

1 **PROCUREMENT CODE REQUIREMENT OF**
2 **HEALTH CARE BENEFITS FOR**
3 **CONTRACTORS**

4 1998 GENERAL SESSION

5 STATE OF UTAH

6 **Sponsor: Eddie P. Mayne**

7 AN ACT RELATING TO STATE AFFAIRS IN GENERAL; REQUIRING A BUSINESS TO
8 PROVIDE HEALTH INSURANCE TO ITS EMPLOYEES AS A CONDITION FOR
9 CONTRACTING WITH THE STATE.

10 This act affects sections of Utah Code Annotated 1953 as follows:

11 AMENDS:

12 **63-56-40**, as enacted by Chapter 75, Laws of Utah 1980

13 **63-56-48**, as enacted by Chapter 75, Laws of Utah 1980

14 ENACTS:

15 **63-56-20.1**, Utah Code Annotated 1953

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

17 Section 1. Section **63-56-20.1** is enacted to read:

18 **63-56-20.1. Health insurance requirement.**

19 (1) A business shall provide health insurance coverage to its employees, as defined in
20 Section 34A-2-104, to be eligible to contract with the state or a local public procurement unit
21 under this chapter.

22 (2) (a) Within ten days of a contract being awarded under this chapter, a business shall
23 submit documentation of current health insurance coverage for its employees to the state or local
24 public procurement unit that awarded the contract.

25 (b) The state or local public procurement unit shall terminate a contract it has awarded and
26 seek appropriate redress if the contracting business:

27 (i) fails to submit documentation of current health insurance coverage as required by

1 Subsection (2); or

2 (ii) submits documentation of current health insurance coverage when none exists.

3 (3) (a) If a business enters into a contract with the state or a local public procurement unit
4 that is in effect or is expected to be in effect for 60 or more days, the business shall inform the state
5 or local public procurement unit if the business has failed to provide health insurance coverage to
6 its employees for 30 or more days during the term of the contract.

7 (b) A state or local public procurement unit that receives a notice of insurance cessation
8 pursuant to Subsection (3)(a) shall terminate the contract and seek appropriate redress unless:

9 (i) termination would materially harm the interests of the state or local public procurement
10 unit;

11 (ii) a comparable contracting business is not readily available; and

12 (iii) the business is using all due diligence to obtain health insurance coverage for its
13 employees.

14 (4) A business may not terminate a contract it has with the state or a local public
15 procurement unit because the business does not provide health insurance coverage to its
16 employees.

17 Section 2. Section **63-56-40** is amended to read:

18 **63-56-40. Required contract clauses -- Computation of price adjustments -- Use of**
19 **rules and regulations.**

20 (1) Rules and regulations shall require for state construction contracts and may permit or
21 require for state contracts for supplies and services the inclusion of clauses providing for
22 adjustments in prices, time of performance, or other appropriate contract provisions, and covering
23 the following subjects:

24 (a) the unilateral right of the state to order in writing changes in the work within the scope
25 of the contract and changes in the time of performance of the contract that do not alter the scope
26 of the contract work;

27 (b) variations occurring between estimated quantities of work in a contract and actual
28 quantities;

29 (c) suspension of work ordered by the state; and

30 (d) site conditions differing from those indicated in the construction contract, or ordinarily
31 encountered, except that differing site conditions clauses required by the rules and regulations need

1 not be included in a construction contract when the contract is negotiated, when the contractor
2 provides the site or design, or when the parties have otherwise agreed with respect to the risk of
3 differing site conditions.

4 (2) Adjustments in price pursuant to clauses promulgated under Subsection (1) shall be
5 computed in one or more of the following ways:

6 (a) by agreement on a fixed price adjustment before commencement of the pertinent
7 performance or as soon thereafter as practicable;

8 (b) by unit prices specified in the contract or subsequently agreed upon;

9 (c) by the costs attributable to the events or situations under the clauses with adjustment
10 of profit or fee, all as specified in the contract or subsequently agreed upon;

11 (d) in any other manner as the contracting parties may mutually agree; or

12 (e) in the absence of agreement by the parties, by a unilateral determination by the state
13 of the costs attributable to the events or situations under the clauses with adjustment of profit or
14 fee, all as computed by the state in accordance with applicable sections of the rules and regulations
15 issued under Subsection 63-56-28(1) and subject to the provisions of Part H of this chapter.

16 (3) A contractor shall be required to submit cost or pricing data if any adjustment in
17 contract price is subject to the provisions of Section 63-56-28.

18 (4) Rules and regulations shall require for state construction contracts and may permit or
19 require for state contracts for supplies and services the inclusion of clauses providing for
20 appropriate remedies and covering at least the following subjects:

21 (a) liquidated damages as appropriate;

22 (b) specified excuses for delay or nonperformance;

23 (c) termination of the contract for default; and

24 (d) termination of the contract in whole or in part for the convenience of the state.

25 (5) A contract for construction, supplies, or service shall include the health insurance
26 requirement of Section 63-56-20.1.

27 [~~5~~] (6) The contract clauses promulgated under this section shall be set forth in rules and
28 regulations. However, the chief procurement officer or the head of a purchasing agency may
29 modify the clauses for inclusion in any particular contract. Any variations shall be supported by
30 a written determination that describes the circumstances justifying the variations, and notice of any
31 material variation shall be included in the invitation for bids or request for proposals.

1 Section 3. Section **63-56-48** is amended to read:

2 **63-56-48. Debarment from consideration for award of contracts -- Causes for**
3 **debarment.**

4 (1) After reasonable notice to the person involved and reasonable opportunity for that
5 person to be heard, the chief procurement officer or the head of a purchasing agency, after
6 consultation with the using agency and the attorney general, shall have authority to debar a person
7 for cause from consideration for award of contracts. The debarment shall not be for a period
8 exceeding three years. The same officer, after consultation with the using agency and the attorney
9 general, shall have authority to suspend a person from consideration for award of contracts if there
10 is probable cause to believe that the person has engaged in any activity which might lead to
11 debarment. The suspension shall not be for a period exceeding three months unless an indictment
12 has been issued for an offense which would be a cause for debarment under Subsection (2) of this
13 section, in which case the suspension shall, at the request of the attorney general, remain in effect
14 until after the trial of the suspended person.

15 (2) The causes for debarment include the following:

16 (a) conviction of a criminal offense as an incident to obtaining or attempting to obtain a
17 public or private contract or subcontract or in the performance of such contract or subcontract;

18 (b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery,
19 falsification or destruction of records, receiving stolen property, or any other offense indicating
20 a lack of business integrity or business honesty which currently, seriously, and directly affects
21 responsibility as a state contractor;

22 (c) conviction under state or federal antitrust statutes;

23 (d) failure without good cause to perform in accordance with the terms of the contract; [or]

24 (e) violation of the health insurance requirement of Section 63-56-20.1; or

25 [(e)] (f) any other cause the chief procurement officer, or the head of a purchasing agency
26 determines to be so serious and compelling as to affect responsibility as a state contractor,
27 including debarment by another governmental entity for any cause listed in rules and regulations.

Legislative Review Note
as of 1-29-98 11:46 AM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel