

**PROCUREMENT CODE RENUMBERING**

2005 GENERAL SESSION

STATE OF UTAH

**Sponsor: Ron Bigelow**

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**LONG TITLE**

**General Description:**

This bill renumbers the Utah Procurement Code.

**Highlighted Provisions:**

This bill:

- ▶ renumbers the Utah Procurement Code to comply with current numbering practices;

and

- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**7-1-323**, as enacted by Chapter 49, Laws of Utah 1995

**10-3-1304**, as last amended by Chapter 92, Laws of Utah 1998

**10-3-1305**, as last amended by Chapter 92, Laws of Utah 1998

**10-7-87**, as enacted by Chapter 32, Laws of Utah 1992

**11-37-101**, as last amended by Chapter 90, Laws of Utah 2004

**11-39-107**, as enacted by Chapter 259, Laws of Utah 2003

**14-1-18**, as enacted by Chapter 218, Laws of Utah 1987

**17-15-24**, as enacted by Chapter 32, Laws of Utah 1992

**17-16a-4**, as last amended by Chapter 92, Laws of Utah 1998

**17A-1-801**, as enacted by Chapter 123, Laws of Utah 1997

**17A-2-328**, as last amended by Chapter 365, Laws of Utah 1999  
**26-8a-405.2**, as last amended by Chapter 277, Laws of Utah 2004  
**26A-1-108.7**, as enacted by Chapter 32, Laws of Utah 1992  
**53A-20-101**, as last amended by Chapters 86 and 123, Laws of Utah 2000  
**63A-5-208**, as last amended by Chapter 347, Laws of Utah 2004  
**63B-2-102**, as enacted by Chapter 304, Laws of Utah 1993  
**63B-3-102**, as last amended by Chapter 171, Laws of Utah 2003  
**63B-4-102**, as last amended by Chapter 171, Laws of Utah 2003  
**63B-5-102**, as last amended by Chapter 391, Laws of Utah 1997  
**63B-6-102**, as last amended by Chapter 199, Laws of Utah 2002  
**63B-6-402**, as enacted by Chapter 391, Laws of Utah 1997  
**63B-7-102**, as last amended by Chapter 327, Laws of Utah 2000  
**63B-7-402**, as enacted by Chapter 67, Laws of Utah 1998  
**63B-8-102**, as enacted by Chapter 309, Laws of Utah 1999  
**63B-8-402**, as last amended by Chapter 327, Laws of Utah 2000  
**63B-9-103**, as last amended by Chapter 233, Laws of Utah 2003  
**63B-11-202**, as enacted by Chapter 252, Laws of Utah 2002  
**67-16-4**, as last amended by Chapter 276, Laws of Utah 2000  
**67-16-5**, as last amended by Chapters 13 and 92, Laws of Utah 1998  
**67-16-5.3**, as enacted by Chapter 108, Laws of Utah 2000  
**67-16-6**, as last amended by Chapter 92, Laws of Utah 1998  
**72-6-107**, as last amended by Chapter 28, Laws of Utah 2001  
**73-10-27**, as last amended by Chapter 365, Laws of Utah 1999

**RENUMBERS AND AMENDS:**

**63-56-101**, (Renumbered from 63-56-1, as enacted by Chapter 75, Laws of Utah 1980)  
**63-56-102**, (Renumbered from 63-56-2, as last amended by Chapter 80, Laws of Utah 2002)  
**63-56-103**, (Renumbered from 63-56-3, as last amended by Chapter 365, Laws of Utah

1999)

**63-56-104**, (Renumbered from 63-56-4, as last amended by Chapter 252, Laws of Utah

1997)

**63-56-105**, (Renumbered from 63-56-5, as last amended by Chapters 159 and 178, Laws of Utah 2002)

**63-56-201**, (Renumbered from 63-56-6, as last amended by Chapter 36, Laws of Utah 2003)

**63-56-202**, (Renumbered from 63-56-7, as last amended by Chapter 232, Laws of Utah 1993)

**63-56-203**, (Renumbered from 63-56-8, as last amended by Chapter 252, Laws of Utah 1997)

**63-56-204**, (Renumbered from 63-56-9, as last amended by Chapter 35, Laws of Utah 2004)

**63-56-205**, (Renumbered from 63-56-10, as enacted by Chapter 75, Laws of Utah 1980)

**63-56-206**, (Renumbered from 63-56-11, as last amended by Chapter 252, Laws of Utah 1997)

**63-56-207**, (Renumbered from 63-56-13, as last amended by Chapter 35, Laws of Utah 2004)

**63-56-208**, (Renumbered from 63-56-14, as last amended by Chapter 232, Laws of Utah 1993)

**63-56-209**, (Renumbered from 63-56-15, as enacted by Chapter 75, Laws of Utah 1980)

**63-56-301**, (Renumbered from 63-56-16, as enacted by Chapter 75, Laws of Utah 1980)

**63-56-302**, (Renumbered from 63-56-17, as enacted by Chapter 75, Laws of Utah 1980)

**63-56-303**, (Renumbered from 63-56-19, as enacted by Chapter 75, Laws of Utah 1980)

**63-56-401**, (Renumbered from 63-56-20, as last amended by Chapter 142, Laws of Utah 1998)

**63-56-402**, (Renumbered from 63-56-20.1, as enacted by Chapter 305, Laws of Utah 2001)

- 63-56-403**, (Renumbered from 63-56-20.3, as enacted by Chapter 32, Laws of Utah 1992)
- 63-56-404**, (Renumbered from 63-56-20.5, as last amended by Chapter 2, Laws of Utah 1988, Second Special Session)
- 63-56-405**, (Renumbered from 63-56-20.6, as enacted by Chapter 2, Laws of Utah 1988, Second Special Session)
- 63-56-406**, (Renumbered from 63-56-20.7, as last amended by Chapter 13, Laws of Utah 1998)
- 63-56-407**, (Renumbered from 63-56-20.8, as enacted by Chapter 114, Laws of Utah 1996)
- 63-56-408**, (Renumbered from 63-56-21, as last amended by Chapter 232, Laws of Utah 1993)
- 63-56-409**, (Renumbered from 63-56-22, as enacted by Chapter 75, Laws of Utah 1980)
- 63-56-410**, (Renumbered from 63-56-23, as last amended by Chapter 342, Laws of Utah 1998)
- 63-56-411**, (Renumbered from 63-56-24, as enacted by Chapter 75, Laws of Utah 1980)
- 63-56-412**, (Renumbered from 63-56-25, as enacted by Chapter 75, Laws of Utah 1980)
- 63-56-413**, (Renumbered from 63-56-26, as enacted by Chapter 75, Laws of Utah 1980)
- 63-56-414**, (Renumbered from 63-56-27, as enacted by Chapter 75, Laws of Utah 1980)
- 63-56-415**, (Renumbered from 63-56-28, as last amended by Chapter 259, Laws of Utah 1981)
- 63-56-416**, (Renumbered from 63-56-29, as enacted by Chapter 75, Laws of Utah 1980)
- 63-56-417**, (Renumbered from 63-56-30, as enacted by Chapter 75, Laws of Utah 1980)
- 63-56-418**, (Renumbered from 63-56-31, as enacted by Chapter 75, Laws of Utah 1980)
- 63-56-419**, (Renumbered from 63-56-32, as enacted by Chapter 75, Laws of Utah 1980)
- 63-56-420**, (Renumbered from 63-56-33, as enacted by Chapter 75, Laws of Utah 1980)
- 63-56-421**, (Renumbered from 63-56-34, as last amended by Chapter 259, Laws of Utah 1991)
- 63-56-422**, (Renumbered from 63-56-35.5, as last amended by Chapter 178, Laws of

Utah 1986)

**63-56-423**, (Renumbered from 63-56-35.6, as enacted by Chapter 201, Laws of Utah 1985)

**63-56-424**, (Renumbered from 63-56-35.7, as last amended by Chapter 232, Laws of Utah 1993)

**63-56-425**, (Renumbered from 63-56-35.8, as last amended by Chapter 135, Laws of Utah 1993)

**63-56-501**, (Renumbered from 63-56-36, as last amended by Chapter 167, Laws of Utah 2004)

**63-56-502**, (Renumbered from 63-56-36.1, as last amended by Chapter 167, Laws of Utah 2004)

**63-56-503**, (Renumbered from 63-56-37, as last amended by Chapter 80, Laws of Utah 2002)

**63-56-504**, (Renumbered from 63-56-38, as last amended by Chapter 80, Laws of Utah 2002)

**63-56-505 (Effective 05/01/05)**, (Renumbered from 63-56-38.1 (Effective 05/01/05), as last amended by Chapters 30 and 250, Laws of Utah 2004)

**63-56-506**, (Renumbered from 63-56-39, as enacted by Chapter 75, Laws of Utah 1980)

**63-56-601**, (Renumbered from 63-56-40, as enacted by Chapter 75, Laws of Utah 1980)

**63-56-602**, (Renumbered from 63-56-41, as enacted by Chapter 75, Laws of Utah 1980)

**63-56-701**, (Renumbered from 63-56-42, as enacted by Chapter 75, Laws of Utah 1980)

**63-56-702**, (Renumbered from 63-56-43, as enacted by Chapter 75, Laws of Utah 1980)

**63-56-703**, (Renumbered from 63-56-43.1, as enacted by Chapter 89, Laws of Utah 1997)

**63-56-704**, (Renumbered from 63-56-44, as enacted by Chapter 75, Laws of Utah 1980)

**63-56-705**, (Renumbered from 63-56-44.5, as enacted by Chapter 21, Laws of Utah 2000)

**63-56-801**, (Renumbered from 63-56-45, as enacted by Chapter 75, Laws of Utah 1980)

**63-56-802**, (Renumbered from 63-56-46, as last amended by Chapter 92, Laws of Utah 1987)

**63-56-803**, (Renumbered from 63-56-47, as last amended by Chapter 178, Laws of Utah 2002)

**63-56-804**, (Renumbered from 63-56-48, as enacted by Chapter 75, Laws of Utah 1980)

**63-56-805**, (Renumbered from 63-56-49, as enacted by Chapter 75, Laws of Utah 1980)

**63-56-806**, (Renumbered from 63-56-50, as enacted by Chapter 75, Laws of Utah 1980)

**63-56-807**, (Renumbered from 63-56-51, as last amended by Chapter 243, Laws of Utah 1996)

**63-56-808**, (Renumbered from 63-56-52, as enacted by Chapter 75, Laws of Utah 1980)

**63-56-809**, (Renumbered from 63-56-53, as enacted by Chapter 75, Laws of Utah 1980)

**63-56-810**, (Renumbered from 63-56-54, as enacted by Chapter 75, Laws of Utah 1980)

**63-56-811**, (Renumbered from 63-56-55, as enacted by Chapter 75, Laws of Utah 1980)

**63-56-812**, (Renumbered from 63-56-56, as enacted by Chapter 75, Laws of Utah 1980)

**63-56-813**, (Renumbered from 63-56-57, as enacted by Chapter 75, Laws of Utah 1980)

**63-56-814**, (Renumbered from 63-56-58, as last amended by Chapter 47, Laws of Utah 1986)

**63-56-815**, (Renumbered from 63-56-59, as last amended by Chapter 267, Laws of Utah 2004)

**63-56-816**, (Renumbered from 63-56-60, as last amended by Chapter 92, Laws of Utah 1987)

**63-56-817**, (Renumbered from 63-56-61, as last amended by Chapter 259, Laws of Utah 1981)

**63-56-818**, (Renumbered from 63-56-62, as enacted by Chapter 75, Laws of Utah 1980)

**63-56-819**, (Renumbered from 63-56-63, as enacted by Chapter 75, Laws of Utah 1980)

**63-56-820**, (Renumbered from 63-56-64, as last amended by Chapter 79, Laws of Utah 1989)

**63-56-901**, (Renumbered from 63-56-65, as enacted by Chapter 75, Laws of Utah 1980)

**63-56-902**, (Renumbered from 63-56-66, as enacted by Chapter 75, Laws of Utah 1980)

**63-56-903**, (Renumbered from 63-56-67, as enacted by Chapter 75, Laws of Utah 1980)

**63-56-904**, (Renumbered from 63-56-68, as enacted by Chapter 75, Laws of Utah 1980)

**63-56-905**, (Renumbered from 63-56-69, as last amended by Chapter 92, Laws of Utah 1987)

**63-56-906**, (Renumbered from 63-56-70, as enacted by Chapter 75, Laws of Utah 1980)

**63-56-907**, (Renumbered from 63-56-71, as enacted by Chapter 75, Laws of Utah 1980)

**63-56-1001**, (Renumbered from 63-56-72, as enacted by Chapter 75, Laws of Utah 1980)

**63-56-1002**, (Renumbered from 63-56-73, as enacted by Chapter 75, Laws of Utah 1980)

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

Section 1. Section **7-1-323** is amended to read:

**7-1-323. Regulation of interstate operations -- Coordination of efforts.**

(1) The commissioner may:

(a) examine, supervise, and regulate a branch operated in this state by a depository institution chartered by another state and take any action or issue any order with regard to that branch;

(b) examine, supervise, and regulate a branch operated in another state by a depository institution chartered by this state and take any action or issue any order with regard to that branch; and

(c) coordinate these activities with any other state or federal agency that shares jurisdiction over the institution.

(2) The commissioner may coordinate the examination, supervision, and regulation of any depository institution chartered by this state with the examination, supervision, and regulation of an affiliated depository institution operating in another state.

(3) The commissioner may take any reasonable and lawful action in furtherance of coordinating the regulation of interstate operations, including:

(a) negotiating and entering into cooperative agreements with an agency of another state or of the federal government;

(b) sharing information and reports in accordance with Section 7-1-802 with an agency

that shares jurisdiction over the institution;

(c) accepting as sufficient, if appropriate, examination reports and other information compiled or generated by or for an agency that shares jurisdiction over the institution;

(d) contracting with an agency that shares jurisdiction over the institution to engage the services of its examiners at a reasonable rate of compensation;

(e) offering the services of the department's examiners at a reasonable rate of compensation to an agency that shares jurisdiction over the institution;

(f) collecting fees on behalf of, or receiving payment of fees through, an agency that shares jurisdiction over the institution; and

(g) cooperating in any other way with other supervisory agencies and professional associations to promote the efficient, safe, and sound operation and regulation of interstate depository institution activities, including the formulation of interstate examination policies and procedures and the drafting of model laws, rules, and agreements.

(4) A contract between the department and an agency that shares jurisdiction over a depository institution to provide examiners to aid in interstate examination and regulation is considered a sole source contract under Section [~~63-56-23~~] 63-56-410.

Section 2. Section **10-3-1304** is amended to read:

**10-3-1304. Use of office for personal benefit prohibited.**

(1) As used in this section, "economic benefit tantamount to a gift" includes:

(a) a loan at an interest rate that is substantially lower than the commercial rate then currently prevalent for similar loans; and

(b) compensation received for private services rendered at a rate substantially exceeding the fair market value of the services.

(2) It is an offense for an elected or appointed officer or municipal employee, under circumstances not amounting to a violation of Section [~~63-56-72~~] 63-56-1001 or 76-8-105, to:

(a) disclose or improperly use private, controlled, or protected information acquired by reason of his official position or in the course of official duties in order to further substantially the officer's or employee's personal economic interest or to secure special privileges or



exemptions for himself or others;

(b) use or attempt to use his official position to:

(i) further substantially the officer's or employee's personal economic interest; or

(ii) secure special privileges for himself or others; or

(c) knowingly receive, accept, take, seek, or solicit, directly or indirectly, for himself or another a gift of substantial value or a substantial economic benefit tantamount to a gift that:

(i) would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties; or

(ii) the person knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the person for official action taken.

(3) Subsection (2)(c) does not apply to:

(a) an occasional nonpecuniary gift having a value of less than \$50;

(b) an award publicly presented in recognition of public services;

(c) any bona fide loan made in the ordinary course of business; or

(d) a political campaign contribution.

Section 3. Section **10-3-1305** is amended to read:

**10-3-1305. Compensation for assistance in transaction involving municipality --  
Public disclosure and filing required.**

(1) As used in this section, "municipal body" means any public board, commission, committee, or other public group organized to make public policy decisions or to advise persons who make public policy decisions.

(2) It is an offense for an elected officer, or appointed officer, who is a member of a public body, under circumstances not amounting to a violation of Section ~~[63-56-72]~~ 63-56-1001 or 76-8-105, to receive or agree to receive compensation for assisting any person or business entity in any transaction involving the municipality in which he is an officer unless he:

(a) files with the mayor a sworn statement giving the information required by this section; and

(b) discloses the information required by Subsection (5) in an open meeting to the

members of the body of which he is a member immediately before the discussion.

(3) It is an offense for an appointed officer who is not a member of a public body or a municipal employee to receive or agree to receive compensation for assisting any person or business entity in any transaction involving the municipality by which he is employed unless the officer or employee:

(a) files with the mayor a sworn statement giving the information required by this section; and

(b) discloses the information required by Subsection (5) to:

(i) his immediate supervisor; and

(ii) any other municipal officer or employee who may rely upon the employee's representations in evaluating or approving the transaction.

(4) (a) The officer or employee shall file the statement required to be filed by this section ten days before the date of any agreement between the elected or appointed officer or municipal employee and the person or business entity being assisted or ten days before the receipt of compensation by the officer or employee, whichever is earlier.

(b) The statement is public information and shall be available for examination by the public.

(5) The statement and disclosure shall contain:

(a) the name and address of the officer or municipal employee;

(b) the name and address of the person or business entity being or to be assisted or in which the appointed or elected official or municipal employee has a substantial interest; and

(c) a brief description of the transaction as to which service is rendered or is to be rendered and of the nature of the service performed or to be performed.

Section 4. Section **10-7-87** is amended to read:

**10-7-87. Procurement -- Use of recycled goods.**

The procurement officer or other person responsible for purchasing supplies for each municipality shall:

(1) maintain for reference a copy of the current listing of recycled items available on state

contracts as issued by the chief procurement officer under Section [~~63-56-9~~] 63-56-204; and

(2) give recycled items consideration when inviting bids and purchasing supplies, in compliance with Section 11-37-101.

Section 5. Section **11-37-101** is amended to read:

**11-37-101. Definition -- Procurement -- Use of recycled goods.**

(1) "Local government entity" means:

- (a) municipalities, cities, and counties;
- (b) entities created under Title 26A, Chapter 1, Local Health Departments; and
- (c) political subdivisions created by cities or counties, including entities created under:
  - (i) Title 9, Chapter 4, Part 9, Utah Housing Corporation Act; and
  - (ii) Title 11, Chapter 13, Interlocal Cooperation Act.

(2) The procurement officer or other person responsible for purchasing supplies for each local government entity shall:

(a) maintain for reference a copy of the current listing of recycled items available on state contract as issued by the chief procurement officer under Section [~~63-56-9~~] 63-56-204; and

(b) give recycled items consideration when inviting bids and purchasing supplies.

Section 6. Section **11-39-107** is amended to read:

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

(1) This chapter may not be construed to:

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

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

(2) (a) In seeking bids and awarding a contract for a building improvement or public works project, a county legislative body may elect to follow the provisions of the procurement code, as the county legislative body considers appropriate under the circumstances, for specification preparation, source selection, or contract formation.

(b) A county legislative body's election to adopt the procedures of the procurement code may not excuse the county from complying with the requirements to award a contract for work in

excess of the bid limit and to publish notice of the intent to award.

(c) An election under Subsection (2)(a) may be made on a case-by-case basis, unless the county has previously adopted the procurement code as permitted by Subsection [~~63-56-2~~ 63-56-102](3)(e).

(d) The county legislative body shall:

(i) make each election under Subsection (2)(a) in an open meeting; and

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

(3) If the estimated cost of the building improvement or public works project proposed by a special district or local district exceeds the bid limit, the legislative body of the special district or local district may, if it determines to proceed with the building improvement or public works project, use the competitive procurement procedures of the procurement code in place of the comparable provisions of this chapter.

Section 7. Section **14-1-18** is amended to read:

**14-1-18. Definitions -- Application of Procurement Code to payment and performance bonds.**

(1) (a) For purposes of this chapter, "political subdivision" means any county, city, town, school district, public transit district, special district, redevelopment agency, public corporation, institution of higher education of the state, public agency of any political subdivision, and, to the extent provided by law, any other entity which expends public funds for construction.

(b) For purposes of applying Section [~~63-56-38~~ 63-56-504] to a political subdivision, "state" includes "political subdivision."

(2) Section [~~63-56-38~~ 63-56-504] applies to all contracts for the construction, alteration, or repair of any public building or public work of the state or a political subdivision of the state.

Section 8. Section **17-15-24** is amended to read:

**17-15-24. Procurement -- Use of recycled goods.**

The procurement officer or other person responsible for purchasing supplies for each county and each entity created by a county or joined by a county shall:

(1) maintain for reference a copy of the current listing of recycled items available on a

state contract as issued by the chief procurement officer appointed under Section [63-56-9] 63-56-204; and

(2) give recycled items consideration when inviting bids and purchasing supplies, in compliance with Section 11-37-101.

Section 9. Section **17-16a-4** is amended to read:

**17-16a-4. Prohibited use of official position.**

(1) It is an offense for an elected or appointed officer, under circumstances not amounting to a violation of Section [63-56-72] 63-56-1001 or 76-8-105, to:

(a) disclose confidential information acquired by reason of his official position or use that information to secure special privileges or exemptions for himself or others;

(b) use or attempt to use his official position to secure special privileges for himself or others; or

(c) knowingly receive, accept, take, seek or solicit, directly or indirectly, any gift or loan for himself or another if the gift or loan tends to influence him in the discharge of his official duties.

(2) This section is inapplicable to:

(a) an occasional nonpecuniary gift having a value of less than \$50;

(b) an award publicly presented;

(c) any bona fide loan made in the ordinary course of business; or

(d) political campaign contributions actually used in a political campaign.

Section 10. Section **17A-1-801** is amended to read:

**17A-1-801. Hiring of professional architect, engineer, or surveyor.**

Notwithstanding Subsection [63-56-2] 63-56-102(3)(d), each special district board that engages the services of a professional architect, engineer, or surveyor and considers more than one such professional for the engagement:

(1) shall consider, as a minimum, in the selection process:

(a) the qualifications, experience, and background of each firm submitting a proposal;

(b) the specific individuals assigned to the project and the time commitments of each to

the project; and

(c) the project schedule and the approach to the project that the firm will take; and

(2) may engage the services of a professional architect, engineer, or surveyor based on the criteria under Subsection (1) rather than solely on lowest cost.

Section 11. Section **17A-2-328** is amended to read:

**17A-2-328. Powers of municipalities -- Collection -- System for collection, retention, and disposition of storm and flood waters -- Power of district to make contracts -- Retainage.**

(1) (a) If an improvement district under this part contracts with a municipality to supply sewage treatment or disposal service, the municipality's legislative body may:

(i) impose an appropriate service charge to each party connected with the municipality's sewer system for the services provided by the improvement district, as the municipality's legislative body considers reasonable and proper; and

(ii) require industrial and commercial establishments to pretreat certain wastes and sewage when the wastes and sewage would otherwise impose an unreasonable burden upon the collection system or the treatment facility of the improvement district.

(b) If the municipality operates a waterworks system, the charge under Subsection (1)(a)(i) may be combined with the charge made for water furnished by the water system and may be collected and the collection thereof secured in the same manner as that specified in Section 10-8-38.

(2) (a) An improvement district acquiring a system for the collection, retention, and disposition of storm and flood waters may contract with a municipality or other political subdivision or a person, firm, or corporation for the collection of storm and flood waters by any of the contracting parties.

(b) Some or all of the parties to a contract under Subsection (2)(a) may agree to joint acquisition, ownership, construction, operation, or maintenance of all or part of the system for the collection of storm and flood waters.

(c) (i) In exercising the power to acquire and operate a system for the collection of storm

and flood waters, an improvement district may contract for the construction of storm sewers, drainage channels, dams, dikes, levees, reservoirs, and other pertinent improvements.

(ii) As a local public procurement unit as defined in Subsection [~~63-56-5~~] 63-56-105(14), each improvement district contracting as provided in Subsection (2)(c)(i) shall comply with the provisions applicable to local public procurement units under Title 63, Chapter 56, Utah Procurement Code.

(3) If any payment on a contract with a private person, firm, or corporation to construct storm sewers, drainage canals, dams, dikes, levees, reservoirs, and other pertinent improvements is retained or withheld, it shall be retained or withheld and released as provided in Section 13-8-5.

Section 12. Section **26-8a-405.2** is amended to read:

**26-8a-405.2. Selection of provider -- Public bid -- Public convenience and necessity.**

(1) (a) A political subdivision may contract with an applicant approved under Section 26-8a-404 to provide 911 ambulance or paramedic services for the geographic service area that is approved by the department in accordance with Subsection (2), if the political subdivision complies with the provisions of this section.

(b) The provisions of this section and Section 26-8a-405.1 do not require a political subdivision to issue a request for proposal for ambulance or paramedic services. If a political subdivision does not contract with an applicant in accordance with this section, the provisions of Sections 26-8a-406 through 26-8a-409 apply to the issuance of a license for ambulance or paramedic services in the geographic service area that is within the boundaries of the political subdivision.

(c) (i) For purposes of this Subsection (1)(c):

(A) "local district" and "county service area" are defined in Subsection 26-8a-405.1(1)(b)(iii);

(B) "participating municipality" means a city or town whose area is partly or entirely included within a county service area or local district; and

(C) "participating county" means a county whose unincorporated area is partly or entirely

included within a county service area or local district.

(ii) A participating municipality or participating county may contract with a provider for 911 ambulance or paramedic service as provided in this section.

(iii) If the participating municipality or participating county contracts with a provider for 911 ambulance or paramedic services under this section:

(A) the county service area or local district is not obligated to provide the ambulance or paramedic services that are included in the contract between the participating municipality or the participating county and the 911 ambulance or paramedic provider;

(B) the county service area and local district may impose taxes and obligations within the county service area or local district in the same manner as if the participating municipality or participating county were receiving all services offered by the local district or county service area; and

(C) the participating municipality's and participating county's obligations to the local district or county service area are not diminished.

(2) (a) The political subdivision shall submit the request for proposal and the exclusive geographic service area to be included in the request for proposal to the department for approval prior to issuing the request for proposal. The department shall approve the request for proposal and the exclusive geographic service area:

(i) unless the geographic service area creates an orphaned area; and

(ii) in accordance with Subsections (2)(b) and (c).

