multiyear contract if:
  - (a) the portion of the contract that is to be funded by funds of a public entity are appropriated;
  - (b) adequate federal funds to continue or renew the contract have not been, but are expected to be, appropriated by, and received from, the federal government;
  - (c) continuation or renewal of the contract before the federal money is appropriated or received is permitted by the federal government; and
  - (d) the contract states that it may be cancelled or suspended, without penalty, if the anticipated federal funds are not appropriated or received.
- (6) A procurement unit may not continue or renew a multiyear contract after the end of the multiyear contract term or the renewal periods described in the contract, unless the procurement unit engages in a new standard procurement process or complies with an exception, described in this chapter, to using a standard procurement process.
- (7) A multiyear contract, including any renewal periods, may not exceed a period of five years, unless:
  - (a) the procurement official determines, in writing, that:
    - (i) a longer period is necessary in order to obtain the procurement item;
    - (ii) a longer period is customary for industry standards; or
    - (iii) a longer period is in the best interest of the procurement unit; and
  - (b) the written determination described in Subsection (7)(a) is included in the file relating to the procurement.
- (8) This section does not apply to a contract for the design or construction of a facility, a road, a public transit project, or a contract for the financing of equipment.

Amended by Chapter 64, 2021 General Session

**63G-6a-1204.5 Multiple award contracts.**

- (1)
  - (a) Through a standard procurement process, the division or an independent procurement unit may enter into multiple award contracts with multiple persons.
  - (b) The applicable rulemaking authority may make rules, consistent with this section, regulating the use of multiple award contracts.
- (2) Multiple award contracts may be in a procurement unit's best interest if award to two or more bidders or offerors for similar procurement items is needed or desired for adequate delivery, service, availability, or product compatibility.
- (3) A procurement unit that enters into multiple award contracts under this section shall:
  - (a) exercise care to protect and promote competition among bidders or offerors when seeking to enter into multiple award contracts;
  - (b) name all eligible users of the multiple award contracts in the invitation for bids or request for proposals; and



- (c) if the procurement unit anticipates entering into multiple award contracts before issuing the invitation for bids or request for proposals, state in the invitation for bids or request for proposals that the procurement unit may enter into multiple award contracts at the end of the procurement process.
- (4) A procurement unit that enters into multiple award contracts under this section shall:
  - (a) obtain, under the multiple award contracts, all of its normal, recurring requirements for the procurement items that are the subject of the contracts until the contracts terminate; and
  - (b) reserve the right to obtain the procurement items described in Subsection (4)(a) separately from the contracts if:
    - (i) there is a need to obtain a quantity of the procurement items that exceeds the amount specified in the contracts; or
    - (ii) the procurement officer makes a written finding that the procurement items available under the contract will not effectively or efficiently meet a nonrecurring special need of a procurement unit.
- (5) An applicable rulemaking authority may make rules to further regulate a procurement under this section.

Amended by Chapter 257, 2020 General Session

**63G-6a-1205 Regulation of contract types -- Permitted and prohibited contract types.**

- (1) Except as otherwise provided in this section, and subject to rules made under this section by the rulemaking authority, a procurement unit may use any type of contract that will promote the best interests of the procurement unit.
- (2) A rulemaking authority:
  - (a) may make rules governing, placing restrictions on, or prohibiting the use of any type of contract; and
  - (b) may not make rules that permit the use of a contract:
    - (i) that is prohibited under this section; or
    - (ii) in a manner that is prohibited under this section.
- (3) A procurement official may not use a type of contract, other than a firm fixed price contract, unless the procurement official makes a written determination that:
  - (a) the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated;
  - (b) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles; and
  - (c) the use of a specified type of contract, other than a firm fixed price contract, is in the best interest of the procurement unit, taking into consideration the following criteria:
    - (i) the type and complexity of the procurement item;
    - (ii) the difficulty of estimating performance costs at the time the contract is entered into, due to factors that may include:
      - (A) the difficulty of determining definitive specifications;
      - (B) the difficulty of determining the risks, to the contractor, that are inherent in the nature of the work to be performed; or
      - (C) the difficulty to clearly determine other factors necessary to enter into an accurate firm fixed price contract;
    - (iii) the administrative costs to the procurement unit and the contractor;
    - (iv) the degree to which the procurement unit is required to provide technical coordination during performance of the contract;

- (v) the impact that the choice of contract type may have upon the level of competition for award of the contract;
  - (vi) the stability of material prices, commodity prices, and wage rates in the applicable market;
  - (vii) the impact of the contract type on the level of urgency related to obtaining the procurement item;
  - (viii) the impact of any applicable governmental regulation relating to the contract; and
  - (ix) other criteria that the procurement officer determines may relate to determining the contract type that is in the best interest of the procurement unit.
- (4) Contract types that, subject to the provisions of this section and rules made under this section, may be used by a procurement unit include the following:
- (a) a fixed price contract;
  - (b) a fixed price contract with price adjustment;
  - (c) a time and materials contract;
  - (d) a labor hour contract;
  - (e) a definite quantity contract;
  - (f) an indefinite quantity contract;
  - (g) a requirements contract;
  - (h) a contract based on a rate table in accordance with industry standards; or
  - (i) a contract that includes one of the following construction delivery methods:
    - (i) design-build;
    - (ii) design-bid-build; or
    - (iii) construction manager/general contractor.
- (5) Except as it applies to a change order, a procurement unit may not enter into a cost-plus-percentage-of-cost contract, unless:
- (a) use of a cost-plus-percentage-of-cost contract is approved by the procurement officer;
  - (b) it is standard practice in the industry to obtain the procurement item through a cost-plus-percentage-of-cost contract; and
  - (c) the percentage and the method of calculating costs in the contract are in accordance with industry standards.
- (6) A procurement unit may not enter into a cost-reimbursement contract, unless the procurement official makes a written determination that:
- (a)
    - (i) a cost-reimbursement contract is likely to cost less than any other type of permitted contract; or
    - (ii) it is impracticable to obtain the procurement item under any other type of permitted contract; and
  - (b) the proposed contractor's accounting system:
    - (i) will timely develop the cost data in the form necessary for the procurement unit to timely and accurately make payments under the contract; and
    - (ii) will allocate costs in accordance with generally accepted accounting principles.

Amended by Chapter 257, 2020 General Session

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

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

- (b) The cost principles established by rule under Subsection (1)(a) may be modified, by contract, if the procurement official approves the modification.
- (2) Except as provided in Subsection (5), a person who seeks to be, or is, a party in a cost-based contract with a procurement unit shall:
  - (a) submit cost or pricing data relating to determining the cost or pricing amount; and
  - (b) certify that, to the best of the contractor's knowledge and belief, the cost or pricing data submitted is accurate and complete as of the date specified by the procurement unit.
- (3) The procurement official shall ensure that the date specified under Subsection (2)(b) is before:
  - (a) the pricing of any contract awarded by a standard procurement process or pursuant to a sole source procurement, if the total contract price is expected to exceed an amount established by rule made by the rulemaking authority; or
  - (b) the pricing of any change order that is expected to exceed an amount established by rule made by the rulemaking authority.
- (4) A contract or change order that requires a certification described in Subsection (2) shall include a provision that the price to the procurement unit, including profit or fee, shall be adjusted to exclude any significant sums by which the procurement unit finds that the price was increased because the contractor provided cost or pricing data that was inaccurate, incomplete, or not current as of the date specified by the procurement officer.
- (5) A procurement unit is not required to comply with Subsection (2) if:
  - (a) the contract price is based on adequate price competition;
  - (b) the contract price is based on established catalogue prices or market prices;
  - (c) the contract price is set by law or rule; or
  - (d) the procurement states, in writing:
    - (i) that, in accordance with rules made by the rulemaking authority, the requirements of Subsection (2) may be waived; and
    - (ii) the reasons for the waiver.

Amended by Chapter 257, 2020 General Session

**63G-6a-1206.3 Auditing of books of contractor or subcontractor.**

- (1) A procurement officer or an audit entity under contract with the procurement unit may audit the books and records of a contractor or subcontractor.
- (2) An audit under Subsection (1):
  - (a) is limited to the books and records that relate to the applicable contract or subcontract; and
  - (b) may occur only at a reasonable time and place.
- (3) A contractor shall maintain all books and records relating to a contract for six years after the day on which the contractor receives the final payment under the contract, or until all audits initiated under this section within the six-year period have been completed, whichever is later.
- (4) A subcontractor shall maintain all books and records relating to a subcontract for six years after the day on which the subcontractor receives the final payment under the subcontract, or until all audits initiated under this section within the six-year period have been completed, whichever is later.

Enacted by Chapter 355, 2016 General Session

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

- (1) As used in this section, "contract price":
  - (a) means the price under an existing contract between a procurement unit and a contractor; and

- (b) does not include a proposed price or cost contained in a solicitation response or any other bid, proposal, or offer submitted by a person other than the contractor under the existing contract.
- (2) A contractor may:
  - (a) increase the contract price only in accordance with the terms of the contract; and
  - (b) subject to Subsection (3), lower the contract price at any time during the time a contract is in effect.
- (3) A contractor under a multiple award contract resulting from a bidding process may not lower the contract price unless the contractor's solicitation response that led to the contract award was the lowest price solicitation response.

Amended by Chapter 406, 2021 General Session

**63G-6a-1207 Certification of change order.**

- (1) Under a construction contract, a change order that increases the contract amount may not be made without prior written certification that the change order is within the determined project or contract budget by:
  - (a) the fiscal officer of the entity responsible for funding the project or contract; or
  - (b) the official responsible for monitoring and reporting upon the status of the costs of the total project or contract budget.
- (2) If a change order will result in an increase in the total project or contract budget, the change order may not be made, unless:
  - (a) sufficient funds are added to the project contract or budget; or
  - (b) the scope of the project or contract is adjusted to permit the degree of completion feasible within the total project or contract budget as it existed before the change order under consideration.
- (3) Notwithstanding any other provision of this section, it shall be presumed that this section has been complied with if the contractor reasonably relies on an executed change order.

Renumbered and Amended by Chapter 347, 2012 General Session

**63G-6a-1208 Installment payments -- Contract prepayments.**

- (1) A contract entered into by a procurement unit may provide for installment payments, including interest charges, over a period of time, if the procurement official makes a written finding that:
  - (a) the use of installment payments are in the interest of the procurement unit;
  - (b) installment payments are not used as a method of avoiding budgetary constraints;
  - (c) the procurement unit has obtained all budgetary approvals and other approvals required for making the installment payments;
  - (d) all aspects of the installment payments required in the contract are in accordance with the requirements of law; and
  - (e) for a contract awarded through an invitation for bids or a request for proposals, the invitation for bids or request for proposals indicates that installment payments are required or permitted.
- (2)
  - (a) A procurement unit may not pay for a procurement item before the procurement unit receives the procurement item, unless the procurement official determines that it is necessary or beneficial for the procurement unit to pay for the procurement item before the procurement unit receives the procurement item.
  - (b) A procurement official's determination under Subsection (2)(a) shall be in writing, unless:

- (i) the rulemaking authority has adopted a rule describing one or more circumstances under which a written determination is not necessary; and
  - (ii) the procurement official's determination is under one of those circumstances.
- (3) Circumstances where prepayment may be necessary for, or beneficial to, the procurement unit include:
- (a) when it is customary in the industry to prepay for the procurement item;
  - (b) if the procurement unit will receive an identifiable benefit by prepaying, including reduced costs, additional procurement items, early delivery, better service, or better contract terms; or
  - (c) other circumstances permitted by rule made by the rulemaking authority.
- (4) The rulemaking authority may make rules governing prepayments.
- (5) A prepaid expenditure shall be supported by documentation indicating:
- (a) the amount of the prepayment;
  - (b) the prepayment schedule;
  - (c) the procurement items to which each prepayment relates;
  - (d) the remedies for a contractor's noncompliance with requirements relating to the provision of the procurement items; and
  - (e) all other terms and conditions relating to the payments and the procurement items.
- (6) The procurement official or the procurement official's designee may require a performance bond, of up to 100% of the prepayment amount, from the person to whom the prepayments are made.

Amended by Chapter 257, 2020 General Session

**63G-6a-1209 Leases.**

- (1) As used in this section, "lease" means for a procurement unit to lease or lease-purchase a procurement item from a person.
- (2) This section does not apply to the lease of real property.
- (3) A procurement unit may not lease a procurement item unless the procurement unit complies with the requirements of this section.
- (4) A procurement unit may lease a procurement item if:
  - (a) the procurement officer determines that it is in the best interest of the procurement unit to lease the procurement item, after the procurement officer:
    - (i) investigates alternative means of obtaining the procurement item; and
    - (ii) considers the costs and benefits of the alternative means of obtaining the procurement item;
  - (b) all conditions for renewal and cost are included in the lease;
  - (c) the lease is awarded through a standard procurement process, or an exception to a standard procurement process described in Part 8, Exceptions to Procurement Requirements;
  - (d) for a standard procurement process, the invitation for bids, request for proposals, or request for quotes states:
    - (i) that the procurement unit is seeking, or willing to consider, a lease; and
    - (ii) for a lease purchase, that the procurement unit is seeking, or willing to consider, a lease-purchase;
  - (e) the lease is not used to avoid competition; and
  - (f) the lease complies with all other provisions of law or rule applicable to the lease.

Amended by Chapter 354, 2020 General Session

**63G-6a-1210 Contract provisions for incentives, damages, and penalties.**

A procurement unit may include in a contract terms that provide for:

- (1) incentives, including bonuses;
- (2) payment of damages, including liquidated damages; or
- (3) penalties.

Enacted by Chapter 445, 2013 General Session

## **Part 13**

### **General Construction Provisions**

#### **63G-6a-1301 Title.**

This part is known as "General Construction Provisions."

Enacted by Chapter 347, 2012 General Session

#### **63G-6a-1302 Alternative methods of construction contracting management.**

- (1) A rulemaking authority shall, by rule provide as many alternative methods of construction contracting management as determined to be feasible.
- (2) The rules described in Subsection (1) shall:
  - (a) grant to the procurement official responsible for carrying out the construction project the discretion to select the appropriate method of construction contracting management for a particular project; and
  - (b) require the procurement official to execute and include in the contract file a written statement describing the facts that led to the selection of a particular method of construction contracting management for each project.
- (3) Before choosing a construction contracting management method, the procurement official responsible for carrying out the construction project shall consider the following factors:
  - (a) when the project must be ready to be occupied;
  - (b) the type of project;
  - (c) the extent to which the requirements of the procurement unit, and the way they are to be met are known;
  - (d) the location of the project;
  - (e) the size, scope, complexity, and economics of the project;
  - (f) the source of funding and any resulting constraints necessitated by the funding source;
  - (g) the availability, qualification, and experience of public personnel to be assigned to the project and the amount of time that the public personnel can devote to the project; and
  - (h) the availability, qualifications, and experience of outside consultants and contractors to complete the project under the various methods being considered.
- (4) A rulemaking authority may make rules that authorize the use of a construction manager/general contractor as one method of construction contracting management.
- (5) The rules described in Subsection (2) shall require that:
  - (a) the construction manager/general contractor be selected using:
    - (i) a standard procurement process; or
    - (ii) an exception to the requirement to use a standard procurement process, described in Part 8, Exceptions to Procurement Requirements; and

- (b) when entering into a subcontract that was not specifically included in the construction manager/general contractor's cost proposal, the construction manager/general contractor shall procure the subcontractor by using a standard procurement process, or an exception to the requirement to use a standard procurement process, described in Part 8, Exceptions to Procurement Requirements, in the same manner as if the subcontract work was procured directly by the procurement unit.
- (6) Procurement rules adopted by the facilities division under Subsections (1) through (3) for state building construction projects may authorize the use of a design-build provider as one method of construction contracting management.
- (7) A design-build contract may include a provision for obtaining the site for the construction project.
- (8) A design-build contract or a construction manager/general contractor contract may include provision by the contractor of operations, maintenance, or financing.

Amended by Chapter 421, 2022 General Session

**63G-6a-1303 Drug and alcohol testing required for state construction contracts.**

- (1) As used in this section:
  - (a) "Contractor" means a person who is or may be awarded a state construction contract.
  - (b) "Covered individual" means an individual who:
    - (i) on behalf of a contractor or subcontractor provides services directly related to design or construction under a state construction contract; and
    - (ii) is in a safety sensitive position, including a design position that has responsibilities that directly affect the safety of an improvement to real property that is the subject of a state construction contract.
  - (c) "Drug and alcohol testing policy" means a policy under which a contractor or subcontractor tests a covered individual to establish, maintain, or enforce the prohibition of:
    - (i) the manufacture, distribution, dispensing, possession, or use of drugs or alcohol, except the medically prescribed possession and use of a drug; or
    - (ii) the impairment of judgment or physical abilities due to the use of drugs or alcohol.
  - (d) "Random testing" means that a covered individual is subject to periodic testing for drugs and alcohol:
    - (i) in accordance with a drug and alcohol testing policy; and
    - (ii) on the basis of a random selection process.
  - (e) "State executive entity" means:
    - (i) a state executive branch:
      - (A) department;
      - (B) division;
      - (C) agency;
      - (D) board;
      - (E) commission;
      - (F) council;
      - (G) committee; or
      - (H) institution; or
    - (ii) a state institution of higher education, as defined in Section 53B-3-102.
  - (f) "State construction contract" means a contract for design or construction entered into by a state executive entity.

- (2) Except as provided in Subsection (7), a state executive entity may not enter into a state construction contract unless the public construction contract requires that the contractor demonstrate to the state executive entity that the contractor:
  - (a) has and will maintain a drug and alcohol testing policy during the period of the state construction contract that applies to the covered individuals hired by the contractor;
  - (b) posts in one or more conspicuous places notice to covered individuals hired by the contractor that the contractor has the drug and alcohol testing policy described in Subsection (2)(a);
  - (c) subjects the covered individuals to random testing under the drug and alcohol testing policy described in Subsection (2)(a) if at any time during the period of the state construction contract there are 10 or more individuals who are covered individuals hired by the contractor; and
  - (d) requires that as a condition of contracting with the contractor, a subcontractor:
    - (i) has and will maintain a drug and alcohol testing policy during the period of the state construction contract that applies to the covered individuals hired by the subcontractor;
    - (ii) posts in one or more conspicuous places notice to covered individuals hired by the subcontractor that the subcontractor has the drug and alcohol testing policy described in Subsection (2)(d)(i); and
    - (iii) subjects the covered individuals hired by the subcontractor to random testing under the drug and alcohol testing policy described in Subsection (2)(d)(i) if at any time during the period of the state construction contract there are 10 or more individuals who are covered individuals hired by the subcontractor.
- (3)
  - (a) Except as otherwise provided in this Subsection (3), if a contractor or subcontractor fails to comply with Subsection (2), the contractor or subcontractor may be suspended or debarred in accordance with this chapter.
  - (b) A state executive entity shall include in a state construction contract:
    - (i) a reference to the rules described in Subsection (4)(b); or
    - (ii) if the rulemaking authority has not made the rules described in Subsection (4)(b), a process that provides a contractor or subcontractor reasonable notice and opportunity to cure a violation of this section before suspension or debarment of the contractor or subcontractor in light of the circumstances of the state construction contract or the violation.
  - (c)
    - (i) A contractor is not subject to penalties for the failure of a subcontractor to comply with Subsection (2).
    - (ii) A subcontractor is not subject to penalties for the failure of a contractor to comply with Subsection (2).
- (4) A rulemaking authority:
  - (a) may make rules that establish the requirements and procedures a contractor is required to follow to comply with Subsection (2); and
  - (b) shall make rules that establish:
    - (i) the penalties that may be imposed in accordance with Subsection (3); and
    - (ii) a process that provides a contractor or subcontractor reasonable notice and opportunity to cure a violation of this section before suspension or debarment of the contractor or subcontractor in light of the circumstances of the state construction contract or the violation.
- (5) The failure of a contractor or subcontractor to meet the requirements of Subsection (2):
  - (a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Part 17, Procurement Appeals Board, or Part 18, Appeals to Court and Court Proceedings; and



- (b) may not be used by a state executive entity, a prospective bidder, an offeror, a contractor, or a subcontractor as a basis for an action that would suspend, disrupt, or terminate the design or construction under a state construction contract.
- (6)
  - (a) After a state executive entity enters into a state construction contract in compliance with this section, the state is not required to audit, monitor, or take any other action to ensure compliance with this section.
  - (b) The state is not liable in any action related to this section, including not being liable in relation to:
    - (i) a contractor or subcontractor having or not having a drug and alcohol testing policy;
    - (ii) failure to test for a drug or alcohol under a contractor's or subcontractor's drug and alcohol testing policy;
    - (iii) the requirements of a contractor's or subcontractor's drug and alcohol testing policy;
    - (iv) a contractor's or subcontractor's implementation of a drug and alcohol testing policy, including procedures for:
      - (A) collection of a sample;
      - (B) testing of a sample;
      - (C) evaluation of a test; or
      - (D) disciplinary or rehabilitative action on the basis of a test result;
    - (v) an individual being under the influence of drugs or alcohol; or
    - (vi) an individual under the influence of drugs or alcohol harming another person or causing property damage.
- (7) This section does not apply if the state executive entity determines that the application of this section would severely disrupt the operation of a procurement unit to the detriment of the procurement unit or the general public, including:
  - (a) jeopardizing the receipt of federal funds;
  - (b) causing the state construction contract to be a sole source contract; or
  - (c) causing the state construction contract to be an emergency procurement.
- (8) If a contractor or subcontractor meets the requirements of this section, this section may not be construed to restrict the contractor's or subcontractor's ability to impose or implement an otherwise lawful provision as part of a drug and alcohol testing policy.

Amended by Chapter 257, 2020 General Session

## **Part 14**

### **Transportation Contracts**

#### **63G-6a-1401 Title.**

This part is known as "Transportation Contracts."