(b) The exclusive geographic service area may:

(i) include the entire geographic service area that is within the political subdivision's boundaries;

(ii) include islands within or adjacent to other peripheral areas not included in the political subdivision that governs the geographic service area; or

(iii) exclude portions of the geographic service area within the political subdivision's boundaries if another political subdivision or licensed provider agrees to include the excluded area within their license.



(c) The proposed geographic service area for 911 ambulance or paramedic service must demonstrate that non-911 ambulance or paramedic service will be provided in the geographic service area, either by the current provider, the applicant, or some other method acceptable to the department. The department may consider the effect of the proposed geographic service area on the costs to the non-911 provider and that provider's ability to provide only non-911 services in the proposed area.

(3) (a) (i) A political subdivision may select an applicant approved by the department under Section 26-8a-404 to provide 911 ambulance or paramedic services by contract let to the lowest, responsive, and responsible bidder after publication of notice at least once a week for three consecutive weeks in a newspaper of general circulation published in the county, or if there is no such newspaper, then after posting such notice for at least 20 days in at least five public places in the county.

(ii) The applicants who are approved under Section 26-8a-405 and who are selected under Subsection (3)(a)(i) may be the political subdivision issuing the request for proposal, or any other public entity or entities, any private person or entity, or any combination thereof.

(b) A political subdivision may reject all of the bids.

(4) In seeking bids and awarding contracts under this section, a political subdivision:

(a) shall follow the provisions of Section [~~63-56-20~~] 63-56-401;

(b) shall consider the public convenience and necessity factors listed in Subsections 26-8a-408(2), (3), and (4);

(c) shall require the applicant responding to the bid to disclose how the applicant will meet performance standards in the request for proposal;

(d) may not require or restrict an applicant to a certain method of meeting the performance standards; and

(e) (i) shall require an applicant to submit the bid based on full cost accounting in accordance with generally accepted accounting principals; and

(ii) if the applicant is a governmental entity, in addition to the requirements of Subsection (4)(e)(i), in accordance with generally accepted government auditing standards and in

compliance with the State of Utah Legal Compliance Audit Guide.

Section 13. Section **26A-1-108.7** is amended to read:

**26A-1-108.7. Procurement -- Use of recycled goods.**

The procurement officer or other person responsible for purchasing supplies for each local health department shall:

(1) maintain for reference a copy of the current listing of recycled items available on state contract as issued by the chief procurement officer under Section [~~63-56-9~~] 63-56-204; and

(2) give recycled items consideration when inviting bids and purchasing supplies, in compliance with Section 11-37-101.

Section 14. Section **53A-20-101** is amended to read:

**53A-20-101. Construction and alteration of schools and plants -- Advertising for bids -- Payment and performance bonds -- Contracts -- Bidding limitations on local school boards -- Interest of local school board members.**

(1) As used in this section, the word "sealed" does not preclude acceptance of electronically sealed and submitted bids or proposals in addition to bids or proposals manually sealed and submitted.

(2) (a) Prior to the construction of any school or the alteration of any existing school plant, if the total estimated accumulative building project cost exceeds \$80,000, a local school board shall advertise for bids on the project at least ten days before the bid due date.

(b) The board shall have the advertisement published in a newspaper having general circulation throughout the state and in appropriate construction trade publications that offer free listings.

(c) A similar advertisement is required in a newspaper published or having general circulation in any city or county that would be affected by the proposed project.

(d) The advertisement shall:

(i) require sealed proposals for the building project in accordance with plans and specifications furnished by the local school board;

(ii) state where and when the proposals will be opened and shall reserve the right of the

board to reject any and all proposals; and

(iii) require a certified check or bid bond of not less than 5% of the bid to accompany the bid.

(3) (a) The board shall meet at the time and place specified in the advertisement and publicly open and read all received proposals.

(b) If satisfactory bids are received, the board shall award the contract to the lowest responsible bidder.

(c) If none of the proposals are satisfactory, all shall be rejected.

(d) The board shall again advertise in the manner provided in this section.

(e) If, after advertising a second time no satisfactory bid is received, the board may proceed under its own direction with the required project.

(4) (a) The check or bond required under Subsection (2)(d) shall be drawn in favor of the local school board.

(b) If the successful bidder fails or refuses to enter into the contract and furnish the additional bonds required under this section, then the bidder's check or bond is forfeited to the district.

(5) A local school board shall require payment and performance bonds of the successful bidder as required in Section [~~63-56-38~~] 63-56-504.

(6) (a) A local school board may require in the proposed contract that at least 10% of the contract price be withheld until the project is completed and accepted by the board.

(b) If money is withheld, the board shall place it in an interest bearing account, and the interest accrues for the benefit of the contractor and subcontractors.

(c) This money shall be paid upon completion of the project and acceptance by the board.

(7) (a) A local school board may not bid on projects within the district if the total accumulative estimated cost exceeds \$80,000.

(b) The board may use its resources if no satisfactory bids are received under this section.

(8) If the local school board determines in accordance with Section [~~63-56-36~~] 63-56-501 to use a construction manager/general contractor as its method of construction contracting

management on projects where the total estimated accumulative cost exceeds \$80,000, it shall select the construction manager/general contractor using one of the source selection methods provided for in Sections [~~63-56-20~~] 63-56-401 through [~~63-56-36~~] 63-56-501.

(9) A local school board member may not have a direct or indirect financial interest in the construction project contract.

Section 15. Section **63-56-101**, which is renumbered from Section 63-56-1 is renumbered and amended to read:

**Part 1. General Provisions**

**[~~63-56-1~~]. 63-56-101. Purpose of chapter.**

The underlying purposes and policies of this chapter are:

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

Section 16. Section **63-56-102**, which is renumbered from Section 63-56-2 is renumbered and amended to read:

**[~~63-56-2~~]. 63-56-102. Application of chapter.**

(1) This chapter applies only to contracts solicited or entered into after the effective date of this chapter unless the parties agree to its application to a contract solicited or entered into prior to the effective date.

(2) Except as provided in Section [~~63-56-3~~] 63-56-103, this chapter shall apply to every expenditure of public funds irrespective of their source, including federal assistance, by any state agency under any contract.

(3) (a) Only the following sections shall apply to local public procurement units: Sections [~~63-56-3~~] 63-56-103, [~~63-56-5~~] 63-56-105, [~~63-56-16~~] 63-56-301, [~~63-56-19~~] 63-56-303 through [~~63-56-33~~] 63-56-420, [~~63-56-35.5~~] 63-56-422, [~~63-56-36~~] 63-56-501 through [~~63-56-41~~] 63-56-602, [~~63-56-45~~] 63-56-801 through [~~63-56-50~~] 63-56-806, and

[~~63-56-59~~] 63-56-815 through [~~63-56-63~~] 63-56-819; provided, however, that, except as provided in Sections [~~63-56-70~~] 63-56-906 and [~~63-56-71~~] 63-56-907, the jurisdiction of the procurement appeals board is limited to matters involving state agencies.

(b) Subsections [~~63-56-14~~] 63-56-208(1)(b), [~~63-56-37~~] 63-56-503(4), and [~~63-56-38~~] 63-56-504(2) also apply to local public procurement units.

(c) For the purpose of application of those sections and subsections to a local public procurement unit, "state" shall mean "local public procurement unit," "chief procurement officer" or "head of a purchasing agency" shall mean any person conducting procurement for a local public procurement unit, and "rules and regulations" shall mean ordinances and rules and regulations promulgated by a local public procurement unit to implement or supplement those sections.

(d) In addition to the sections and subsections listed above and except as provided in Section 17A-1-801 relating to special districts, each local public procurement unit shall adopt ordinances relating to the procurement of architect-engineer services not inconsistent with the provisions of Part [~~G of this chapter~~] 7, Architect-Engineer Services.

(e) Any other section of this chapter, or its implementing regulations, may be adopted by any local public procurement unit.

(f) Any other implementing regulations adopted by local public procurement units may not be inconsistent with the provisions of this chapter.

(4) Unless otherwise provided by statute, this chapter does not apply to procurement of real property.

Section 17. Section **63-56-103**, which is renumbered from Section 63-56-3 is renumbered and amended to read:

~~[63-56-3].~~     **63-56-103. Exemptions from chapter -- Compliance with federal law.**

(1) This chapter is not applicable to funds administered under the Percent-for-Art Program of the Utah Percent-for-Art Act.

(2) This chapter is not applicable to grants awarded by the state or contracts between the state and local public procurement units except as provided in Part [~~F of this chapter~~] 9.

Intergovernmental Relations.

(3) This chapter shall not prevent the state or a local public procurement unit from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

(4) When a procurement involves the expenditure of federal assistance or contract funds, the chief procurement officer or head of a purchasing agency shall comply with mandatory applicable federal law and regulations not reflected in this chapter.

(5) This chapter may not supersede the requirements for retention or withholding of construction proceeds and release of construction proceeds as provided in Section 13-8-5.

Section 18. Section **63-56-104**, which is renumbered from Section 63-56-4 is renumbered and amended to read:

**[63-56-4]. 63-56-104. Records.**

(1) All procurement records shall be retained and disposed of in accordance with Title 63, Chapter 2, Government Records Access and Management Act.

(2) Written determinations required by this chapter shall also be retained in the appropriate official contract file of the Division of Purchasing and General Services or the purchasing agency.

Section 19. Section **63-56-105**, which is renumbered from Section 63-56-5 is renumbered and amended to read:

**[63-56-5]. 63-56-105. Definitions.**

As used in this chapter:

(1) "Architect-engineer services" are those professional services within the scope of the practice of architecture as defined in Section 58-3a-102, or professional engineering as defined in Section 58-22-102.

(2) "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

(3) "Change order" means a written order signed by the procurement officer, directing the contractor to suspend work or make changes, which the appropriate clauses of the contract

authorize the procurement officer to order without the consent of the contractor or any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

(4) (a) "Construction" means the process of building, renovation, alteration, improvement, or repair of any public building or public work.

(b) "Construction" does not mean the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

(5) (a) "Construction Manager/General Contractor" means any contractor who enters into a contract for the management of a construction project when that contract allows the contractor to subcontract for additional labor and materials that were not included in the contractor's cost proposal submitted at the time of the procurement of the Construction Manager/General Contractor's services.

(b) "Construction Manager/General Contractor" does not mean a contractor whose only subcontract work not included in the contractor's cost proposal submitted as part of the procurement of construction is to meet subcontracted portions of change orders approved within the scope of the project.

(6) "Contract" means any state agreement for the procurement or disposal of supplies, services, or construction.

(7) "Cooperative purchasing" means procurement conducted by, or on behalf of, more than one public procurement unit, or by a public procurement unit with an external procurement unit.

(8) "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.

(9) (a) "Design-build" means the procurement of architect-engineer services and construction by the use of a single contract with the design-build provider.

(b) This method of design and construction can include the design-build provider

supplying the site as part of the contract.

(10) "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 either 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.

(11) "External procurement unit" means any buying organization not located in this state which, if located in this state, would qualify as a public procurement unit. An agency of the United States is an external procurement unit.

(12) "Grant" means the furnishing by the state or by any other public or private source assistance, whether financial or otherwise, to any person to support a program authorized by law. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies, services, or construction. A contract resulting from the award is not a grant but a procurement contract.

(13) "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

(14) "Local public procurement unit" means any political subdivision or institution of higher education of the state or public agency of any subdivision, public authority, educational, health, or other institution, and to the extent provided by law, any other entity which expends public funds for the procurement of supplies, services, and construction, but not counties, municipalities, political subdivisions created by counties or municipalities under the Interlocal Cooperation Act, the Utah Housing Corporation, the Utah Technology Finance Corporation, or the Legislature and its staff offices. It includes two or more local public procurement units acting under legislation which authorizes intergovernmental cooperation.

(15) "Person" means any business, individual, union, committee, club, other organization, or group of individuals, not including a state agency or a local public procurement



unit.

(16) "Policy board" means the procurement policy board created by Section [~~63-56-6~~] 63-56-201.

(17) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference under the requirements of this chapter.

(18) "Procurement" means buying, purchasing, renting, leasing, leasing with an option to purchase, or otherwise acquiring any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection, and solicitation of sources, preparation, and award of a contract, and all phases of contract administration.

(19) "Procurement officer" means any person or board duly authorized to enter into and administer contracts and make written determinations with respect thereto. It also includes an authorized representative acting within the limits of authority.

(20) "Public procurement unit" means either a local public procurement unit or a state public procurement unit.

(21) "Purchase description" means the words used in a solicitation to describe the supplies, services, or construction to be purchased, and includes specifications attached to or made a part of the solicitation.

(22) "Purchasing agency" means any state agency other than the Division of Purchasing and General Services that is authorized by this chapter or its implementing regulations, or by delegation from the chief procurement officer, to enter into contracts.

(23) "Request for proposals" means all documents, whether attached or incorporated by reference, used for soliciting proposals.

(24) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and who has the integrity and reliability which will assure good faith performance.

(25) "Responsive bidder" means a person who has submitted a bid which conforms in all material respects to the invitation for bids.

(26) "Sealed" does not preclude acceptance of electronically sealed and submitted bids or proposals in addition to bids or proposals manually sealed and submitted.

(27) "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. It does not include employment agreements or collective bargaining agreements.

(28) "Specification" means any description of the physical or functional characteristics, or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

(29) "State agency" or "the state" means any department, division, commission, council, board, bureau, committee, institution, government corporation, or other establishment, official, or employee of this state.

(30) "State public procurement unit" means the Division of Purchasing and General Services and any other purchasing agency of this state.

(31) "Supplies" means all property, including equipment, materials, and printing.

(32) "Using agency" means any state agency which utilizes any supplies, services, or construction procured under this chapter.

Section 20. Section **63-56-201**, which is renumbered from Section 63-56-6 is renumbered and amended to read:

**Part 2. Procurement Organization**

**~~63-56-6~~. 63-56-201. Creation of procurement policy board.**

(1) (a) There is created a state procurement policy board.

(b) The policy board shall consist of eight members who shall be appointed as follows:

(i) an employee of a state institution of higher education, appointed by the board of regents;

(ii) an employee of the Department of Human Services, appointed by the executive director of that department;

(iii) an employee of the Department of Transportation, appointed by the executive director of that department;

(iv) an employee of a school district appointed by a cooperative purchasing entity for school districts;

(v) an employee of the Division of Facilities Construction and Management appointed by the director of that division;

(vi) an employee of a county, appointed by the Utah Association of Counties;

(vii) an employee of a city, appointed by the Utah League of Cities and Towns; and

(viii) an employee of a special district, appointed by the Utah Association of Special Districts.

(c) Members of the policy board shall be knowledgeable and experienced in, and have supervisory responsibility for, procurement in their official positions.

(2) Members shall be appointed to four-year staggered terms.

(3) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(4) (a) The policy board shall:

(i) adopt rules of procedure for conducting its business; and

(ii) elect a chair to serve for one year.

(b) The chair may be elected to succeeding terms.

(c) The chief procurement officer shall serve as the nonvoting secretary to the policy board.

(5) (a) (i) Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Members may decline to receive per diem and expenses for their service.

(b) (i) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred

in the performance of their official duties from the board at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) State government officer and employee members may decline to receive per diem and expenses for their service.

(c) (i) Higher education members who do not receive salary, per diem, or expenses from the entity that they represent for their service may receive per diem and expenses incurred in the performance of their official duties from the committee at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Higher education members may decline to receive per diem and expenses for their service.

(d) (i) Local government members who do not receive salary, per diem, or expenses from the entity that they represent for their service may receive per diem and expenses incurred in the performance of their official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Local government members may decline to receive per diem and expenses for their service.

Section 21. Section **63-56-202**, which is renumbered from Section 63-56-7 is renumbered and amended to read:

**~~[63-56-7]~~. 63-56-202. Powers and duties of board.**

(1) Except as otherwise provided in Sections ~~[63-56-2]~~ 63-56-102 and ~~[63-56-14]~~ 63-56-208, the policy board shall:

(a) make rules, consistent with this chapter, governing the procurement, management, and control of any and all supplies, services, and construction to be procured by the state; and

(b) 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 policy board may:

(i) audit and monitor the implementation of its rules and the requirements of this chapter;

(ii) upon the request of a local public procurement unit, review that procurement unit's

proposed rules to ensure that they are not inconsistent with the provisions of this chapter; and

(iii) approve the use of innovative procurement methods proposed by local public procurement units.

(b) The policy board may not exercise authority over the award or administration of:

(i) any particular contact; or

(ii) over any dispute, claim, or litigation pertaining to any particular contract.

Section 22. Section **63-56-203**, which is renumbered from Section 63-56-8 is renumbered and amended to read:

**[63-56-8]. 63-56-203. Chief procurement officer -- Appointment -- Qualifications.**

(1) The executive director of the Department of Administrative Services, with the consent of the governor, shall appoint the chief procurement officer after considering recommendations from the policy board.

(2) The chief procurement officer shall:

(a) have a minimum of eight years' experience in the large-scale procurement of supplies and services or services and construction, 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.

(3) The chief procurement officer is also the director of the Division of Purchasing and General Services.

Section 23. Section **63-56-204**, which is renumbered from Section 63-56-9 is renumbered and amended to read:

**[63-56-9]. 63-56-204. Duties of chief procurement officer.**

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

(1) adopt office policies governing the internal functions of the Division of Purchasing and General Services;

(2) procure or supervise the procurement of all supplies, services, and construction

needed by the state;

(3) exercise general supervision and control over all inventories or supplies belonging to the state;

(4) establish and maintain programs for the inspection, testing, and acceptance of supplies, services, and construction;

(5) prepare statistical data concerning the procurement and usage of all supplies, services, and construction;

(6) before June 1, 1990, notify all public procurement units of the requirements of Section [~~63-56-20.7~~] 63-56-406 regarding purchases of recycled paper and recycled paper products, recycling requirements, and provide guidelines on the availability of recycled paper and paper products, including the sources of supply and the potential uses of various grades of recycled paper;

(7) before July 1, 1992:

(a) establish standards and specifications for determining which supplies are considered recycled, based upon his review of current definitions and standards employed by national procurement, product recycling, and other relevant organizations and the federal Environmental Protection Agency;

(b) compile and update as necessary the specifications, a list of recycled supplies available on state contract, and sources where the supplies may be obtained;

(c) make the compiled information under Subsection (7)(b) available to:

(i) all local government entities under Section 11-37-101;

(ii) all local health departments under Section 26A-1-108.7;

(iii) all procurement officers or other persons responsible for purchasing supplies within the public school system under Title 53A, State System of Public Education;

(iv) all procurement officers or other persons responsible for purchasing supplies within the state system of higher education under Title 53B, State System of Higher Education; and

(v) all procurement officers or other persons responsible for purchasing supplies for all public procurement units as defined in Section [~~63-56-5~~] 63-56-105; and

(d) present a written report to the Natural Resources, Agriculture, and Environment Interim Committee annually prior to November 30 regarding the purchases of recycled goods on state contracts during the prior fiscal year; and

(8) ensure that:

(a) before approving a purchase, lease, or rental not covered by an existing statewide contract for information technology or telecommunications supplies or services under the provisions of Section 63A-6-105, the director of the Division of Information Technology Services has provided in writing to the chief procurement officer that the analysis required by Subsection 63A-6-105(7) was completed; and

(b) the oversight authority required by Subsection (8)(a) is not delegated outside the Division of Purchasing and General Services.

Section 24. Section **63-56-205**, which is renumbered from Section 63-56-10 is renumbered and amended to read:

**~~[63-56-10].~~ 63-56-205. Delegation of authority.**

Subject to rules and regulations, the chief procurement officer may delegate authority to designees or to any department, agency, or official.

Section 25. Section **63-56-206**, which is renumbered from Section 63-56-11 is renumbered and amended to read:

**~~[63-56-11].~~ 63-56-206. Transfer of power to policy board.**

Except as otherwise provided in this chapter, all rights, powers, duties, and authority relating to the procurement of supplies, services, and construction, and the management, control, warehousing, and sale of supplies, services, and construction vested in or exercised by any state agency on the effective date are transferred to the policy board as they relate to its duties and to the Division of Purchasing and General Services as they relate to its duties.

Section 26. Section **63-56-207**, which is renumbered from Section 63-56-13 is renumbered and amended to read:

**~~[63-56-13].~~ 63-56-207. Specific statutory authority.**

(1) The authority to procure certain supplies, services, and construction given the public

procurement units governed by the following provisions shall be retained:

- (a) Title 53B, State System of Higher Education;
- (b) Title 63A, Chapter 5, State Building Board - Division of Facilities Construction and Management;
- (c) Title 67, Chapter 5, Attorney General;
- (d) Title 72, Transportation; and
- (e) Title 78, Chapter 3, District Courts.

(2) This authority extends only to supplies, services, and construction to the extent provided in the cited chapters. Except as otherwise provided in Sections [~~63-56-2~~] 63-56-102 and [~~63-56-3~~] 63-56-103, the respective purchasing agencies shall procure supplies, services, and construction in accordance with this chapter.

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

(b) This Subsection (3) supersedes Subsections (1) and (2).

(4) The Legislature may procure supplies and services for its own needs.

Section 27. Section **63-56-208**, which is renumbered from Section 63-56-14 is renumbered and amended to read:

**~~[63-56-14].~~ 63-56-208. Rules and regulations of policy board and building board.**

(1) (a) Except as provided in Subsection (2), the policy board shall make rules governing state procurement by complying with the procedures and requirements of Title 63, Chapter 46a, the Utah Administrative Rulemaking Act.

(b) The procurement rules adopted by the policy board under this section apply to all local public procurement units unless the local public procurement unit's legislative body has adopted separate rules governing procurement.

(2) The State Building Board rules governing procurement of construction, architect-engineer services, and leases apply to the procurement of construction, architect-engineer services, and leases of real property by the Division of Facilities Construction and Management.



Section 28. Section **63-56-209**, which is renumbered from Section 63-56-15 is renumbered and amended to read:

**[63-56-15]. 63-56-209. Procurement Advisory Council.**

(1) The policy board may establish a Procurement Advisory Council, which shall meet at least once a year for the discussion of problems and recommendations for improvement of the procurement process. When requested by the policy board, the Procurement Advisory Council may conduct studies, research, analyses, and make reports and recommendations with respect to subjects or matters within the jurisdiction of the policy board. The Procurement Advisory Council shall consist of representatives of state and local government and any other persons the policy board [~~deems~~] considers desirable.

(2) The chief procurement officer may appoint advisory groups to provide advice regarding any matters within the authority of the chief procurement officer.

(3) Members of the Procurement Advisory Council and other advisory groups may be reimbursed for expenses incurred in the performance of their duties, as provided by the policy board.

Section 29. Section **63-56-301**, which is renumbered from Section 63-56-16 is renumbered and amended to read:

**Part 3. Specifications**

**[63-56-16]. 63-56-301. Rules and regulations for specifications of supplies.**

Rules and regulations shall be promulgated to govern the preparation, maintenance, and content of specifications for supplies, services, and construction required by the state. Rules and regulations shall determine the extent to which a nonemployee who has prepared specifications for use by the state may participate in any state procurement using such specifications.

Section 30. Section **63-56-302**, which is renumbered from Section 63-56-17 is renumbered and amended to read:

**[63-56-17]. 63-56-302. Duty of chief procurement officer in maintaining specifications of supplies.**

The chief procurement officer shall prepare, issue, revise, maintain, and monitor the use

of specifications for supplies, services, and construction required by the state. The chief procurement officer shall obtain expert advice and assistance from personnel of using agencies in the development of specifications and may delegate in writing to a using agency the authority to prepare and utilize its own specifications.

Section 31. Section **63-56-303**, which is renumbered from Section 63-56-19 is renumbered and amended to read:

**~~[63-56-19]~~. 63-56-303. Purpose of specifications.**

All specifications shall seek to promote overall economy and best use for the purposes intended and encourage competition in satisfying the state's needs, and shall not be unduly restrictive. The requirements of this part regarding the purposes and nonrestrictiveness of specifications shall apply to all specifications, including, but not limited to, those prepared by architects, engineers, designers, and draftsmen for public contracts.

Section 32. Section **63-56-401**, which is renumbered from Section 63-56-20 is renumbered and amended to read:

**Part 4. Source Selections and Contract Formation**

**~~[63-56-20]~~. 63-56-401. Contracts awarded by sealed bidding -- Procedure.**

(1) Contracts shall be awarded by competitive sealed bidding except as otherwise provided by this chapter.

(2) (a) An invitation for bids shall be issued when a contract is to be awarded by competitive sealed bidding.

(b) The invitation shall include a purchase description and all contractual terms and conditions applicable to the procurement.

(3) (a) Public notice of the invitation for bids shall be given a reasonable time before the date set forth in the invitation for the opening of bids, in accordance with rules.

(b) The notice may include publication in a newspaper of general circulation a reasonable time before bid opening.

(4) (a) Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids.

(b) The amount of each bid and any other relevant information specified by rules, together with the name of each bidder, shall be recorded.

(c) The record and each bid shall be open to public inspection.

(5) (a) Bids shall be unconditionally accepted without alteration or correction, except as authorized in this chapter.

(b) (i) Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose.

(ii) Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable.

(iii) The criteria may include discounts, transportation costs, and total or life cycle costs.

(c) No criteria may be used in bid evaluation that are not set forth in the invitation for bids.

(6) (a) Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on the bid mistakes, shall be permitted in accordance with rules.

(b) After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the state or fair competition may be permitted.

(c) Except as otherwise provided by rule, all decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes shall be supported by a written determination made by the chief procurement officer or the head of a purchasing agency.

(7) (a) The contract shall be awarded with reasonable promptness by written notice to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids.

(b) (i) If all bids for a construction project exceed available funds as certified by the appropriate fiscal officer, and the low responsive and responsible bid does not exceed those funds by more than 5%, the chief procurement officer or the head of a purchasing agency may, in situations where time or economic considerations preclude resolicitation of work of a reduced

scope, negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder in order to bring the bid within the amount of available funds.

(ii) If the State Building Board establishes alternative procedures by rule under Section 63A-5-103, the Division of Facilities Construction and Management need not comply with the provisions of this Subsection (7) when a bid meets the requirements of the State Building Board's rule.