Enacted by Chapter 347, 2012 General Session

#### **63G-6a-1402 Procurement of design-build transportation project contracts.**

(1) As used in this section:

- (a) "Design-build transportation project contract" means the procurement of both the design and construction of a transportation project in a single contract with a company or combination of companies capable of providing the necessary engineering services and construction.
- (b) "Transportation agency" means:
  - (i) the Department of Transportation;
  - (ii) a county of the first or second class, as defined in Section 17-50-501;
  - (iii) a municipality of the first class, as defined in Section 10-2-301;
  - (iv) a large public transit district as defined in Section 17B-2a-802; and
  - (v) a public airport authority.
- (2) Except as provided in Subsection (3), a transportation agency may award a design-build transportation project contract for any transportation project that has an estimated cost of at least \$50,000,000 by following the requirements of this section.
- (3)
  - (a) The Department of Transportation:
    - (i) may award a design-build transportation project contract for any transportation project by following the requirements of this section; and
    - (ii) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing requirements for the procurement of its design-build transportation project contracts in addition to those required by this section.
  - (b) A public transit district that has more than 200,000 people residing within its boundaries:
    - (i) may award a design-build transportation project contract for any transportation project by following the requirements of this section; and
    - (ii) shall pass ordinances or a resolution establishing requirements for the procurement of its design-build transportation project contracts in addition to those required by this section.
  - (c) A design-build transportation project contract authorized under this Subsection (3) is not subject to the estimated cost threshold described in Subsection (2).
  - (d) A design-build transportation project contract may include provision by the contractor of operations, maintenance, or financing.
- (4)
  - (a) Before entering into a design-build transportation project contract, a transportation agency may issue a request for qualifications to prequalify potential contractors.
  - (b) Public notice of the request for qualifications shall be given in accordance with board rules.
  - (c) A transportation agency shall require, as part of the qualifications specified in the request for qualifications, that potential contractors at least demonstrate their:
    - (i) construction experience;
    - (ii) design experience;
    - (iii) financial, manpower, and equipment resources available for the project; and
    - (iv) experience in other design-build transportation projects with attributes similar to the project being procured.
  - (d) The request for qualifications shall identify the number of eligible competing proposers that the transportation agency will select to submit a proposal, which may not be less than two.
- (5) The transportation agency shall:
  - (a) evaluate the responses received from the request for qualifications;
  - (b) select from their number those qualified to submit proposals; and
  - (c) invite those respondents to submit proposals based upon the transportation agency's request for proposals.
- (6) If the transportation agency fails to receive at least two qualified eligible competing proposals, the transportation agency shall readvertise the project.

- (7) The transportation agency shall issue a request for proposals to those qualified respondents that:
- (a) includes a scope of work statement constituting an information for proposal that may include:
    - (i) preliminary design concepts;
    - (ii) design criteria, needs, and objectives;
    - (iii) warranty and quality control requirements;
    - (iv) applicable standards;
    - (v) environmental documents;
    - (vi) constraints;
    - (vii) time expectations or limitations;
    - (viii) incentives or disincentives; and
    - (ix) other special considerations;
  - (b) requires submitters to provide:
    - (i) a sealed cost proposal;
    - (ii) a critical path matrix schedule, including cash flow requirements;
    - (iii) proposal security; and
    - (iv) other items required by the department for the project; and
  - (c) may include award of a stipulated fee to be paid to offerors who submit unsuccessful proposals.
- (8) The transportation agency shall:
- (a) evaluate the submissions received in response to the request for proposals from the prequalified offerors;
  - (b) comply with rules relating to discussion of proposals, best and final offers, and evaluations of the proposals submitted; and
  - (c) after considering price and other identified factors, award the contract to the responsible offeror whose responsive proposal is most advantageous to the transportation agency or the state.

Amended by Chapter 424, 2018 General Session

**63G-6a-1403 Procurement of tollway development agreements.**

- (1) As used in this section, "tollway development agreement" means the same as that term is defined in Section 72-6-202.
- (2) The Department of Transportation and the Transportation Commission:
- (a) may solicit a tollway development agreement proposal by following the requirements of this section;
  - (b) may award a solicited tollway development agreement contract for any tollway project by following the requirements of this section; and
  - (c) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing requirements for the procurement of tollway development agreement proposals in addition to those required by this section.
- (3)
- (a) Before entering into a tollway development agreement, the Department of Transportation may issue a request for qualifications to prequalify potential contractors.
  - (b) Public notice of the request for qualifications shall be given in accordance with board rules.
  - (c) The Department of Transportation shall require, as part of the qualifications specified in the request for qualifications, that potential contractors at least provide:

- (i) a demonstration of their experience with other transportation concession projects with attributes similar to the project being procured;
  - (ii) a financial statement of the firm or consortium of firms making the proposal;
  - (iii) a conceptual project development plan and financing plan;
  - (iv) the legal structure of the firm or consortium of firms making the proposal;
  - (v) the organizational structure for the project; and
  - (vi) a statement describing why the firm or consortium of firms is best qualified for the project.
- (d) The request for qualifications shall identify the number of eligible competing offerors that the Department of Transportation will select to submit a proposal.
- (4) The Department of Transportation shall:
- (a) evaluate the responses received from the request for qualifications;
  - (b) select from their number those qualified to submit proposals; and
  - (c) invite those respondents to submit proposals based upon the Department of Transportation's request for proposals.
- (5) The Department of Transportation shall issue a request for proposals to those qualified respondents that may require, as appropriate for the procurement:
- (a) a description of the proposed project or projects;
  - (b) a financial plan for the project, including:
    - (i) the anticipated financial commitment of all parties;
    - (ii) equity, debt, and other financing mechanisms;
    - (iii) an analysis of the projected return, rate of return, or both; and
    - (iv) the monetary benefit and other value to a government entity;
  - (c) assumptions about user fees or toll rates;
  - (d) a project development and management plan, including:
    - (i) the contracting structure;
    - (ii) the plan for quality management;
    - (iii) the proposed toll enforcement plan; and
    - (iv) the plan for safety management; and
  - (e) that the proposal comply with the minimum guidelines for tollway development agreement proposals under Section 72-6-204.
- (6) The Department of Transportation and the Transportation Commission:
- (a) shall evaluate the submissions received in response to the request for proposals from the prequalified offerors;
  - (b) shall comply with rules relating to discussion of proposals, best and final offers, and evaluations of the proposals submitted; and
  - (c) may, after considering price and other identified factors and complying with the requirements of Section 72-6-206, award the contract to the responsible offeror whose responsive proposal is most advantageous to the state.

Amended by Chapter 354, 2020 General Session

## **Part 15**

### **Design Professional Services**

#### **63G-6a-1501 Title.**

This part is known as "Design Professional Services."

Amended by Chapter 218, 2015 General Session

**63G-6a-1502 Requirements regarding procurement of design professional services.**

- (1) A procurement unit seeking to procure design professional services shall:
  - (a) publicly announce all requirements for those services through a request for statement of qualifications, as provided in this part; and
  - (b) negotiate contracts for design professional services:
    - (i) on the basis of demonstrated competence and qualification for the type of services required; and
    - (ii) at fair and reasonable prices.
- (2) A procurement unit shall procure design professional services as provided in this part, except as otherwise provided in Sections 63G-6a-506, 63G-6a-802, and 63G-6a-803.
- (3) A procurement unit may procure professional services, other than design professional services, as provided in this part.
- (4) This part does not affect the authority of, and does not apply to procedures undertaken by, a procurement unit to obtain the services of architects or engineers in the capacity of employees of the procurement unit.

Amended by Chapter 257, 2020 General Session

**63G-6a-1502.5 Request for statement of qualifications.**

- (1) A procurement unit may establish criteria in a request for statement of qualifications by which the qualifications of a design professional, as set forth in a statement of qualifications, will be evaluated, including:
  - (a) the design professional's work history and experience;
  - (b) performance ratings earned by the design professional or references for similar work;
  - (c) any quality assurance or quality control plan;
  - (d) the quality of the design professional's past work product;
  - (e) the time, manner of delivery, and schedule of delivery of the design professional services;
  - (f) the design professional's financial solvency;
  - (g) any management plan, including key personnel and subconsultants for the project; and
  - (h) other project specific criteria that the procurement unit establishes.
- (2) A request for statement of qualifications may not include a request for a price or a cost component for the design professional services.

Enacted by Chapter 218, 2015 General Session

**63G-6a-1503 Evaluation committee for design professional services.**

- (1) In the procurement of design professional services, the procurement officer or the head of an issuing procurement unit shall encourage design professionals engaged in the lawful practice of their profession to submit a statement of qualifications.
- (2)
  - (a) The director of the Division of Facilities Construction and Management shall appoint an evaluation committee for design professional services procurements under its authority.
  - (b) A conducting procurement unit, other than the Division of Facilities Construction and Management, shall appoint an evaluation committee for design professional services procurements under the authority of that procurement unit.

- (3)
  - (a) An evaluation committee appointed under Subsection (2) shall consist of at least three members.
  - (b) A procurement unit appointing an evaluation committee under this section shall ensure that each member of the evaluation committee:
    - (i) does not have a conflict of interest with any of the design professionals under consideration;
    - (ii) can fairly evaluate each statement of qualifications;
    - (iii) does not contact or communicate with any of the design professionals under consideration concerning the request for statement of qualifications outside the official evaluation committee process, beginning the date that the request for statement of qualifications is issued until the selection of the design professional has been made; and
    - (iv) conducts the evaluation in a manner that ensures a fair and competitive process and avoids the appearance of impropriety.
- (4) An evaluation committee appointed under this section shall:
  - (a) evaluate current statements of qualifications and performance data on file with the procurement unit, together with those that may be submitted by other design professionals in response to the announcement of a proposed contract;
  - (b) consider no fewer than three design professionals; and
  - (c) based upon criteria established and published by the conducting procurement unit, select no fewer than three of the design professionals considered to be the most highly qualified to provide the services required.

Amended by Chapter 218, 2015 General Session

**63G-6a-1503.5 Evaluation of statements of qualifications.**

- (1) An evaluation committee appointed under Section 63G-6a-1503 shall evaluate and score each responsive statement of qualifications that has not been eliminated from consideration under this chapter, using the criteria described in the request for statement of qualifications.
- (2) Criteria not described in the request for statement of qualifications may not be used to evaluate a statement of qualifications.
- (3) An evaluation committee may enter into discussions or conduct interviews with, or attend presentations by, the design professionals whose statements of qualifications are under consideration.
- (4) An evaluation committee shall rank the top three highest scoring design professionals, in order of their scores, for the purpose of entering into fee negotiations as provided in Section 63G-6a-1505.
- (5) If fewer than three responsible design professionals submit statements of qualifications that are determined to be responsive, the procurement official shall issue a written determination explaining why it is in the best interest of the procurement unit to continue the fee negotiation and the contracting process with less than three design professionals.
- (6)
  - (a) The deliberations of an evaluation committee may be held in private.
  - (b) If the evaluation committee is a public body, as defined in Section 52-4-103, the evaluation committee shall comply with Section 52-4-205 in closing a meeting for its deliberations.

Amended by Chapter 257, 2020 General Session

**63G-6a-1504 Selection as part of design-build or lease.**

Notwithstanding any other provision of this chapter, design professional services may be procured under Title 63A, Chapter 5b, Administration of State Facilities, as part of the services obtained in a design-build contract or as part of the services obtained in a lease contract for real property, if the qualifications of those providing the design professional services are part of the consideration in the selection process.