(8) When it is considered impractical to prepare initially a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

Section 33. Section **63-56-402**, which is renumbered from Section 63-56-20.1 is renumbered and amended to read:

**~~[63-56-20.1].~~            63-56-402. Contracts awarded by reverse auction.**

(1) As used in this section, "reverse auction" means a process where:

(a) contracts are awarded in an open and interactive environment, which may include the use of electronic media; and

(b) bids are opened and made public immediately, and bidders given opportunity to submit revised, lower bids, until the bidding process is complete.

(2) (a) Notwithstanding the requirements of this chapter, contracts may be awarded through a reverse auction.

(b) The policy board shall make rules, consistent with this chapter, governing a reverse auction process.

Section 34. Section **63-56-403**, which is renumbered from Section 63-56-20.3 is renumbered and amended to read:

**~~[63-56-20.3].~~            63-56-403. Procurement -- Use of recycled goods.**

The procurement officer or other person responsible for purchasing supplies for each public procurement unit shall:

(1) comply with Section [~~63-56-20.7~~] 63-56-406; and

(2) (a) maintain for reference a copy of the current listing of recycled items available on state contract as issued by the chief procurement officer under Section [~~63-56-9~~] 63-56-204; and

(b) give recycled items consideration when inviting bids and purchasing supplies.

Section 35. Section **63-56-404**, which is renumbered from Section 63-56-20.5 is renumbered and amended to read:

~~[63-56-20.5]~~.                    **63-56-404**. Preference for providers of state products.

(1) (a) All public procurement units shall, in all purchases of goods, supplies, equipment, materials, and printing, give a reciprocal preference to those bidders offering goods, supplies, equipment, materials, or printing produced, manufactured, mined, grown, or performed in Utah as against those bidders offering goods, supplies, equipment, materials, or printing produced, manufactured, mined, grown, or performed in any state that gives or requires a preference to goods, supplies, equipment, materials, or printing 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 good, supply, equipment, material, or printing.

(c) (i) The bidder shall certify on the bid that the goods, supplies, equipment, materials, or printing offered are produced, manufactured, mined, grown, or performed in Utah.

(ii) The reciprocal preference is waived if that certification does not appear on the bid.

(2) (a) If the bidder submitting the lowest responsive and responsible bid offers goods, supplies, equipment, materials, or printing produced, manufactured, mined, grown, or performed in a state that gives or requires a preference, and if another bidder has submitted a responsive and responsible bid offering goods, supplies, equipment, materials, or printing produced, manufactured, mined, grown, or performed in Utah, and with the benefit of the reciprocal preference, his bid is equal to or less than the original lowest bid, the procurement officer shall:

(i) give notice to the bidder offering goods, supplies, equipment, materials, or printing produced, manufactured, mined, grown, or performed in Utah that he qualifies as a preferred bidder; and

(ii) make the purchase from the preferred bidder if, within 72 hours after notification to him that he is a preferred bidder, he agrees, in writing, to meet the low bid.

(b) The procurement officer shall include the exact price submitted by the lowest bidder in the notice he submits to the preferred bidder.

(c) The procurement officer 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 procurement officer 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 procurement officer shall comply with the rules adopted by the Procurement Policy Board 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.

Section 36. Section **63-56-405**, which is renumbered from Section 63-56-20.6 is renumbered and amended to read:

**~~63-56-20.6~~.            63-56-405. 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, a public procurement unit shall grant a resident contractor a reciprocal preference as against 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) The bidder shall certify on the bid that he qualifies as a resident contractor.

(b) The reciprocal preference is waived if that certification does not appear on the bid.

(4) (a) If the contractor submitting the lowest responsive and responsible bid is not a resident contractor and has his principal place of business in any state that gives or requires a preference to contractors from that state, and if a resident contractor has also submitted a responsive and responsible 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 procurement officer shall:

(i) give notice to the resident contractor that he qualifies as a preferred resident contractor; and

(ii) issue the contract to the resident contractor if, within 72 hours after notification to him that he is a preferred resident contractor, he agrees, in writing, to meet the low bid.

(b) The procurement officer shall include the exact price submitted by the lowest bidder in the notice he submits to the preferred resident contractor.

(c) The procurement officer 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 procurement officer 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 procurement officer shall comply with the rules adopted by the Procurement Policy Board 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.

Section 37. Section **63-56-406**, which is renumbered from Section 63-56-20.7 is renumbered and amended to read:

~~[63-56-20.7].~~            **63-56-406. Preference for recycled paper and paper products.**

(1) As used in this section:

(a) "Chief procurement officer" is the chief procurement officer appointed under Section ~~[63-56-8]~~ 63-56-203.

(b) "Paper" means any newspaper, high-grade office paper, fine paper, bond paper, offset paper, xerographic paper, mimeographic paper, duplicator paper, and related types of cellulosic material containing not more than 10% by weight or volume of noncellulosic material such as laminates, binders, coatings, or saturants.

(c) "Paper product" means any paper items or commodities, including paper napkins, towels, corrugated and other cardboard, toilet tissue, paper and related types of cellulosic products containing not more than 10% by weight or volume of noncellulosic material such as laminates, binders, coatings, or saturants. "Paper product" does not include preprinted cellulosic products such as books, newspapers, calendars, and magazines.

(d) "Postconsumer waste," "recycled paper," "recycled paper product," and "secondary waste paper material" are defined by rule made by the Division of Purchasing, Department of Administrative Services. The division rules shall be based on current definitions and standards employed by national procurement, product recycling, and other relevant organizations such as the federal Environmental Protection Agency.

(2) Notwithstanding Section [~~63-56-20~~] 63-56-401, which requires public procurement units to purchase products from the lowest responsible bidder, and subject to Subsection (3), every public procurement unit shall give preference to the purchase of paper and paper products which are manufactured or produced from recycled materials.

(3) A public procurement unit shall give preference to purchasing recycled paper and recycled paper products unless:

(a) the bid or purchase price for recycled paper or paper products exceeds by more than 5% the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids;

(b) there is no recycled paper or paper product reasonably available that meets the requirements and criteria set forth in the invitation for bids; or

(c) the public procurement unit has purchased at least the minimum percentage purchase requirement of recycled paper or recycled paper products as provided in Subsection (4).

(4) (a) The minimum percentage purchase requirement for fiscal year 1990-91 is 10% of



the public procurement unit's projected annual paper and paper product purchases.

(b) The minimum percentage purchase requirement shall be increased by 5% each fiscal year until the minimum percentage purchase requirement is 50%.

(5) Each public procurement unit shall provide the chief procurement officer with a report at the end of each fiscal year documenting:

- (a) the dollar amounts of paper and paper products purchased;
- (b) the dollar amounts of recycled paper and recycled paper products purchased; and
- (c) any additional costs resulting from purchasing recycled paper or recycled paper products.

(6) The chief procurement officer shall provide a written report of the information received under Subsection (5) to the Natural Resources, Agriculture, and Environment Interim Committee prior to November 30 of each year.

(7) (a) Each state agency shall separate and collect all types of recyclable paper for recycling, except under Subsection (7)(b). The chief procurement officer shall maintain an updated list of which papers are recyclable.

(b) If the state agency conducts an evaluation under Subsection (8) and determines the cost of recycling a certain type of recyclable paper is more than 10% greater than the cost of the current disposal method, the entity is exempt from the requirements of Subsection (7)(a) regarding that type of paper.

(8) A state agency's evaluation shall:

- (a) determine the types and quantities of recyclable paper in the state agency's current waste stream;
- (b) determine the market value of the recyclable paper;
- (c) determine and describe the alternatives for separating recyclable paper from the waste stream;
- (d) for each type of paper and for each method of separation, determine the cost of separating and collecting the recyclable paper for recycling;
- (e) determine the cost of the current disposal method for each type of recyclable paper;

(f) for each type of paper, compare the cost of the current disposal method with the cost of separating and collecting the paper for recycling; and

(g) determine the cost of producing the report required under Subsection (13)(b).

(9) Each evaluation conducted under Subsection (8) shall:

(a) be in writing;

(b) justify all estimates;

(c) be retained by the state agency;

(d) be accessible to the public for review; and

(e) be submitted to the chief procurement officer.

(10) Each state agency conducting an evaluation shall revise the evaluation as necessary, at least every 30 months.

(11) A state agency that is required to separate paper for recycling shall:

(a) designate an existing employee as a recycling coordinator to organize and coordinate the state agency's recycling program;

(b) establish procedures for separating each type of paper required to be separated for recycling;

(c) establish a system for separating and collecting each type of paper to be recycled, which assures the recyclable paper is sold to appropriate industries for reuse or recycling; and

(d) make participation in the recycling program as easy as practicable for state agency personnel by establishing clear policies.

(12) The monies received from the sale of recyclable paper shall be retained by the agency for:

(a) reimbursement to the state agency for program administration costs incurred as a result of recycling, if any; and

(b) funding recycling incentives programs.

(13) (a) The recycling coordinator designated in Subsection (11) shall keep records of:

(i) the quantity of paper recycled by the state agency;

(ii) the costs incurred by the state agency in recycling paper; and

(iii) the monies received from the sale of recyclable paper.

(b) Each recycling coordinator shall provide a written report of the state agency's recycling activities including the information required under Subsection (13)(a) before September 30 of each year to the chief procurement officer.

(14) The chief procurement officer shall provide a written report of the information received under Subsection (13) to the Natural Resources, Agriculture, and Environment Interim Committee prior to November 30 of each year.

Section 38. Section **63-56-407**, which is renumbered from Section 63-56-20.8 is renumbered and amended to read:

**~~[63-56-20.8]~~.            63-56-407. Use of alkaline paper.**

(1) As used in this section, "alkaline paper" means paper that is acid-free, manufactured with calcium carbonate as the principal filler, and meets standards for paper approved by the American National Standards Institute, National Information Standards Organization, and American Society for Testing and Materials.

(2) (a) Notwithstanding Section [~~63-56-20~~] 63-56-401, which requires public procurement units to purchase products from the lowest responsible bidder, and except as provided in Subsection (2)(b), every public procurement unit shall purchase and use alkaline paper.

(b) A public procurement unit shall purchase alkaline paper unless:

(i) the bid or purchase price for alkaline paper or alkaline recycled paper exceeds the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids;

(ii) there is no alkaline or alkaline recycled paper reasonably available that meets the requirements and criteria set forth in the invitation for bids; or

(iii) other paper products have equal or better quality characteristics than alkaline paper and meet standards for paper approved by the American National Standards Institute, National Information Standards Organization, and American Society for Testing and Materials.

(3) The state archivist shall promote the use of alkaline paper within state government,

local units of government, and school districts.

Section 39. Section **63-56-408**, which is renumbered from Section 63-56-21 is renumbered and amended to read:

**[63-56-21]. 63-56-408. Use of competitive sealed proposals in lieu of bids --**

**Procedure.**

(1) (a) When, according to rules established by the Procurement Policy Board, the chief procurement officer, the head of a purchasing agency, or a designee of either officer above the level of procurement officer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the state, a contract may be entered into by competitive sealed proposals.

(b) (i) Competitive sealed proposals may be used for the procurement of services of consultants, professionals, and providers as defined by the policy board by rule, whether or not the determination described in this subsection has been made.

(ii) The policy board shall make rules establishing guidelines to assure maximum practicable competition in those procurements, including the relative importance, if any, of the fee to be charged by an offeror.

(iii) The rules may provide that it is either not practicable or not advantageous to the state to procure certain types of supplies, services, or construction by competitive sealed bidding or competitive sealed proposals.

(2) (a) Proposals shall be solicited through a request for proposals.

(b) Public notice of the request for proposals shall be given in accordance with policy board rules.

(3) (a) Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation.

(b) A register of proposals shall be prepared in accordance with policy board rules and shall be open for public inspection after the contract is awarded.

(4) The request for proposals shall state the relative importance of price and other evaluating factors.

(5) (a) As provided in the request for proposals and under policy board rules, discussions may be conducted with responsible offerors who submit proposals for the purpose of assuring full understanding of, and responsiveness to, solicitation requirements.

(b) Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and before the contract is awarded for the purpose of obtaining best and final offers.

(c) In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(6) (a) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state, taking into consideration price and the evaluation factors set forth in the request for proposals.

(b) No other factors or criteria shall be used in the evaluation.

(c) The contract file shall contain the basis on which the award is made.

Section 40. Section **63-56-409**, which is renumbered from Section 63-56-22 is renumbered and amended to read:

**[63-56-22]. 63-56-409. Small purchases.**

Small purchases shall be defined in, and may be made in accordance with procedures established by rules and regulations; except that procurement requirement shall not be artificially divided so as to constitute a small purchase under this section.

Section 41. Section **63-56-410**, which is renumbered from Section 63-56-23 is renumbered and amended to read:

**[63-56-23]. 63-56-410. Circumstances justifying award of contract without competition.**

A contract may be awarded for a supply, service, or construction item without competition when, under rules and regulations, the chief procurement officer, the head of a purchasing agency, or a designee of either officer above the level of procurement officer determines in writing that:

(1) there is only one source for the required supply, service, or construction item; or

(2) the award to a specific supplier, service provider, or contractor is a condition of a donation that will fund the full cost of the supply, service, or construction item.