Amended by Chapter 218, 2015 General Session

**63G-6a-1505 Determination of compensation for design professional services.**

- (1) The procurement officer shall award a contract to the qualified design professional whose statement of qualifications was awarded the highest score under Subsection 63G-6a-1503(4) by the evaluation committee, at compensation that the procurement officer determines, in writing, to be fair and reasonable to the procurement unit.
- (2) In making the determination described in Subsection (1), the procurement officer shall take into account:
  - (a) the estimated value, scope, and professional nature of the services; and
  - (b) the complexity of the project or services.
- (3) If the procurement officer is unable to agree to a satisfactory contract with the highest scoring design professional, at a price the procurement officer determines to be fair and reasonable to the procurement unit, the procurement officer shall:
  - (a) formally terminate discussions with that design professional; and
  - (b) undertake discussions with the second highest scoring, qualified design professional.
- (4) If the procurement officer is unable to agree to a satisfactory contract with the second highest scoring design professional, at a price the procurement officer determines to be fair and reasonable to the procurement unit, the procurement officer shall:
  - (a) formally terminate discussions with that design professional; and
  - (b) undertake discussions with the third highest scoring, qualified design professional.
- (5) If the procurement officer is unable to award a contract at a fair and reasonable price to any of the highest scoring design professionals, the procurement officer shall:
  - (a) select additional design professionals; and
  - (b) continue discussions in accordance with this part until an agreement is reached.

Amended by Chapter 218, 2015 General Session

**63G-6a-1506 Restrictions on procurement of design professional services.**

- (1) Except as provided in Subsection (2), if the division or an independent procurement unit, in accordance with Section 63G-6a-1502, issues a request for statement of qualifications to procure design professional services and provides public notice of the request for statement of qualifications:
  - (a) a public entity inside or outside the state may not submit a proposal in response to the procurement unit's request for statement of qualifications; and
  - (b) the procurement unit may not award a contract to a public entity inside or outside the state to perform the design professional services solicited in the request for statement of qualifications.
- (2) Subsection (1) does not apply when the procurement unit is procuring design professional services for contracts related to research activities and technology transfer.

Amended by Chapter 257, 2020 General Session

## Part 16 Protests

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

This part is known as " Protests."

Amended by Chapter 355, 2016 General Session

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

As used in this part:

- (1) "Constructive knowledge":
  - (a) means knowledge or information that a protestor would have if the protestor had exercised reasonable care or diligence, regardless of whether the protestor actually has the knowledge or information; and
  - (b) includes knowledge of:
    - (i) applicable provisions of this chapter and other law and administrative rule;
    - (ii) instructions, criteria, deadlines, and requirements contained in the solicitation or in other documents made available to persons interested in the solicitation or provided in a mandatory pre-solicitation meeting;
    - (iii) relevant facts and evidence supporting the protest or leading the protestor to contend that the protestor has been aggrieved in connection with a procurement;
    - (iv) communications or actions, pertaining to the procurement, of all persons within the protestor's organization or under the supervision of the protestor; and
    - (v) any other applicable information discoverable by the exercise of reasonable care or diligence.
- (2) "Hearing" means a proceeding in which evidence, which may include oral testimony, or argument relevant to a protest is presented to a protest officer in connection with the protest officer's determination of an issue of fact or law or both.
- (3) "Protest appeal record" means:
  - (a) a copy of the protest officer's written decision;
  - (b) all documentation and other evidence the protest officer relied upon in reaching the protest officer's decision;
  - (c) the recording of the hearing, if the protest officer held a hearing;
  - (d) a copy of the protestor's written protest; and
  - (e) all documentation and other evidence submitted by the protestor supporting the protest or the protestor's claim of standing.
- (4) "Protestor" means a person who files a protest under this part.
- (5) "Standing" means to have suffered an injury or harm or to be about to suffer imminent injury or harm, if:
  - (a) the cause of the injury or harm is:
    - (i) an infringement of the protestor's own right and not the right of another person who is not a party to the procurement;
    - (ii) reasonably connected to the procurement unit's conduct; and
    - (iii) the sole reason the protestor is not considered, or is no longer considered, for an award of a contract under the procurement that is the subject of the protest;



- (b) a decision on the protest in favor of the protestor:
  - (i) is likely to redress the injury or harm; and
  - (ii) would give the protestor a reasonable likelihood of being awarded a contract; and
- (c) the protestor has the legal authority to file the protest on behalf of the actual or prospective bidder or offeror or prospective contractor involved in the procurement that is the subject of the protest.

Amended by Chapter 348, 2017 General Session

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

- (1) A protest may be filed with the protest officer by a person who:
  - (a) has standing; and
  - (b) is aggrieved in connection with a procurement or an award of a contract.
- (2) A protest may not be filed after:
  - (a)
    - (i)
      - (A) the opening of bids, for a protest relating to a procurement under a bidding process; or
      - (B) the deadline for submitting responses to the solicitation, for a protest relating to another standard procurement process; or
    - (ii) the closing of the procurement stage that is the subject of the protest:
      - (A) if the protest relates to a multiple-stage procurement; and
      - (B) notwithstanding Subsections (2)(a)(i)(A) and (B); or
  - (b) the day that is seven days after the day on which the person knows or first has constructive knowledge of the facts giving rise to the protest, if:
    - (i) the protestor did not know and did not have constructive knowledge of the facts giving rise to the protest before:
      - (A) the opening of bids, for a protest relating to a procurement under a bidding process;
      - (B) the deadline for submitting responses to the solicitation, for a protest relating to another standard procurement process; or
      - (C) the closing of the procurement stage that is the subject of the protest, if the protest relates to a multiple-stage procurement; or
    - (ii) the protest relates to a procurement process not described in Subsection (2)(a).
- (3) A deadline under Subsection (2) for filing a protest may not be modified.
- (4)
  - (a) A protestor shall include in a protest:
    - (i) the protestor's mailing address and email address; and
    - (ii) a concise statement of the facts and evidence:
      - (A) leading the protestor to claim that the protestor has been aggrieved in connection with a procurement and providing the grounds for the protestor's protest; and
      - (B) supporting the protestor's claim of standing.
  - (b) A protest may not be considered unless it contains facts and evidence that, if true, would establish:
    - (i) a violation of this chapter or other applicable law or rule;
    - (ii) the procurement unit's failure to follow a provision of a solicitation;
    - (iii) an error made by an evaluation committee or conducting procurement unit;
    - (iv) a bias exercised by an evaluation committee or an individual committee member, excluding a bias that is a preference arising during the evaluation process because of how well a solicitation response meets criteria in the solicitation;

- (v) a failure to correctly apply or calculate a scoring criterion; or
  - (vi) that specifications in a solicitation are unduly restrictive or unduly anticompetitive.
- (5) A protest may not be based on:
- (a) the rejection of a solicitation response due to a protestor's failure to attend or participate in a mandatory conference, meeting, or site visit held before the deadline for submitting a solicitation response;
  - (b) a vague or unsubstantiated allegation; or
  - (c) a person's claim that:
    - (i) a procurement unit that complied with Section 63G-6a-112 did not provide individual notice of a solicitation to the person; or
    - (ii) the person received late notice of a solicitation for which notice was provided in accordance with Section 63G-6a-112.
- (6) A protest may not include a request for:
- (a) an explanation of the rationale or scoring of evaluation committee members;
  - (b) the disclosure of a protected record or protected information in addition to the information provided under the disclosure provisions of this chapter; or
  - (c) other information, documents, or explanations not explicitly provided for in this chapter.
- (7) A person who fails to file a protest within the time prescribed in Subsection (2) may not:
- (a) protest to the protest officer a solicitation or award of a contract; or
  - (b) file an action or appeal challenging a solicitation or award of a contract before an appeals panel, a court, or any other forum.
- (8) Subject to the applicable requirements of Section 63G-10-403, a protest officer or the head of a procurement unit may enter into a settlement agreement to resolve a protest.

Amended by Chapter 348, 2017 General Session

**63G-6a-1603 Protest officer responsibilities and authority -- Proceedings on protest -- Effect of decision.**

- (1) After a protest is filed, the protest officer shall determine whether the protest is timely filed and complies fully with the requirements of Section 63G-6a-1602.
- (2) If the protest officer determines that the protest is not timely filed or that the protest does not fully comply with Section 63G-6a-1602, the protest officer shall dismiss the protest without holding a hearing.
- (3) If the protest officer determines that the protest is timely filed and complies fully with Section 63G-6a-1602, the protest officer shall:
  - (a) dismiss the protest without holding a hearing if the protest officer determines that the protest alleges facts that, if true, do not provide an adequate basis for the protest;
  - (b) uphold the protest without holding a hearing if the protest officer determines that the undisputed facts of the protest indicate that the protest should be upheld; or
  - (c) hold a hearing on the protest if there is a genuine issue of material fact or law that needs to be resolved in order to determine whether the protest should be upheld.
- (4)
  - (a) If a hearing is held on a protest, the protest officer may:
    - (i) subpoena witnesses and compel their attendance at the protest hearing;
    - (ii) subpoena documents for production at the protest hearing;
    - (iii) obtain additional factual information; and
    - (iv) obtain testimony from experts, the person filing the protest, representatives of the procurement unit, or others to assist the protest officer to make a decision on the protest.

- (b) The Rules of Evidence do not apply to a protest hearing.
  - (c) A rulemaking authority shall make rules relating to intervention in a protest, including designating:
    - (i) who may intervene; and
    - (ii) the time and manner of intervention.
  - (d) A protest officer shall:
    - (i) record each hearing held on a protest under this section;
    - (ii) regardless of whether a hearing on a protest is held under this section, preserve all records and other evidence relied upon in reaching the protest officer's written decision until the decision, and any appeal of the decision, becomes final; and
    - (iii) if the protestor appeals the protest officer's decision, submit the protest appeal record to the procurement policy board chair within seven days after receiving:
      - (A) notice that an appeal of the protest officer's decision has been filed under Section 63G-6a-1702; or
      - (B) a request for the protest appeal record from the chair of the procurement policy board.
  - (e) A protest officer's holding a hearing, considering a protest, or issuing a written decision under this section does not affect a person's right to later question or challenge the protest officer's jurisdiction to hold the hearing, consider the protest, or issue the decision.
- (5)
- (a) The deliberations of a protest officer may be held in private.
  - (b) If the protest officer is a public body, as defined in Section 52-4-103, the protest officer shall comply with Section 52-4-205 in closing a meeting for its deliberations.
- (6)
- (a) A protest officer shall promptly issue a written decision regarding any protest, unless the protest is settled by mutual agreement.
  - (b) The decision shall:
    - (i) state the reasons for the action taken;
    - (ii) inform the protestor of the right to judicial or administrative review as provided in this chapter; and
    - (iii) indicate the amount of the security deposit or bond required under Section 63G-6a-1703.
  - (c) A person who issues a decision under Subsection (6)(a) shall mail, email, or otherwise immediately furnish a copy of the decision to the protestor.
- (7) A decision described in this section is effective until stayed or reversed on appeal, except to the extent provided in Section 63G-6a-1903.
- (8)
- (a) A decision described in Subsection (6)(a) that is issued in relation to a procurement unit other than a legislative procurement unit, a judicial procurement unit, a nonadopting local government procurement unit, or a public transit district is final and conclusive unless the protestor files an appeal under Section 63G-6a-1702.
  - (b) A decision described in Subsection (6)(a) that is issued in relation to a legislative procurement unit, a judicial procurement unit, a nonadopting local government procurement unit, or a public transit district is final and conclusive unless the protestor files an appeal under Section 63G-6a-1802.
- (9) If the protest officer does not issue the written decision regarding a protest within 30 calendar days after the day on which the protest was filed with the protest officer, or within a longer period as may be agreed upon by the parties, the protestor may proceed as if an adverse decision had been received.