Section 42. Section **63-56-411**, which is renumbered from Section 63-56-24 is renumbered and amended to read:

**~~[63-56-24].~~ 63-56-411. Emergency procurements.**

Notwithstanding any other provision of this chapter, when there exists a threat to public health, welfare, or safety under emergency conditions as defined in rules and regulations, the chief procurement officer, the head of a purchasing agency, or a designee of either officer may make or authorize others to make emergency procurements; provided that emergency procurements shall be made with as much competition as practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

Section 43. Section **63-56-412**, which is renumbered from Section 63-56-25 is renumbered and amended to read:

**~~[63-56-25].~~ 63-56-412. Cancellation and rejection of bids.**

An invitation for bids, a request for proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected, in whole or in part, as may be specified in the solicitation, when it is in the best interests of the state in accordance with rules and regulations. The reasons shall be made part of the contract file.

Section 44. Section **63-56-413**, which is renumbered from Section 63-56-26 is renumbered and amended to read:

**~~[63-56-26].~~ 63-56-413. Determination of nonresponsibility of bidder.**

A written determination of nonresponsibility of a bidder or offeror shall be made in accordance with rules and regulations. The unreasonable failure of a bidder or offeror 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 bidder or offeror. Information furnished by a bidder or offeror pursuant to this section shall not be disclosed outside of the purchasing division or the purchasing agency without prior written consent by the

bidder or offeror.

Section 45. Section **63-56-414**, which is renumbered from Section 63-56-27 is renumbered and amended to read:

**[63-56-27]. 63-56-414. Prequalification of suppliers.**

Prospective suppliers may be prequalified for particular types of supplies, services, and construction. Solicitation mailing lists of potential contractors shall include but shall not be limited to prequalified suppliers.

Section 46. Section **63-56-415**, which is renumbered from Section 63-56-28 is renumbered and amended to read:

**[63-56-28]. 63-56-415. Rules and regulations to determine allowable incurred costs -- Required information -- Auditing of books.**

(1) Rules and regulations may be promulgated to set forth cost principles to be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions which provide for the reimbursement of costs; provided that if a written determination is approved at a level above the procurement officer, the cost principles may be modified by contract.

(2) A person shall, except as provided in Subsection (4), submit cost or pricing data and shall certify that, to the best of the person's knowledge and belief, the cost or pricing data submitted were accurate, complete, and current as of a mutually determined specified date prior to the date of:

(a) the pricing of any contract awarded by competitive sealed proposals or pursuant to the sole source procurement authority, where the total contract price is expected to exceed an amount established by rules and regulations; or

(b) the pricing of any change order which is expected to exceed an amount established by rules and regulations.

(3) Any contract or change order under which a certificate is required shall contain a provision that the price to the state, including profit or fee, shall be adjusted to exclude any significant sums by which the state finds that the price was increased because the

contractor-furnished cost or pricing data were inaccurate, incomplete, or not current as of the date agreed upon between the parties.

(4) The requirements of Subsections (2) and (3) need not be applied to contracts:

- (a) where the contract price is based on adequate price competition;
- (b) where the contract price is based on established catalogue prices or market prices;
- (c) where contract prices are set by law or regulation; or

(d) where it is determined in writing in accordance with rules and regulations that the requirements of this section may be waived, and the reasons for such waiver are stated in writing.

(5) The state may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data pursuant to this section or any contractor or subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that the books and records relate to the cost or pricing data, contract, or subcontract. The books and records shall be maintained by the contractor for three years following the end of the fiscal year in which final payment is made under the prime contract and by the subcontractor for three years following the end of the fiscal year in which final payment is made under the subcontract, unless a shorter period is otherwise authorized in writing.

Section 47. Section **63-56-416**, which is renumbered from Section 63-56-29 is renumbered and amended to read:

**[~~63-56-29~~]. 63-56-416. Cost-plus-a-percentage-of-cost contract prohibited.**

(1) Subject to the limitations of this section, any type of contract which will promote the best interests of the state may be used; provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the state than any other type or that it is impracticable to obtain the supplies, services, or construction required except under such a contract.

(2) Except with respect to firm fixed-price contracts, no contract type shall be used unless it has been determined in writing by the chief procurement officer, the head of a purchasing agency, or a designee of either officer 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; and

(b) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

Section 48. Section **63-56-417**, which is renumbered from Section 63-56-30 is renumbered and amended to read:

**~~[63-56-30]~~. 63-56-417. Period of time for contract of supplies.**

(1) Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time [~~deemed~~] considered to be in the best interests of the state; provided that the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds.

(2) Prior to the utilization of a multiyear contract, it shall be determined in writing that estimated requirements cover the period of the contract and are reasonably firm and continuing and that such a contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(3) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled and the contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriations available for that purpose.

Section 49. Section **63-56-418**, which is renumbered from Section 63-56-31 is renumbered and amended to read:

**~~[63-56-31]~~. 63-56-418. Right of state to inspect place of business of contractor or subcontractor.**

The state may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to

be awarded by the state.

Section 50. Section **63-56-419**, which is renumbered from Section 63-56-32 is renumbered and amended to read:

~~[63-56-32].~~ **63-56-419. Determinations final except when arbitrary and capricious.**

The determinations required by Subsections ~~[63-56-20]~~ 63-56-401(6), ~~[63-56-21]~~ 63-56-408(1) and (6), Sections ~~[63-56-23]~~ 63-56-410, ~~[63-56-24]~~ 63-56-411, ~~[63-56-26]~~ 63-56-413, Subsection ~~[63-56-28]~~ 63-56-415(4), Section ~~[63-56-29]~~ 63-56-416, and Subsection ~~[63-56-30]~~ 63-56-417(2) are final and conclusive unless they are arbitrary and capricious or clearly erroneous.

Section 51. Section **63-56-420**, which is renumbered from Section 63-56-33 is renumbered and amended to read:

~~[63-56-33].~~ **63-56-420. Factual information to attorney general if collusion suspected.**

When for any reason collusion or other anticompetitive practices are suspected among bidders or offerors, a notice of the relevant facts shall be transmitted to the attorney general.

Section 52. Section **63-56-421**, which is renumbered from Section 63-56-34 is renumbered and amended to read:

~~[63-56-34].~~ **63-56-421. Records of contracts made.**

The chief procurement officer or the head of a purchasing agency shall maintain a record listing all contracts made under Section ~~[63-56-23]~~ 63-56-410 or ~~[63-56-24]~~ 63-56-411 and shall maintain the record in accordance with Title 63, 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 supplies, services, or construction procured under each contract.

Section 53. Section **63-56-422**, which is renumbered from Section 63-56-35.5 is renumbered and amended to read:

~~[63-56-35.5].~~ **63-56-422. Exemptions from source selection and contract requirements -- Violation penalty.**

The policy board may, by rule, exempt a public procurement unit from the source selection and contract award provisions of this part, if it [~~deems~~] considers that to be in the best economic interest of the state.

On projects where public funds or political subdivisions are involved, the owner shall follow the procedures outlined in the Utah Procurement Code when determining or selecting their agent or construction manager. However, no exemption shall be permitted that allows any political subdivision of this state to negotiate, enter into, or cause to be negotiated prior to open bidding for the prime contracting agent any predetermined agreement or arrangement which causes interference with the traditional fair competitive bidding process or the rights of employees under state and federal law. Any agreement or arrangement entered into in violation of this section is unenforceable and void ab initio and the parties to such an agreement or arrangement are subject to a class B misdemeanor penalty.

This provision shall not apply to any political subdivision, agency, or department of this state, if, as a condition of a federal grant, there is a requirement that a schedule of predetermined wages be included in the contract.

Section 54. Section **63-56-423**, which is renumbered from Section 63-56-35.6 is renumbered and amended to read:

**~~[63-56-35.6].~~            63-56-423. Purchase of prison industry goods.**

(1) All public procurement units shall purchase goods and services produced by the Utah Correctional Industries Division as provided by this section, which is an exemption from this chapter. All political subdivisions of the state may purchase these goods and services and are encouraged to do so when feasible.

(2) By July 1 of each year, the director of the Utah Correctional Industries shall publish and distribute to all state agencies and interested political subdivisions a catalog of goods and services provided by the Correctional Industries Division. The catalog shall include a description and price of each item offered for sale. The catalog shall be updated and revised during the year as the director [~~deems~~] considers necessary.

(3) (a) State departments, agencies, and institutions may not purchase any goods or

services provided by the Correctional Industries Division from any other source unless it has been determined in writing by the director of Correctional Industries and the state procurement officer or in the case of institutions of higher education, the institutional procurement officer, that purchase from the Correctional Industries Division is not feasible due to one of the following circumstances:

~~[(a)]~~ (i) the good or service offered by the division does not meet the reasonable requirements of the purchasing agency;

~~[(b)]~~ (ii) the good or service cannot be supplied within a reasonable time by the division;  
or

~~[(c)]~~ (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, the decision may be appealed to a board consisting of the director of the Department of Corrections, the director of Administrative Services, and a neutral third party agreed upon by the other two members or, in the case of institutions of higher education, the president of the involved institution shall make the final decision.

Section 55. Section **63-56-424**, which is renumbered from Section 63-56-35.7 is renumbered and amended to read:

~~[63-56-35.7].~~            **63-56-424. Counties and municipalities eligible to participate in state agreements, contracts, and surplus property program.**

Utah counties, municipalities, and local public procurement units may purchase from or otherwise participate in state public procurement unit agreements and contracts.

Section 56. Section **63-56-425**, which is renumbered from Section 63-56-35.8 is renumbered and amended to read:

~~[63-56-35.8].~~            **63-56-425. Purchase from sheltered workshops.**

(1) As used in this section, "sheltered workshop" means a nonprofit organization operated in the interest of severely disabled individuals that:

(a) is certified as a sheltered workshop or sheltered work activity center by the United

States Department of Labor; or

(b) is a supported employment program approved by the Utah State Office of Rehabilitation if:

(i) the program has as its principal purpose the development of employment opportunities for individuals with severe disabilities; and

(ii) at least 75% of the program employees under the procurement contract in question have severe disabilities.

(2) Notwithstanding any provision in this chapter to the contrary, each public procurement unit shall purchase goods and services produced by a sheltered workshop if:

(a) the good or service offered for sale by a sheltered workshop reasonably conforms to the needs and specifications of the public procurement unit;

(b) the sheltered workshop can supply the good or service within a reasonable time;

(c) the price of the good or service is reasonably competitive with the cost of procuring the good or service from another source;

(d) the sheltered workshop has provided the public procurement unit with a written bid fairly identifying the good or service and naming its price; and

(e) (i) the sheltered workshop has its principal place of business in Utah;

(ii) the good was produced by the sheltered workshop in Utah; or

(iii) the service is provided by individuals, the majority of whom are domiciled in Utah.

(3) The cost of a good or service is considered reasonably competitive under Subsection (2)(c) if it is within 5% of the lowest responsive and responsible bid offer for that good or service.

(4) Each sheltered workshop shall certify on any bid it submits to a public procurement unit under this section that it is claiming a preference under this section.

(5) In the case of conflict between a purchase under this section and a purchase under Section [~~63-56-35.6;~~ 63-56-423, this section [~~63-56-35.8~~] prevails.

Section 57. Section **63-56-501**, which is renumbered from Section 63-56-36 is renumbered and amended to read:

**Part 5. Procurement of Construction****[~~63-56-36~~]. 63-56-501. Alternative methods of construction contracting management.**

(1) (a) Rules shall provide as many alternative methods of construction contracting management as determined to be feasible.

(b) These rules shall:

(i) grant to the chief procurement officer or the head of the purchasing agency responsible for carrying out the construction project the discretion to select the appropriate method of construction contracting management for a particular project; and

(ii) require the procurement officer to execute and include in the contract file a written statement setting forth the facts which led to the selection of a particular method of construction contracting management for each project.

(c) Before choosing a construction contracting management method, the chief procurement officer or the head of the purchasing agency responsible for carrying out the construction project shall consider the following factors:

(i) when the project must be ready to be occupied;

(ii) the type of project;

(iii) the extent to which the requirements of the procuring agencies and the ways in which they are to be met are known;

(iv) the location of the project;

(v) the size, scope, complexity, and economics of the project;

(vi) the source of funding and any resulting constraints necessitated by the funding source;

(vii) the availability, qualification, and experience of state personnel to be assigned to the project and how much time the state personnel can devote to the project; and

(viii) the availability, qualifications, and experience of outside consultants and contractors to complete the project under the various methods being considered.

(2) (a) Rules adopted by state public procurement units and local public procurement

units to implement this section may authorize the use of a Construction Manager/General Contractor as one method of construction contracting management.

(b) Those rules shall require that:

(i) the Construction Manager/General Contractor shall be selected using one of the source selection methods provided for in [~~Sections 63-56-20 through 63-56-35.8~~] Part 4, Source Selections and Contract Formation, and Section [~~63-56-36.1~~] 63-56-502; and

(ii) when entering into any subcontract that was not specifically included in the Construction Manager/General Contractor's cost proposal submitted under the requirements of Subsection (2)(b)(i), the Construction Manager/General Contractor shall procure that subcontractor by using one of the source selection methods provided for in [~~Sections 63-56-20 through 63-56-35.8~~] Part 4, Source Selections and Contract Formation, in the same manner as if the subcontract work was procured directly by the state.

(3) Procurement rules adopted by the State Building Board under Subsection (1) for state building construction projects may authorize the use of a design-build provider as one method of construction contracting management.

Section 58. Section **63-56-502**, which is renumbered from Section 63-56-36.1 is renumbered and amended to read:

~~[63-56-36.1].~~            **63-56-502.** **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 public transit district that has more than 200,000 people residing within its boundaries; and

(v) a public airport authority~~[, as defined in Section 72-10-102]~~.