- (10) A determination under this section by the protest officer regarding an issue of fact may not be overturned on appeal unless the decision is arbitrary and capricious or clearly erroneous.
- (11) An individual is not precluded from acting, and may not be disqualified or required to be recused from acting, as a protest officer because the individual also acted in another capacity during the procurement process, as required or allowed in this chapter.

Amended by Chapter 257, 2020 General Session

## **Part 17**

### **Procurement Appeals Board**

#### **63G-6a-1701 Title.**

This part is known as "Procurement Appeals Board."

Enacted by Chapter 347, 2012 General Session

#### **63G-6a-1701.5 Definitions.**

As used in this part:

- (1) "Appointing officer" means:
  - (a) the chair of the board; or
  - (b) a designee of the chair who is not employed by the procurement unit responsible for the solicitation, contract award, or other action that is the subject of the protestor's protest.
- (2) "Protest appeal record" means the same as that term is defined in Section 63G-6a-1601.5.
- (3) "Protestor" means the same as that term is defined in Section 63G-6a-1601.5.

Enacted by Chapter 348, 2017 General Session

#### **63G-6a-1702 Appeal to Utah State Procurement Policy Board -- Appointment of procurement appeals panel -- Proceedings.**

- (1) This part applies to all procurement units other than:
  - (a) a legislative procurement unit;
  - (b) a judicial procurement unit;
  - (c) a nonadopting local government procurement unit; or
  - (d) a public transit district.
- (2)
  - (a) Subject to Section 63G-6a-1703, a protestor may appeal to the board a protest decision of a procurement unit that is subject to this part by filing a written notice of appeal with the chair of the board within seven days after:
    - (i) the day on which the written decision described in Section 63G-6a-1603 is:
      - (A) personally served on the party or the party's representative; or
      - (B) emailed or mailed to the address or email address provided by the party under Subsection 63G-6a-1602(4); or
    - (ii) the day on which the 30-day period described in Subsection 63G-6a-1603(9) ends, if a written decision is not issued before the end of the 30-day period.
  - (b) A notice of appeal under Subsection (2)(a) shall:

- (i) include the address of record and email address of record of the party filing the notice of appeal; and
  - (ii) be accompanied by a copy of any written protest decision.
- (c) The deadline for appealing a protest decision may not be modified.
- (3) A person may not base an appeal of a protest under this section on:
  - (a) a ground not specified in the person's protest under Section 63G-6a-1602; or
  - (b) new or additional evidence not considered by the protest officer.
- (4)
  - (a) A person may not appeal from a protest described in Section 63G-6a-1602, unless:
    - (i) a decision on the protest has been issued; or
    - (ii) a decision is not issued and the 30-day period described in Subsection 63G-6a-1603(9), or a longer period agreed to by the parties, has passed.
  - (b) A procurement unit may not appeal a protest decision or other determination made by the procurement unit's protest officer.
- (5)
  - (a) Within seven days after the chair of the board receives a written notice of an appeal under this section, the chair shall submit a written request to the protest officer for the protest appeal record.
  - (b) Within seven days after the chair receives the protest appeal record from the protest officer, the appointing officer shall, in consultation with the attorney general's office:
    - (i) review the appeal to determine whether the appeal complies with the requirements of Subsections (2), (3), and (4) and Section 63G-6a-1703; and
    - (ii)
      - (A) dismiss any claim asserted in the appeal, or dismiss the appeal, without holding a hearing if the appointing officer determines that the claim or appeal, respectively, fails to comply with any of the requirements listed in Subsection (5)(b)(i); or
      - (B) appoint a procurement appeals panel to conduct an administrative review of any claim in the appeal that has not been dismissed under Subsection (5)(b)(ii)(A), if the appointing officer determines that one or more claims asserted in the appeal comply with the requirements listed in Subsection (5)(b)(i).
  - (c) A procurement appeals panel appointed under Subsection (5)(a) shall consist of an odd number of at least three individuals, each of whom is:
    - (i) a member of the board; or
    - (ii) a designee of a member appointed under Subsection (5)(c)(i), if the designee is approved by the chair of the board.
  - (d) The appointing officer shall appoint one of the members of the procurement appeals panel to serve as the coordinator of the panel.
  - (e) The appointing officer may:
    - (i) appoint the same procurement appeals panel to hear more than one appeal; or
    - (ii) appoint a separate procurement appeals panel for each appeal.
  - (f) The appointing officer may not appoint a person to a procurement appeals panel if the person is employed by the procurement unit responsible for the solicitation, contract award, or other action that is the subject of the protestor's protest.
  - (g) The appointing officer shall, at the time the procurement appeals panel is appointed, provide appeals panel members with a copy of the notice of appeal filed under Subsection (2) and the protest decision record.
- (6)
  - (a) A procurement appeals panel described in Subsection (5):

- (i) shall conduct an administrative review of the appeal within 30 days after the day on which the procurement appeals panel is appointed, or before a later date that all parties agree upon, unless the appeal is dismissed under Subsection (8)(a); and
- (ii)
  - (A) may, as part of the administrative review and at the sole discretion of the procurement appeals panel, conduct an informal hearing, if the procurement appeals panel considers a hearing to be necessary; and
  - (B) if the procurement appeals panel conducts an informal hearing, shall, at least seven days before the hearing, mail, email, or hand-deliver a written notice of the hearing to the parties to the appeal.
- (b) A procurement appeals panel may, during an informal hearing, ask questions and receive responses regarding the appeal and the protest appeal record to assist the procurement appeals panel to understand the basis of the appeal and information contained in the protest appeal record, but may not otherwise take any additional evidence or consider any additional ground for the appeal.
- (7) A procurement appeals panel shall consider and decide the appeal based solely on:
  - (a) the notice of appeal and the protest appeal record; and
  - (b) responses received during an informal hearing, if an informal hearing is held and to the extent allowed under Subsection (6)(b).
- (8) A procurement appeals panel:
  - (a) may dismiss an appeal if the appeal does not comply with the requirements of this chapter; and
  - (b) shall uphold the protest decision unless the protest decision is arbitrary and capricious or clearly erroneous.
- (9) The procurement appeals panel shall, within seven days after the day on which the procurement appeals panel concludes the administrative review:
  - (a) issue a written decision on the appeal; and
  - (b) mail, email, or hand-deliver the written decision on the appeal to the parties to the appeal and to the protest officer.
- (10)
  - (a) The deliberations of a procurement appeals panel may be held in private.
  - (b) If the procurement appeals panel is a public body, as defined in Section 52-4-103, the procurement appeals panel shall comply with Section 52-4-205 in closing a meeting for its deliberations.
- (11) A procurement appeals panel may continue an administrative review under this section beyond the 30-day period described in Subsection (6)(a)(i) if the procurement appeals panel determines that the continuance is in the interests of justice.
- (12) If a procurement appeals panel determines that the decision of the protest officer is arbitrary and capricious or clearly erroneous, the procurement appeals panel:
  - (a) shall remand the matter to the protest officer, to cure the problem or render a new decision;
  - (b) may recommend action that the protest officer should take; and
  - (c) may not order that:
    - (i) a contract be awarded to a certain person;
    - (ii) a contract or solicitation be cancelled; or
    - (iii) any other action be taken other than the action described in Subsection (12)(a).
- (13) The board shall make rules relating to the conduct of an appeals proceeding, including rules that provide for:
  - (a) expedited proceedings; and

- (b) electronic participation in the proceedings by panel members and participants.
- (14) The Rules of Evidence do not apply to a hearing held by a procurement appeals panel.
- (15) Part 20, Records, applies to the records involved in the process described in this section, including the decision issued by a procurement appeals panel.

Amended by Chapter 348, 2017 General Session

**63G-6a-1703 Requirement to pay a security deposit or post a bond -- Exceptions -- Amount -- Forfeiture of security deposit or bond.**

- (1) A person who files a notice of appeal under Section 63G-6a-1702 shall, before the expiration of the time provided under Subsection 63G-6a-1702(2) for filing a notice of appeal, pay a security deposit or post a bond with the office of the protest officer.
- (2) The amount of a security deposit or bond required under Subsection (1) is:
  - (a) for an appeal relating to an invitation for bids or request for proposals and except as provided in Subsection (2)(b)(ii):
    - (i) \$20,000, if the total contract value is under \$500,000;
    - (ii) \$25,000, if the total contract value is \$500,000 or more but less than \$1,000,000;
    - (iii) \$50,000, if the total contract value is \$1,000,000 or more but less than \$2,000,000;
    - (iv) \$95,000, if the total contract value is \$2,000,000 or more but less than \$4,000,000;
    - (v) \$180,000, if the total contract value is \$4,000,000 or more but less than \$8,000,000;
    - (vi) \$320,000, if the total contract value is \$8,000,000 or more but less than \$16,000,000;
    - (vii) \$600,000, if the total contract value is \$16,000,000 or more but less than \$32,000,000;
    - (viii) \$1,100,000, if the total contract value is \$32,000,000 or more but less than \$64,000,000;
    - (ix) \$1,900,000, if the total contract value is \$64,000,000 or more but less than \$128,000,000;
    - (x) \$3,500,000, if the total contract value is \$128,000,000 or more but less than \$256,000,000;
    - (xi) \$6,400,000, if the total contract value is \$256,000,000 or more but less than \$512,000,000;
    - and
    - (xii) \$10,200,000, if the total contract value is \$512,000,000 or more; or
  - (b) \$20,000, for an appeal:
    - (i) relating to any type of procurement process other than an invitation for bids or request for proposals;
    - (ii) relating to an invitation for bids or request for proposals, if the estimated total contract value cannot be determined; or
    - (iii) of a debarment or suspension.
- (3)
  - (a) For an appeal relating to an invitation for bids, the estimated total contract value shall be based on:
    - (i) the lowest responsive bid amount for the entire term of the contract, excluding any renewal period, if the bid opening has occurred;
    - (ii) the total budget for the procurement item for the entire term of the contract, excluding any renewal period, if bids are based on unit or rate pricing; or
    - (iii) if the contract is being rebid, the historical usage and amount spent on the contract over the life of the contract.
  - (b) For an appeal relating to a request for proposals, the estimated total contract value shall be based on:
    - (i) the lowest cost proposed in a response to a request for proposals, considering the entire term of the contract, excluding any renewal period, if the opening of proposals has occurred;

- (ii) the total budget for the procurement item over the entire term of the contract, excluding any renewal period, if opened cost proposals are based on unit or rate pricing; or
  - (iii) if the contract is being reissued, the historical usage and amount spent on the contract over the life of the contract that is being reissued.
- (4) The protest officer shall:
- (a) retain the security deposit or bond until the protest and any appeal of the protest decision is final;
  - (b) as it relates to a security deposit:
    - (i) deposit the security deposit into an interest-bearing account; and
    - (ii) after any appeal of the protest decision becomes final, return the security deposit and the interest it accrues to the person who paid the security deposit, unless the security deposit is forfeited to the general fund of the procurement unit under Subsection (5); and
  - (c) as it relates to a bond:
    - (i) retain the bond until the protest and any appeal of the protest decision becomes final; and
    - (ii) after the protest and any appeal of the protest decision becomes final, return the bond to the person who posted the bond, unless the bond is forfeited to the general fund of the procurement unit under Subsection (5).
- (5) A security deposit that is paid, or a bond that is posted, under this section shall forfeit to the general fund of the procurement unit if:
- (a) the person who paid the security deposit or posted the bond fails to ultimately prevail on appeal; and
  - (b) the procurement appeals panel finds that the protest or appeal is frivolous or that its primary purpose is to harass or cause a delay.

Amended by Chapter 348, 2017 General Session

**63G-6a-1704 Discontinued appeal with prejudice, except as authorized.**

After notice of an appeal to the board is filed under Section 63G-6a-1702, no party may discontinue the appeal without prejudice, except as authorized by the procurement appeals panel appointed for the appeal.

Amended by Chapter 445, 2013 General Session

**63G-6a-1705 Factual determination of procurement appeals panel final and conclusive.**

A determination of an issue of fact by a procurement appeals panel may not be overturned on appeal, unless the determination is arbitrary and capricious or clearly erroneous.

Amended by Chapter 91, 2012 General Session

Renumbered and Amended by Chapter 347, 2012 General Session

Amended by Chapter 347, 2012 General Session, (Coordination Clause)

## **Part 18**

### **Appeals to Court and Court Proceedings**

**63G-6a-1801 Title.**

This part is known as "Appeals to Court and Court Proceedings."



Enacted by Chapter 347, 2012 General Session

**63G-6a-1802 Appeal to Utah Court of Appeals.**

- (1)
  - (a) As provided in this part:
    - (i) a person may appeal a dismissal of an appeal by the board chair under Subsection 63G-6a-1702(5)(b)(ii)(A);
    - (ii) a person who receives an adverse decision by a procurement appeals panel may appeal that decision;
    - (iii) subject to Subsection (2), a procurement unit, other than a legislative procurement unit, a judicial procurement unit, a nonadopting local government procurement unit, or a public transit district, may appeal an adverse decision by a procurement appeals panel; and
    - (iv) a person who receives an adverse decision in a protest relating to a legislative procurement unit, a judicial procurement unit, a nonadopting local government procurement unit, or a public transit district may appeal that decision.
  - (b) A person seeking to appeal a dismissal or decision under Subsection (1)(a) shall file a notice of appeal with the Utah Court of Appeals within seven days after the dismissal or decision.
- (2) A procurement unit may not appeal the decision of a procurement appeals panel, unless the appeal is:
  - (a) recommended by the protest officer involved; and
  - (b) except for a procurement unit that is not represented by the attorney general's office, approved by the attorney general.
- (3) A person appealing a dismissal, decision, or protest under this section may not base the appeal on a ground not specified in the proceeding from which the appeal is taken.
- (4) The Utah Court of Appeals:
  - (a) shall consider the appeal as an appellate court;
  - (b) may not hear the matter as a trial de novo; and
  - (c) may not overturn a finding, dismissal, or decision unless the finding, dismissal, or decision, is arbitrary and capricious or clearly erroneous.
- (5) The Utah Court of Appeals is encouraged to:
  - (a) give an appeal made under this section priority; and
  - (b) consider the appeal and render a decision in an expeditious manner.

Amended by Chapter 348, 2017 General Session

**Part 19**  
**General Provisions Related to Protest or Appeal**

**63G-6a-1901 Title.**

This part is known as "General Provisions Related to Protest or Appeal."

Enacted by Chapter 347, 2012 General Session

**63G-6a-1902 Limitation on challenges -- Compliance with federal law.**

- (1) A person may not challenge a procurement, a procurement process, the award of a contract relating to a procurement, a debarment, or a suspension, in a court, before an administrative officer or body, or in any other forum other than the forum permitted in this chapter.
- (2) A person who desires to challenge a procurement, a procurement process, the award of a contract relating to a procurement, a debarment, or a suspension, shall bring the challenge, in accordance with the requirements of this chapter.
- (3) In hearing a protest or an appeal under this chapter relating to an expenditure of federal assistance, federal contract funds, or a federal grant, the person who hears the appeal shall ensure compliance with federal law and regulations relating to the expenditure.

Amended by Chapter 196, 2014 General Session

**63G-6a-1903 Effect of timely protest or appeal.**

A procurement unit, other than a legislative procurement unit, a judicial procurement unit, a nonadopting local government procurement unit, or a public transit district, may not proceed further with a solicitation or with the award of a contract:

- (1) during the pendency of a timely:
  - (a) protest under Section 63G-6a-1602;
  - (b) appeal of a protest under Section 63G-6a-1702; or
  - (c) appeal of a procurement appeals panel decision under Section 63G-6a-1802; and
- (2) until:
  - (a) all administrative and judicial remedies are exhausted;
  - (b) for a protest under Section 63G-6a-1602 or an appeal under Section 63G-6a-1702:
    - (i) the chief procurement officer, after consultation with the attorney general's office and the head of the using agency, makes a written determination that award of the contract without delay is in the best interest of the procurement unit or the state;
    - (ii) the procurement official of an independent procurement unit, after consultation with the procurement unit's attorney, makes a written determination that award of the contract without delay is in the best interest of the procurement unit or the state; or
    - (iii) for a procurement unit that is not represented by the attorney general's office, the procurement official, after consulting with the attorney for the procurement unit, makes a written determination that award of the contract without delay is in the best interest of the procurement unit or the state; or
  - (c) for an appeal under Section 63G-6a-1802, or an appeal to a higher court than district court:
    - (i) the chief procurement officer, after consultation with the attorney general's office and the head of the using agency, makes a written determination that award of the contract without delay is in the best interest of the procurement unit or the state;
    - (ii) the procurement official of an independent procurement unit, after consultation with the procurement unit's attorney, makes a written determination that award of the contract without delay is in the best interest of the procurement unit or the state; or
    - (iii) for a procurement unit that is not represented by the attorney general's office, the procurement official, after consulting with the attorney for the procurement unit, makes a written determination that award of the contract without delay is necessary to protect the best interest of the procurement unit or the state.

Amended by Chapter 257, 2020 General Session

**63G-6a-1904 Costs to or against protestor.**

- (1) If a protest is sustained administratively or upon administrative or judicial review and the protesting bidder or offeror should have been awarded the contract under the solicitation but is not, the protestor is entitled to the following relief as a claim against the procurement unit:
  - (a) the reasonable costs incurred in connection with the solicitation, including bid preparation and appeal costs; and
  - (b) any equitable relief determined to be appropriate by the reviewing administrative or judicial body.
- (2) If the final determination of a procurement appeals panel or other appellate body does not sustain the protest, the protestor shall reimburse the conducting or issuing procurement unit for all expenses that the conducting or issuing procurement unit incurred in defending the appeal, including personnel costs, attorney fees, other legal costs, the per diem and expenses paid by the conducting or issuing procurement unit to witnesses or appeals panel members, and any additional expenses incurred by the staff of the conducting or issuing procurement unit who have provided materials and administrative services to the procurement appeals panel for that case.
- (3) The provisions of Title 63G, Chapter 7, Part 4, Notice of Claim Against a Governmental Entity or a Government Employee, and Section 63G-7-601 do not apply to actions brought under this chapter by an aggrieved party for equitable relief or reasonable costs incurred in preparing or appealing an unsuccessful bid or offer.

Amended by Chapter 218, 2015 General Session

**63G-6a-1906 Effect of prior determination by agents of procurement unit.**

In any judicial action under Section 63G-6a-1802, determinations by employees, agents, or other persons appointed by the procurement unit shall be final and conclusive only as provided in Sections 63G-6a-1911, 63G-6a-1603, and 63G-6a-1705.

Amended by Chapter 196, 2014 General Session

**63G-6a-1907 Effect of violation found after award of contract.**

- (1) If after award of a contract it is determined administratively or upon administrative or judicial review that a procurement or award of a contract is in violation of law:
  - (a)
    - (i) if the person awarded the contract did not act fraudulently or in bad faith:
      - (A) the contract may be ratified and affirmed if it is in the best interests of the procurement unit; or
      - (B) the contract may be terminated; and
    - (ii) the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract before the termination, plus a reasonable profit; or
  - (b) if the person awarded the contract acted fraudulently or in bad faith:
    - (i) the contract may be declared null and void; or
    - (ii) the contract may be ratified and affirmed if it is in the best interests of the procurement unit, without prejudice to the procurement unit's rights to any appropriate damages.
- (2) Under no circumstances is a person entitled to consequential damages in relation to a solicitation or award of a contract under this chapter, including consequential damages for lost profits, loss of business opportunities, or damage to reputation.

Amended by Chapter 196, 2014 General Session

**63G-6a-1909 Affect of violation found prior to award of contract.**

If, before award of a contract, it is determined administratively or upon administrative or judicial review that a procurement or proposed award of a contract is in violation of law, the procurement or proposed award shall be cancelled or revised to comply with the law.

Renumbered and Amended by Chapter 347, 2012 General Session  
Amended by Chapter 347, 2012 General Session, (Coordination Clause)

**63G-6a-1910 Interest rates.**

- (1) In controversies between a procurement unit and a contractor under this chapter, interest on amounts ultimately determined to be due to a contractor or the procurement unit are payable at the rate applicable to judgments from the date the claim arose through the date of decision or judgment, whichever is later.
- (2) Unless otherwise specified in a lawful contract between a procurement unit and the person making a bond claim against the procurement unit, the interest rate applicable to the bond claim is the rate described in Subsection 15-1-1(2).
- (3) This section does not apply to public assistance benefits programs.

Amended by Chapter 196, 2014 General Session

**63G-6a-1911 Determinations final except when arbitrary and capricious or clearly erroneous.**

The determinations required under the following provisions are final and conclusive unless they are arbitrary and capricious or clearly erroneous:

- (1) Section 63G-6a-114;
- (2) Section 63G-6a-115;
- (3) Section 63G-6a-702;
- (4) Section 63G-6a-707;
- (5) Section 63G-6a-803;
- (6) Section 63G-6a-804;
- (7) Section 63G-6a-903;
- (8) Subsection 63G-6a-1204(1) or (2);
- (9) Subsection 63G-6a-1204(5);
- (10) Section 63G-6a-1205; or
- (11) Subsection 63G-6a-1206(5).

Amended by Chapter 257, 2020 General Session

**Part 20  
Records**

**63G-6a-2001 Title.**

This part is known as "Records."