(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, by following the procedures and requirements of Title 63, Chapter 46a, 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 under Subsection (2).

(4) (a) Before entering 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 policy 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 must be at least two.

(5) (a) The transportation agency shall:

(i) evaluate the responses received from the request for qualifications;  
(ii) select from their number those qualified to submit proposals; and  
(iii) invite those respondents to submit proposals based upon the transportation agency's request for proposals.

(b) If the transportation agency fails to receive at least two qualified eligible competing proposers, the transportation agency shall readvertise the project.

(6) 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 submitters who submit unsuccessful proposals.

(7) The transportation agency shall:

(a) evaluate the submissions received in response to the request for proposals from the prequalified proposers;

(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 proposer whose proposal is most advantageous to the state.

Section 59. Section **63-56-503**, which is renumbered from Section 63-56-37 is renumbered and amended to read:

**~~[63-56-37].~~ 63-56-503. Bid security requirements -- Directed suretyship prohibited -- Penalty.**

(1) Bid security in amount equal to at least 5% of the amount of the bid shall be required for all competitive sealed 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 set forth in the invitation for bids, the bid shall be rejected unless, pursuant to rules, it is determined 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, except as provided in Subsection ~~[63-56-20]~~ 63-56-401(6). 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 chief procurement

officer or the head of the purchasing agency 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 referred to 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.

Section 60. Section **63-56-504**, which is renumbered from Section 63-56-38 is renumbered and amended to read:

**[63-56-38]. 63-56-504. Bonds necessary when contract is awarded -- Waiver -- Action -- Attorneys' 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 state, which shall become binding on the parties upon the execution of the contract:

(a) a performance bond satisfactory to the state 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 this state or any other form satisfactory to the state; and

(b) a payment bond satisfactory to the state 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 this state or any other form satisfactory to the state, 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 chief procurement officer or the head of the purchasing agency responsible for carrying out a construction project may not require a contractor to whom a contract is awarded to obtain a bond of the types referred to in ~~[Subsections]~~ Subsection (1)~~[(a) and (b)]~~ 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 may provide for waiver of the requirement of a bid, performance, or payment bond for circumstances in which the state considers any or all of the bonds to be unnecessary to

protect the state.

(4) A person shall have a right of action on a payment bond under this section for any unpaid amount due him if:

(a) he 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) he has not been paid in full within 90 days after the last date on which he performed the labor or service or supplied the equipment or material for which the claim is made.

(5) An action upon a payment bond shall be brought in a court of competent jurisdiction in any county where the construction contract was to be performed and not elsewhere. 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 attorneys' fees to the prevailing party, which fees shall be taxed as costs in the action.

Section 61. Section **63-56-505 (Effective 05/01/05)**, which is renumbered from Section 63-56-38.1 (Effective 05/01/05) is renumbered and amended to read:

**~~[63-56-38.1 (Effective 05/01/05)].~~ 63-56-505 (Effective 05/01/05). 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 38-1-32, except that this section does not apply:

(a) to a person performing labor for wages; or

(b) if a notice of commencement is not filed as prescribed in Section 38-1-31 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 prior to commencement of any action on the payment bond.

Section 62. Section **63-56-506**, which is renumbered from Section 63-56-39 is renumbered and amended to read:

**[63-56-39]. 63-56-506. Form of bonds -- Effect of certified copy.**

The form of the bonds required by this part shall be established by rules and regulations. Any person may obtain from the state a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

Section 63. Section **63-56-601**, which is renumbered from Section 63-56-40 is renumbered and amended to read:

**Part 6. Contract Clauses**

**[63-56-40]. 63-56-601. Required contract clauses -- Computation of price adjustments -- Use of rules and regulations.**

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

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

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

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

(d) site conditions differing from those indicated in the construction contract, or ordinarily encountered, except that differing site conditions clauses required by the rules and regulations need not be included in a construction contract when the contract is negotiated, when the contractor provides the site or design, or when the parties have otherwise agreed with respect to the risk of differing site conditions.

(2) Adjustments in price pursuant to clauses promulgated under Subsection (1) shall be

computed in one or more of the following ways:

- (a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- (b) by unit prices specified in the contract or subsequently agreed upon;
- (c) by the costs attributable to the events or situations under the clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;
- (d) in any other manner as the contracting parties may mutually agree; or
- (e) in the absence of agreement by the parties, by a unilateral determination by the state of the costs attributable to the events or situations under the clauses with adjustment of profit or fee, all as computed by the state in accordance with applicable sections of the rules and regulations issued under Subsection ~~[63-56-28]~~ 63-56-415(1) and subject to the provisions of Part ~~[H of this chapter]~~ 8, Legal and Contractual Remedies.

(3) A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of Section ~~[63-56-28]~~ 63-56-415.

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

- (a) liquidated damages as appropriate;
- (b) specified excuses for delay or nonperformance;
- (c) termination of the contract for default; and
- (d) termination of the contract in whole or in part for the convenience of the state.

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

Section 64. Section **63-56-602**, which is renumbered from Section 63-56-41 is renumbered and amended to read:

~~[63-56-41]~~. **63-56-602**. **Certification of change order.**

Under a construction contract, any change order which increases the contract amount shall be subject to prior written certification that the change order is within the determined project or contract budget. The certification shall be made by the fiscal officer of the entity responsible for funding the project or the contract or other official responsible for monitoring and reporting upon the status of the costs of the total project or contract budget. If the certification discloses a resulting increase in the total project or contract budget, the procurement officer shall not execute or make the change order unless sufficient funds are available or 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 prior to the change order under consideration. However, with respect to the validity, as to the contractor, of any executed change order upon which the contractor has reasonably relied, it shall be presumed that there has been compliance with the provisions of this section.

Section 65. Section **63-56-701**, which is renumbered from Section 63-56-42 is renumbered and amended to read:

**Part 7. Architect-Engineer Services**

~~[63-56-42]~~. **63-56-701**. **Policy regarding architect-engineer services.**

It is the policy of this state to publicly announce all requirements for architect-engineer services and to negotiate contracts for architect-engineer services on the basis of demonstrated competence and qualification for the type of services required, and at fair and reasonable prices. Architect-engineer services shall be procured as provided in this part except as authorized by Sections ~~[63-56-22]~~ 63-56-409 through ~~[63-56-24]~~ 63-56-411. This part does not affect the authority of, and does not apply to procedures undertaken by, a public procurement unit to obtain the services of architects or engineers in the capacity of employees of such unit.

Section 66. Section **63-56-702**, which is renumbered from Section 63-56-43 is renumbered and amended to read:

~~[63-56-43]~~. **63-56-702**. **Selection committee for architect-engineer services.**

In the procurement of architect-engineer services, the chief procurement officer or the

head of a purchasing agency shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The Building Board shall be the selection committee for architect-engineer services contracts under its authority. Selection committees for architect-engineer services contracts not under the authority of the Building Board shall be established in accordance with rules and regulations promulgated by the policy board. Selection committees shall evaluate current statements of qualifications and performance data on file with the state, together with those that may be submitted by other firms in response to the announcement of the proposed contract. Selection committees shall consider no less than three firms and then shall select therefrom, based upon criteria established and published by the selection committees, no less than three of the firms [~~deemed~~] considered to be the most highly qualified to provide the services required.

Section 67. Section **63-56-703**, which is renumbered from Section 63-56-43.1 is renumbered and amended to read:

~~[63-56-43.1].~~            **63-56-703. Selection as part of design-build or lease.**

Notwithstanding any other provision of this chapter, architect-engineer services may be procured under Title 63A, Chapter 5, State Building Board[~~f~~] - Division of Facilities Construction and Management, 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, provided that the qualifications of those providing the architect-engineer services are part of the consideration in the selection process.

Section 68. Section **63-56-704**, which is renumbered from Section 63-56-44 is renumbered and amended to read:

~~[63-56-44].~~            **63-56-704. Determination of compensation for architect-engineer services.**

The procurement officer shall award a contract to a qualified firm at compensation which the procurement officer determines in writing to be fair and reasonable to the state. In making this decision, the procurement officer shall take into account the estimated value, the scope, and complexity, and the professional nature of the services to be rendered. Should the procurement



officer be unable to agree to a satisfactory contract with the firm first selected, at a price the procurement officer determines to be fair and reasonable to the state, discussions with that firm shall be formally terminated. The procurement officer shall then undertake discussions with a second qualified firm. Failing accord with the second firm, the procurement officer shall formally terminate discussions. The procurement officer shall then undertake discussions with a third qualified firm. Should the procurement officer be unable to award a contract at a fair and reasonable price with any of the selected firms, the procurement officer shall select additional firms, and the procurement officer shall continue discussions in accordance with this part until an agreement is reached.

Section 69. Section **63-56-705**, which is renumbered from Section 63-56-44.5 is renumbered and amended to read:

~~[63-56-44.5]~~. **63-56-705. Restrictions on state agency procurement of architect-engineer services.**

(1) Except as provided in Subsection (2), when a public procurement unit, in accordance with Section ~~[63-56-42]~~ 63-56-701, elects to obtain architect or engineering services by using a competitive procurement process and has provided public notice of its competitive procurement process:

(a) a higher education entity, or any part of one, may not submit a proposal in response to the public procurement unit's competitive procurement process; and

(b) the public procurement unit may not award a contract to perform the architect or engineering services solicited in the competitive procurement process to a higher education entity or any part of one.

(2) A public procurement unit need not comply with the requirements of Subsection (1) when the public procurement unit is procuring architect or engineer services for contracts related to research activities and technology transfer.

Section 70. Section **63-56-801**, which is renumbered from Section 63-56-45 is renumbered and amended to read:

### **Part 8. Legal and Contractual Remedies**

~~[63-56-45]~~. **63-56-801**. **Protest to chief procurement officer -- Time -- Authority to resolve protest.**

(1) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the chief procurement officer or the head of a purchasing agency. A protest with respect to an invitation for bids or a request for proposals shall be submitted in writing prior to the opening of bids or the closing date for proposals, unless the aggrieved person did not know and should not have known of the facts giving rise to the protest prior to bid opening or the closing date for proposals. The protest shall be submitted in writing within five working days after the aggrieved person knows or should have known of the facts giving rise thereto.

(2) The chief procurement officer, the head of a purchasing agency, or a designee of either officer shall have the authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve the protest.

Section 71. Section **63-56-802**, which is renumbered from Section 63-56-46 is renumbered and amended to read:

~~[63-56-46]~~. **63-56-802**. **Effect of timely protest.**

In the event of a timely protest under Subsection ~~[63-56-45]~~ 63-56-801(1), ~~[63-56-54]~~ 63-56-810(1), or ~~[63-56-59]~~ 63-56-815(1), the state shall not proceed further with the solicitation or with the award of the contract until all administrative and judicial remedies have been exhausted or until the chief procurement officer, after consultation with the head of the using agency or the head of a purchasing agency, makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the state.

Section 72. Section **63-56-803**, which is renumbered from Section 63-56-47 is renumbered and amended to read:

~~[63-56-47]~~. **63-56-803**. **Costs to or against protestor.**

(1) When 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 shall be entitled to the following relief as a claim against the state:

(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) When a protest is not sustained by the Procurement Appeals Board, the protestor shall reimburse the Division of Purchasing and General Services for the per diem and expenses paid by the division to witnesses or appeals board members and any additional expenses incurred by the state agency staff who have provided materials and administrative services to the board for that case.

Section 73. Section **63-56-804**, which is renumbered from Section 63-56-48 is renumbered and amended to read:

**[63-56-48]. 63-56-804. Debarment from consideration for award of contracts -- Causes for debarment.**

(1) After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the chief procurement officer or the head of a purchasing agency, after consultation with the using agency and the attorney general, shall have authority to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period exceeding three years. The same officer, after consultation with the using agency and the attorney general, shall have authority to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall 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 (2) ~~[of this section]~~, in which case the suspension shall, at the request of the attorney general, remain in effect until after the trial of the suspended person.

(2) 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 such 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 state contractor;

(c) conviction under state or federal antitrust statutes;

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

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

Section 74. Section **63-56-805**, which is renumbered from Section 63-56-49 is renumbered and amended to read:

**~~[63-56-49].~~ 63-56-805. Authority to resolve controversy between state and contractor.**

The chief procurement officer, the head of a purchasing agency, or a designee of either officer is authorized, prior to commencement of an action in court concerning the controversy, to settle and resolve a controversy which arises between the state and a contractor under or by virtue of a contract between them. This includes, without limitation, controversies based upon breach of contract, mistakes, misrepresentation, or other cause for contract modification or rescission.

Section 75. Section **63-56-806**, which is renumbered from Section 63-56-50 is renumbered and amended to read:

**~~[63-56-50].~~ 63-56-806. Decisions of chief procurement officer to be in writing -- Effect of no writing.**

(1) The chief procurement officer, the head of a purchasing agency, or the designee of either officer shall promptly issue a written decision regarding any protest, debarment or suspension, or contract controversy if it is not settled by a mutual agreement. The decision shall state the reasons for the action taken and inform the protestor, contractor, or prospective contractor of the right to judicial or administrative review as provided in this chapter.