Enacted by Chapter 347, 2012 General Session

**63G-6a-2002 Records -- Retention.**

- (1) All procurement records shall be retained and disposed of in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.
- (2) Written determinations required by this chapter shall be retained in the appropriate official contract file of:
  - (a) the division;
  - (b) except as provided in Subsection (2)(c), the independent procurement unit; or
  - (c) for a legislative procurement unit or a judicial procurement unit, the person designated by rule made by the rulemaking authority.
- (3) A procurement unit shall keep, and make available to the public, upon request, written records of procurements for which an expenditure of \$100 or more is made, for the longer of:
  - (a) six years;
  - (b) the time otherwise required by law; or
  - (c) the time period provided by rule made by the rulemaking authority.
- (4) The written record described in Subsection (3) shall include:
  - (a) the name of the provider from whom the procurement was made;
  - (b) a description of the procurement item;
  - (c) the date of the procurement; and
  - (d) the expenditure made for the procurement.

Amended by Chapter 257, 2020 General Session

**63G-6a-2003 Record of contracts made.**

A procurement official shall maintain a record of all contracts made under Section 63G-6a-506, 63G-6a-802, or 63G-6a-803, in accordance with Title 63G, Chapter 2, Government Records Access and Management Act. The record shall contain each contractor's name, the amount and type of each contract, and a listing of the procurement items to which the contract relates.

Amended by Chapter 257, 2020 General Session

**63G-6a-2004 Chief procurement officer's collection of information on procurement items.**

- (1) To the extent possible, the chief procurement officer may collect information concerning the type, cost, quality, and quantity of commonly used procurement items procured or used by procurement units.
- (2) The chief procurement officer may make the information described in Subsection (1) available to any procurement unit upon request.

Amended by Chapter 445, 2013 General Session

**Part 21**  
**Interaction Between Procurement Units**

**63G-6a-2101 Title.**

This part is known as "Interaction Between Procurement Units."

Amended by Chapter 445, 2013 General Session

**63G-6a-2102 Agreements between public entities.**

A public entity may enter into an agreement with one or more other public entities to:

- (1) sponsor, conduct, or administer a cooperative agreement for:
  - (a) the procurement of a procurement item, in accordance with the requirements of Section 63G-6a-2105; or
  - (b) the disposal of a procurement item;
- (2) cooperatively use a procurement item;
- (3) commonly use or share warehousing facilities, capital equipment, and other facilities;
- (4) provide personnel, if the receiving public entity pays the public entity providing the personnel the direct and indirect cost of providing the personnel, in accordance with the agreement; or
- (5) purchase from, contribute to, or otherwise participate in a pooled governmental funds program for the purpose of acquiring or sharing information, data, reports, or other services in accordance with the terms of the agreement.

Amended by Chapter 257, 2020 General Session

**63G-6a-2103 Purchases between public entities.**

- (1)
  - (a)
    - (i) A public entity may purchase a procurement item from another public entity.
    - (ii) Subsection (1)(a)(i) may not be construed to require a public entity to sell a procurement item to another public entity.
  - (b) As provided in Subsection 63G-6a-107.6(1)(a), a purchase under Subsection (1)(a) is not subject to the procurement requirements of this chapter.
  - (c)
    - (i) Subsection (1)(a) does not authorize a public entity to obtain a procurement item under a contract of another public entity.
    - (ii) Subsection (1)(c)(i) does not affect the authority of a procurement unit relating to a cooperative procurement under Subsection 63G-6a-2105(4)(b).
- (2) A public entity may publish a schedule of costs or fees for procurement items available for purchase by another public entity.

Amended by Chapter 257, 2020 General Session

**63G-6a-2104 Compliance by one procurement unit pursuant to agreement considered compliance by others to agreement.**

- (1) When a procurement unit that administers a cooperative procurement complies with the requirements of this chapter, any procurement unit participating in the purchase is considered to have complied with this chapter.
- (2) A procurement unit may not enter into a cooperative procurement agreement for the purpose of circumventing this chapter.

Amended by Chapter 445, 2013 General Session

**63G-6a-2105 Cooperative procurements -- Contracts with federal government -- Regional solicitations.**

- (1) The chief procurement officer may, in accordance with the requirements of this chapter, enter into a cooperative procurement, and a contract that is awarded as a result of a cooperative procurement, with:
  - (a) another state;
  - (b) a cooperative purchasing organization; or
  - (c) a public entity inside or outside the state.
- (2) A public entity, nonprofit organization, or, as permitted under federal law, an agency of the federal government, may obtain a procurement item from a state cooperative contract or a contract awarded by the chief procurement officer under Subsection (1), without signing a participating addendum if the solicitation issued by the chief procurement officer to obtain the contract includes a statement indicating that the resulting contract will be issued for the benefit of public entities and, as applicable, nonprofit organizations and agencies of the federal government.
- (3) Except as provided in Section 63G-6a-506, or as otherwise provided in this chapter, an executive branch procurement unit may not obtain a procurement item from a source other than a state cooperative contract or a contract awarded by the chief procurement officer under Subsection (1), if the procurement item is available under a state cooperative contract or a contract awarded by the chief procurement officer under Subsection (1).
- (4) A Utah procurement unit may:
  - (a) contract with the federal government without going through a standard procurement process or an exception to a standard procurement process, described in Part 8, Exceptions to Procurement Requirements, if the procurement item obtained under the contract is provided:
    - (i) directly by the federal government and not by a person contracting with the federal government; or
    - (ii) by a person under contract with the federal government that obtained the contract in a manner that substantially complies with the provisions of this chapter;
  - (b) participate in, sponsor, conduct, or administer a cooperative procurement with another Utah procurement unit or another public entity in Utah, if:
    - (i) each party unit involved in the cooperative procurement enters into an agreement describing the rights and duties of each party;
    - (ii) the procurement is conducted, and the contract awarded, in accordance with the requirements of this chapter;
    - (iii) the solicitation:
      - (A) clearly indicates that the procurement is a cooperative procurement; and
      - (B) identifies each party that may purchase under the resulting contract; and
    - (iv) each party involved in the cooperative procurement signs a participating addendum describing its rights and obligations in relation to the resulting contract; or
  - (c) purchase under, or otherwise participate in, an agreement or contract of a cooperative purchasing organization, if:
    - (i) each party involved in the cooperative procurement enters into an agreement describing the rights and duties of each party;
    - (ii) the procurement was conducted in accordance with the requirements of this chapter;
    - (iii) the solicitation:
      - (A) clearly indicates that the procurement is a cooperative procurement; and
      - (B) identifies each party that may purchase under the resulting contract; and
    - (iv) each party involved in the cooperative procurement signs a participating addendum describing its rights and obligations in relation to the resulting contract.

- (5) A procurement unit may not obtain a procurement item under a contract that results from a cooperative procurement described in Subsection (4), unless the procurement unit:
  - (a) is identified under Subsection (4)(b)(iii)(B) or (4)(c)(iii)(B); and
  - (b) signs a participating addendum to the contract as required by this section.
- (6) A procurement unit, other than a legislative procurement unit or a judicial procurement unit, may not obtain a procurement item under a contract held by the United States General Services Administration, unless, based upon documentation provided by the procurement unit, the Director of the State Division of Purchasing and General Services determines in writing that the United States General Services Administration procured the contract in a manner that substantially complies with the provisions of this chapter.
- (7)
  - (a) As used in this Subsection (7), "regional solicitation" means a solicitation issued by the chief procurement officer for the procurement of a procurement item within a specified geographical region of the state.
  - (b) In addition to any other duty or authority under this section, the chief procurement officer shall:
    - (i) after considering board recommendations, develop a plan for issuing regional solicitations; and
    - (ii) after developing a plan, issue regional solicitations for procurement items in accordance with the plan and this chapter.
  - (c) A plan under Subsection (7)(b) shall:
    - (i) define the proposed regional boundaries for regional solicitations;
    - (ii) specify the types of procurement items for which a regional solicitation may be issued; and
    - (iii) identify the regional solicitations that the chief procurement officer plans to issue.
  - (d) A regional solicitation shall require that a person responding to the solicitation offer similar warranties and submit to similar obligations as are standard under other state cooperative contracts.
  - (e) Except as authorized by the chief procurement officer, a procurement item that is available under a state cooperative contract may not be provided under a contract pursuant to a regional solicitation until after the expiration of the state cooperative contract.

Amended by Chapter 348, 2016 General Session  
Amended by Chapter 355, 2016 General Session

## **Part 24**

### **Unlawful Conduct and Penalties**

#### **63G-6a-2401 Title.**

This part is known as "Unlawful Conduct and Penalties."

Enacted by Chapter 196, 2014 General Session

#### **63G-6a-2402 Definitions.**

As used in this part:

- (1) "Contract administration professional":
  - (a) means an individual who:



- (i) is:
    - (A) directly under contract with a procurement unit; or
    - (B) employed by a person under contract with a procurement unit; and
  - (ii) has responsibility in:
    - (A) developing a solicitation or grant, or conducting the procurement process; or
    - (B) supervising or overseeing the administration or management of a contract or grant; and
  - (b) does not include an employee of the procurement unit.
- (2) "Contribution":
- (a) means a voluntary gift or donation of money, service, or anything else of value, to a public entity for the public entity's use and not for the primary use of an individual employed by the public entity; and
  - (b) includes:
    - (i) a philanthropic donation;
    - (ii) admission to a seminar, vendor fair, charitable event, fundraising event, or similar event that relates to the function of the public entity;
    - (iii) the purchase of a booth or other display space at an event sponsored by the public entity or a group of which the public entity is a member; and
    - (iv) the sponsorship of an event that is organized by the public entity.
- (3) "Family member" means a father, mother, husband, wife, son, daughter, sister, brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law.
- (4) "Governing body" means an administrative, advisory, executive, or legislative body of a public entity.
- (5) "Gratuity":
- (a) means anything of value given:
    - (i) without anything provided in exchange; or
    - (ii) in excess of the market value of that which is provided in exchange;
  - (b) includes:
    - (i) a gift or favor;
    - (ii) money;
    - (iii) a loan at an interest rate below the market rate or with terms that are more advantageous to the borrower than terms offered generally on the market;
    - (iv) anything of value provided with an award, other than a certificate, plaque, or trophy;
    - (v) employment;
    - (vi) admission to an event;
    - (vii) a meal, lodging, or travel;
    - (viii) entertainment for which a charge is normally made; and
    - (ix) a raffle, drawing for a prize, or lottery; and
  - (c) does not include:
    - (i) an item, including a meal in association with a training seminar, that is:
      - (A) included in a contract or grant; or
      - (B) provided in the proper performance of a requirement of a contract or grant;
    - (ii) an item requested to evaluate properly the award of a contract or grant;
    - (iii) a rebate, coupon, discount, airline travel award, dividend, or other offering included in the price of a procurement item;
    - (iv) a meal provided by an organization or association, including a professional or educational association, an association of vendors, or an association composed of public agencies or public entities, that does not, as an organization or association, respond to solicitations;

- (v) a product sample submitted to a public entity to assist the public entity to evaluate a solicitation;
  - (vi) a political campaign contribution;
  - (vii) an item generally available to the public; or
  - (viii) anything of value that one public agency provides to another public agency.
- (6) "Hospitality gift":
- (a) means a token gift of minimal value, including a pen, pencil, stationery, toy, pin, trinket, snack, beverage, or appetizer, given for promotional or hospitality purposes; and
  - (b) does not include money, a meal, admission to an event for which a charge is normally made, entertainment for which a charge is normally made, travel, or lodging.
- (7) "Kickback":
- (a) means a negotiated bribe provided in connection with a procurement or the administration of a contract or grant; and
  - (b) does not include anything listed in Subsection (5)(c).
- (8) "Procurement" has the same meaning as defined in Section 63G-6a-103, but also includes the awarding of a grant.
- (9) "Procurement professional":
- (a) means an individual who is an employee, and not an independent contractor, of a procurement unit, and who, by title or primary responsibility:
    - (i) has procurement decision making authority; and
    - (ii) is assigned to be engaged in, or is engaged in:
      - (A) the procurement process; or
      - (B) the process of administering a contract or grant, including enforcing contract or grant compliance, approving contract or grant payments, or approving contract or grant change orders or amendments; and
  - (b) excludes:
    - (i) any individual who, by title or primary responsibility, does not have procurement decision making authority;
    - (ii) an individual holding an elective office;
    - (iii) a member of a governing body;
    - (iv) a chief executive of a public entity or a chief assistant or deputy of the chief executive, if the chief executive, chief assistant, or deputy, respectively, has a variety of duties and responsibilities beyond the management of the procurement process or the contract or grant administration process;
    - (v) the superintendent, business administrator, principal, or vice principal of a school district or charter school, or the chief assistant or deputy of the superintendent, business administrator, principal, or vice principal;
    - (vi) a university or college president, vice president, business administrator, or dean;
    - (vii) a chief executive of a special district, as defined in Section 17B-1-102, a special service district, as defined in Section 17D-1-102, or a political subdivision created under Title 11, Chapter 13, Interlocal Cooperation Act;
    - (viii) an employee of a public entity with:
      - (A) an annual budget of \$1,000,000 or less; or
      - (B) no more than four full-time employees; and
    - (ix) an executive director or director of an executive branch procurement unit who:
      - (A) by title or primary responsibility, does not have procurement decision making authority; and
      - (B) is not assigned to engage in, and is not engaged in, the procurement process.

- (10) "Public agency" has the same meaning as defined in Section 11-13-103, but also includes all officials, employees, and official representatives of a public agency, as defined in Section 11-13-103.

Amended by Chapter 16, 2023 General Session

**63G-6a-2403 Applicability.**

- (1) This part applies to each public entity.
- (2) A procurement professional is subject to this part at all times during:
- (a) the procurement process; and
  - (b) the administration of a contract or grant.
- (3) A contract administration professional is subject to this part at all times during the period the contract administration professional is:
- (a) under contract with a procurement unit; and
  - (b) involved in:
    - (i) the procurement process; or
    - (ii) the administration of a contract or grant.
- (4) This part does not apply to:
- (a) an individual described in Subsection 63G-6a-2402(9)(b);
  - (b) any individual other than a procurement professional or contract administration professional; or
  - (c) a taxed interlocal entity, as defined in Section 11-13-602, or a director, officer, or employee of a taxed interlocal entity.
- (5) The other subsections of this section do not affect the applicability or effect of any other ethics, bribery, or other law.

Amended by Chapter 348, 2017 General Session

**63G-6a-2404 Unlawful conduct -- Exceptions -- Classification of offenses.**

- (1)
- (a) It is unlawful for a person who has or is seeking a contract with or a grant from a public entity knowingly to give, or offer, promise, or pledge to give, a gratuity or kickback to:
    - (i) the public entity;
    - (ii) a procurement professional or contract administration professional; or
    - (iii) an individual who the person knows is a family member of an individual described in Subsection (1)(a)(ii).
  - (b) It is not unlawful for a public agency to give, offer, promise, or pledge to give a contribution to another public agency.
  - (c) A person is not guilty of unlawful conduct under Subsection (1)(a) for:
    - (i) giving or offering, promising, or pledging to give a contribution to a public entity, unless done with the intent to induce the public entity, in exchange, to:
      - (A) award a contract or grant;
      - (B) make a procurement decision; or
      - (C) take an action relating to the administration of a contract or grant; or
    - (ii) giving or offering, promising, or pledging to give something of value to an organization to which a procurement professional or contract administration professional belongs, unless done with the intent to induce a public entity, in exchange, to:
      - (A) award a contract or grant;

- (B) make a procurement decision; or
  - (C) take an action relating to the administration of a contract or grant.
- (2)
- (a) It is unlawful for a procurement professional or contract administration professional, or a family member of either, knowingly to receive or accept, offer or agree to receive or accept, or ask for a promise or pledge of, a gratuity or kickback from a person who has or is seeking a contract with or a grant from a public entity.
  - (b) An individual is not guilty of unlawful conduct under Subsection (2)(a) for receiving or accepting, offering or agreeing to receive or accept, or asking for a promise or pledge of a contribution on behalf of a public entity, unless done with the intent that the public entity, in exchange:
    - (i) award a contract or grant;
    - (ii) make a procurement decision; or
    - (iii) take an action relating to the administration of a contract or grant.
- (3) Notwithstanding Subsections (1) and (2), it is not unlawful for a person to give or receive, offer to give or receive, or promise or pledge to give or ask for a promise or pledge of, a hospitality gift, if:
- (a) the total value of the hospitality gift is less than \$10; and
  - (b) the aggregate value of all hospitality gifts from the person to the recipient in a calendar year is less than \$50.
- (4) A person who engages in the conduct made unlawful under Subsection (1) or (2) is guilty of:
- (a) a second degree felony, if the total value of the gratuity or kickback is \$1,000 or more;
  - (b) a third degree felony, if the total value of the gratuity or kickback is \$250 or more but less than \$1,000;
  - (c) a class A misdemeanor, if the total value of the gratuity or kickback is \$100 or more but less than \$250; and
  - (d) a class B misdemeanor, if the total value of the gratuity or kickback is less than \$100.
- (5) The criminal sanctions described in Subsection (4) do not preclude the imposition of other penalties for conduct made unlawful under this part, in accordance with other applicable law, including:
- (a) dismissal from employment or other disciplinary action;
  - (b) for an elected officer listed in Section 77-6-1, removal from office as provided in Title 77, Chapter 6, Removal by Judicial Proceedings;
  - (c) requiring the public officer or employee to return the value of the unlawful gratuity or kickback; and
  - (d) any other civil penalty provided by law.

Enacted by Chapter 196, 2014 General Session

**63G-6a-2404.3 Dividing a procurement to avoid using a standard procurement process.**

- (1) It is unlawful for a person knowingly to divide a single procurement into multiple smaller procurements if dividing the single procurement:
- (a) is done with the intent to avoid the use of a standard procurement process that would have otherwise been required if the procurement had not been divided;
  - (b) constitutes unlawful conduct under Subsection 63G-6a-506(8); or
  - (c) is otherwise prohibited by this chapter.
- (2) A violation of Subsection (1) is:

- (a) a second degree felony, if the value of the procurement before being divided is \$1,000,000 or more;
- (b) a third degree felony, if the value of the procurement before being divided is \$250,000 or more but less than \$1,000,000;
- (c) a class A misdemeanor, if the value of the procurement before being divided is \$100,000 or more but less than \$250,000; or
- (d) a class B misdemeanor, if the value of the procurement before being divided is less than \$100,000.

Enacted by Chapter 348, 2017 General Session

**63G-6a-2404.7 Improper action against a public officer or employee involved in the procurement process.**

- (1)
  - (a) It is unlawful for a person knowingly to threaten to make a false allegation against a public officer or employee, or knowingly to threaten to take a menacing or intimidating action against a public officer or employee, with the intent to:
    - (i) prevent the officer or employee from performing a duty or responsibility that the officer or employee has under this chapter;
    - (ii) influence the officer or employee to award a contract under this chapter to the person or take other action under this chapter in favor of the person; or
    - (iii) retaliate against the officer or employee for:
      - (A) not awarding a contract under this chapter to the person;
      - (B) issuing a decision or taking an action under this chapter that is adverse to the person; or
      - (C) performing a duty or responsibility the officer or employee has under this chapter.
  - (b) A violation of Subsection (1)(a) is a class A misdemeanor.
- (2)
  - (a) It is unlawful for a person knowingly to make a false allegation against a public officer or employee, or knowingly to take a menacing or intimidating action against a public officer or employee, with the intent to:
    - (i) prevent the officer or employee from performing a duty or responsibility that the officer or employee has under this chapter;
    - (ii) influence the officer or employee to award a contract under this chapter to the person or take other action under this chapter in favor of the person; or
    - (iii) retaliate against the officer or employee for:
      - (A) not awarding a contract under this chapter to the person;
      - (B) issuing a decision or taking an action under this chapter that is adverse to the person; or
      - (C) performing a duty or responsibility the officer or employee has under this chapter.
  - (b) A violation of Subsection (2)(a) is a third degree felony.

Enacted by Chapter 348, 2017 General Session

**63G-6a-2405 Discretion to declare contract or grant void -- Limitations.**

- (1) Subject to Subsection (2), the governing body or chief executive officer of a public entity that awards a contract or grant to a person who engages in conduct made unlawful under this part may, in the sole discretion of the governing body or chief executive officer, declare the contract or grant to be void and unenforceable, unless:

- (a) the contract or grant relates to the issuance of a bond or other obligation and the bond has been issued or obligation incurred; or
  - (b) a third party has substantially changed its position in reliance upon the contract or grant.
- (2) Declaring a contract or grant void under Subsection (1) does not affect the obligation of a procurement unit to pay for a contractor's proper performance completed under the contract or grant or the value the contractor provides to the public entity under the contract or grant before the contract or grant is declared void.
- (3) Subsection (1) applies only to a procurement with respect to which:
- (a) public notice is provided on or after July 1, 2014, if public notice of the procurement is required; or
  - (b) the initial contact between the public entity and the potential contractor, for purposes of the procurement, occurs on or after July 1, 2014, if public notice of the procurement is not required.

Enacted by Chapter 196, 2014 General Session

**63G-6a-2406 Authority of conducting procurement unit with respect to evaluation committee.**

Nothing in this part restricts a conducting procurement unit from:

- (1) requiring an evaluation committee member to disclose a conflict of interest; or
- (2) removing an evaluation committee member for having a conflict of interest.

Enacted by Chapter 196, 2014 General Session

**63G-6a-2407 Duty to report unlawful conduct.**

(1) As used in this section, "unlawful conduct" means:

- (a) conduct made unlawful under this part; or
- (b) conduct, including bid rigging, improperly steering a contract to a favored vendor, exercising undue influence on an individual involved in the procurement process, or participating in collusion or other anticompetitive practices, made unlawful under other applicable law.

- (2)
- (a) A procurement professional with actual knowledge that a person has engaged in unlawful conduct shall report the person's unlawful conduct to:
    - (i) the state auditor; or
    - (ii) the attorney general or other appropriate prosecuting attorney.
  - (b) An individual not subject to the requirement of Subsection (2)(a) who has actual knowledge that a person has engaged in unlawful conduct may report the person's unlawful conduct to:
    - (i) the state auditor; or
    - (ii) the attorney general or other appropriate prosecuting attorney.
- (3) A procurement professional who fails to comply with the requirement of Subsection (2)(a) is subject to any applicable disciplinary action.

Amended by Chapter 348, 2017 General Session