(2) A decision shall be effective until stayed or reversed on appeal, except to the extent provided in Section ~~[63-56-46]~~ 63-56-802. A copy of the decision under Subsection (1) shall be

mailed or otherwise furnished immediately to the protestor, prospective contractor, or contractor. The decision shall be final and conclusive unless the protestor, prospective contractor, or contractor appeals administratively to the procurement appeals board in accordance with Subsection ~~[63-56-54]~~ 63-45-810(2) or the protestor, prospective contractor, or contractor commences an action in court in accordance with Section ~~[63-56-59]~~ 63-56-815.

(3) If the chief procurement officer, the head of a purchasing agency, or the designee of either officer does not issue the written decision regarding a contract controversy within 60 calendar days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.

Section 76. Section **63-56-807**, which is renumbered from Section 63-56-51 is renumbered and amended to read:

~~[63-56-51].~~    **63-56-807. Creation of Procurement Appeals Board.**

(1) (a) A Procurement Appeals Board is created in the executive branch. The Procurement Appeals Board shall be composed of a chair and one other member, to be appointed by the governor, and a third member to be designated by the two appointed members on a case-by-case basis.

(b) None of the members of the Procurement Appeals Board shall otherwise be full-time employees of the state.

(c) The appointed members of the Procurement Appeals Board shall have been members in good standing of the state bar for at least five years and shall be experienced in contract or commercial matters.

(d) The designated member shall possess the technical expertise and experience needed for the proper disposition of the factual issues presented by the case.

(2) (a) Except as required by Subsection (2)(b), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board

members are staggered so that approximately half of the board is appointed every two years.

(c) The designated member shall serve for the case on which designated until the final disposition of the case.

(d) Appointed members may be reappointed for succeeding terms and may continue to serve after the expiration of their terms until a successor takes office.

(e) Qualified persons may be redesignated as members.

(3) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(4) (a) Members shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(b) Members may decline to receive per diem and expenses for their service.

Section 77. Section **63-56-808**, which is renumbered from Section 63-56-52 is renumbered and amended to read:

**[63-56-52]. 63-56-808. Rules of procedure to be adopted.**

The Procurement Appeals Board shall adopt rules of procedure which, to the fullest extent possible, will provide for the expeditious resolution of controversies, including procedures to encourage agreements between the parties to a controversy prior to a hearing. The board may adopt small claims procedures for the resolution of controversies involving claims of less than \$15,000.

Section 78. Section **63-56-809**, which is renumbered from Section 63-56-53 is renumbered and amended to read:

**[63-56-53]. 63-56-809. Decisions to be in writing.**

The Procurement Appeals Board shall issue a decision in writing or take other appropriate action of each appeal submitted. A copy of any decision shall be provided to all parties and the chief procurement officer or the head of a purchasing agency.

Section 79. Section **63-56-810**, which is renumbered from Section 63-56-54 is renumbered and amended to read:

**[63-56-54]. 63-56-810. Jurisdiction of Procurement Appeals Board.**

Unless an action has been initiated previously in district courts for essentially the same cause of action, the board shall have jurisdiction to review and determine de novo:

- (1) any protest of a solicitation or award of a contract addressed to the board by an aggrieved actual or prospective bidder or offeror, or a contractor; and
- (2) any appeal by an aggrieved party from a decision rendered or [~~deemed~~] considered to have been rendered pursuant to Section [~~63-56-50~~] 63-56-806.

Section 80. Section **63-56-811**, which is renumbered from Section 63-56-55 is renumbered and amended to read:

**[63-56-55]. 63-56-811. Time limits to file protest or appeal -- Effect of filing.**

(1) For a protest under Subsection [~~63-56-54~~] 63-56-810(1), the aggrieved person shall file a protest with the board within five working days after the aggrieved person knows or should have known of the facts and circumstances upon which the protest is based; provided, however, that a protest with respect to an invitation for bids or request for proposals shall be filed prior to the opening of bids or the closing date for proposals unless the aggrieved person did not know and should not have known of the facts giving rise to the protest prior to bid opening or the closing date for proposals.

(2) For an appeal from a decision regarding a protested solicitation or award, the aggrieved person shall file an appeal within seven calendar days of receipt of a decision rendered or [~~deemed~~] considered to have been rendered pursuant to Section [~~63-56-50~~] 63-56-806.

(3) For an appeal from a decision regarding a debarment, suspension, or contract controversy, the aggrieved person shall file an appeal within 60 calendar days of receipt of a decision rendered or [~~deemed~~] considered to have been rendered pursuant to Section [~~63-56-50~~] 63-56-806.

Section 81. Section **63-56-812**, which is renumbered from Section 63-56-56 is renumbered and amended to read:

**[63-56-56]. 63-56-812. Discontinued appeal with prejudice, except as authorized.**

After notice of an appeal has been filed with the Procurement Appeals Board, no party

may discontinue the appeal without prejudice, except as authorized by the Procurement Appeals Board.

Section 82. Section **63-56-813**, which is renumbered from Section 63-56-57 is renumbered and amended to read:

**[63-56-57]. 63-56-813. Factual determination of appeals board final and conclusive.**

(1) On any protest or appeal under Section [~~63-56-54~~] 63-56-810, the Procurement Appeals Board shall promptly decide the contract controversy or whether the solicitation or award was in accordance with this chapter. Any prior determinations by administrative officials regarding protests of solicitations or awards, suspension or debarments, contract controversies, or breach of contract controversies shall not be final or conclusive.

(2) A determination of an issue of fact by the Procurement Appeals Board under Subsection (1) shall be final and conclusive unless arbitrary and capricious or clearly erroneous. No determination on an issue of law shall be final or conclusive.

Section 83. Section **63-56-814**, which is renumbered from Section 63-56-58 is renumbered and amended to read:

**[63-56-58]. 63-56-814. Right to appeal to Court of Appeals.**

Any person receiving an adverse decision or the state may appeal a decision of the Procurement Appeals Board to the Court of Appeals. However, no appeal may be made by the state unless recommended by the chief procurement officer or the head of the purchasing agency involved, and approved by the attorney general.

Section 84. Section **63-56-815**, which is renumbered from Section 63-56-59 is renumbered and amended to read:

**[63-56-59]. 63-56-815. Jurisdiction of district court.**

(1) The district court shall have jurisdiction over an action, whether the action is at law or in equity, between the state and:

(a) a bidder, offeror, or contractor, prospective or actual, who is aggrieved in connection with the solicitation or award of a contract;



- (b) a person who is subject to a suspension or debarment proceeding; and
- (c) a contractor, for any cause of action which arises under, or by virtue of a contract.

(2) The provisions of Title 63, Chapter 30d, Part 4, Notice of Claim Against a Governmental Entity or a Government Employee, and Section 63-30d-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.

Section 85. Section **63-56-816**, which is renumbered from Section 63-56-60 is renumbered and amended to read:

**~~[63-56-60]~~. 63-56-816. Effect of prior determination by agents of state.**

In any judicial action under Section ~~[63-56-59]~~ 63-56-815, determinations by employees, agents, or other persons appointed by the state shall be final and conclusive only as provided in Sections ~~[63-56-32]~~ 63-56-419 and ~~[63-56-50]~~ 63-56-806, and Subsection ~~[63-56-57]~~ 63-56-813(2).

Section 86. Section **63-56-817**, which is renumbered from Section 63-56-61 is renumbered and amended to read:

**~~[63-56-61]~~. 63-56-817. Statutes of limitations.**

(1) Any action under Subsection ~~[63-56-59]~~ 63-56-815(1)(a) shall be initiated as follows:

(a) within 20 calendar days after the aggrieved person knows or should have known of the facts giving rise to the action; provided, however, that an action with respect to an invitation for bids or request for proposals shall be initiated prior to the opening of bids or the closing date for proposals unless the aggrieved person did not know and should not have known of the facts giving rise to the action prior to bid opening or the closing date for proposals; or

(b) within 14 calendar days after receipt of a final administrative decision pursuant to either Section ~~[63-56-50]~~ 63-56-806 or Section ~~[63-56-57]~~ 63-56-813, whichever is applicable.

(2) Any action under Subsection ~~[63-56-59]~~ 63-56-815(1)(b) shall be commenced within six months after receipt of a final administrative decision pursuant to Section ~~[63-56-50]~~ 63-56-806 or Section ~~[63-56-57]~~ 63-56-813, whichever is applicable.

(3) The statutory limitations on an action between private persons on a contract or for

breach of contract shall apply to any action commenced pursuant to Subsection [~~63-56-59~~] 63-56-815(1)(c), except notice of appeals from the Procurement Appeals Board pursuant to Section [~~63-56-58~~] 63-56-814 concerning actions on a contract or for breach of contract shall be filed within one year after the date of the Procurement Appeals Board decision.

Section 87. Section **63-56-818**, which is renumbered from Section 63-56-62 is renumbered and amended to read:

**~~[63-56-62].~~ 63-56-818. Effect of violation prior to award of contract.**

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

Section 88. Section **63-56-819**, which is renumbered from Section 63-56-63 is renumbered and amended to read:

**~~[63-56-63].~~ 63-56-819. Effect of violation after award of contract.**

If after an award it is determined administratively or upon administrative or judicial review that a solicitation or award of a contract is in violation of law:

(1) If the person awarded the contract has not acted fraudulently or in bad faith:

(a) The contract may be ratified and affirmed if it is determined that doing so is in the best interests of the state; or

(b) The contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract prior to termination, plus a reasonable profit;

(2) If the person awarded the contract has acted fraudulently or in bad faith:

(a) The contract may be declared null and void; or

(b) The contract may be ratified and affirmed if such action is in the best interests of the state, without prejudice to the state's rights to any appropriate damages.

Section 89. Section **63-56-820**, which is renumbered from Section 63-56-64 is renumbered and amended to read:

**~~[63-56-64].~~ 63-56-820. Interest rate.**

(1) Except as provided in Subsection (2), in controversies between the state and contractors under this part, interest on amounts ultimately determined to be due to a contractor or to the state 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) This section does not apply to public assistance benefits programs.

Section 90. Section **63-56-901**, which is renumbered from Section 63-56-65 is renumbered and amended to read:

#### **Part 9. Intergovernmental Relations**

##### **[63-56-65]. 63-56-901. Agreements between public procurement units.**

Under the terms agreed upon among the parties, any public procurement unit may enter into agreements with one or more other public procurement units to:

- (1) sponsor, conduct, or administer a cooperative agreement for the procurement or disposal of any supplies, services, or construction;
- (2) cooperatively use supplies or services;
- (3) commonly use or share warehousing facilities, capital equipment, and other facilities;
- (4) provide personnel; provided that the requesting public procurement unit shall pay the public procurement unit providing the personnel the direct and indirect cost of providing the personnel, in accordance with the agreement; or
- (5) make available informational, technical, and other services, provided that the requirements of the public procurement unit tendering the services shall have precedence over the requesting public procurement unit and that the requesting public procurement unit shall pay for the expenses of the services so provided, in accordance with the agreement.

Section 91. Section **63-56-902**, which is renumbered from Section 63-56-66 is renumbered and amended to read:

##### **[63-56-66]. 63-56-902. Services between public procurement units.**

(1) Upon request, any public procurement unit may make available to other public procurement units the following services, among others: standard forms; printed manuals; qualified products lists; source information; common use commodities listings; supplier

prequalification information; supplier performance ratings; debarred and suspended bidders lists; forms for invitation for bids, requests for proposals, instructions to bidders, general contract provisions, and other contract forms; and contracts or published summaries thereof, including price and time of delivery information.

(2) Any public procurement unit may provide the following technical services, among others, to other public procurement units; development of specifications; development of quality assurance test methods, including receiving, inspection, and acceptance procedures; use of testing and inspection facilities; and use of personnel training programs.

(3) Public procurement units may enter into contractual arrangements and publish a schedule of fees for the services provided under Subsections (1) and (2).

Section 92. Section **63-56-903**, which is renumbered from Section 63-56-67 is renumbered and amended to read:

**~~[63-56-67].~~ 63-56-903. Payments between public procurement units.**

All payments from any public procurement unit received by a public procurement unit supplying personnel or services shall be available to the supplying public procurement unit.

Section 93. Section **63-56-904**, which is renumbered from Section 63-56-68 is renumbered and amended to read:

**~~[63-56-68].~~ 63-56-904. Compliance by one public procurement unit pursuant to agreement considered compliance by others to agreement.**

Where the public procurement unit administering a cooperative purchase complies with the requirements of this chapter, any public procurement unit participating in such a purchase shall be ~~[deemed]~~ considered to have complied with this chapter. Public procurement units may not enter into a cooperative purchasing agreement for the purpose of circumventing this chapter.

Section 94. Section **63-56-905**, which is renumbered from Section 63-56-69 is renumbered and amended to read:

**~~[63-56-69].~~ 63-56-905. Chief procurement officer to collect information as to supplies, etc.**

To the extent possible, the chief procurement officer may collect information concerning

the type, cost, quality, and quantity of commonly used supplies, services, or construction being procured or used by state public procurement units and local public procurement units. The chief procurement officer may make the information available to any public procurement unit upon request.

Section 95. Section **63-56-906**, which is renumbered from Section 63-56-70 is renumbered and amended to read:

**[63-56-70]. 63-56-906. Resolving controversy arising under a cooperative purchasing agreement.**

Under a cooperative purchasing agreement, controversies arising between an administering state public procurement unit and its bidders, offerors, or contractors shall be resolved in accordance with Part ~~[H of this chapter]~~ 8, Legal and Contractual Remedies.

Section 96. Section **63-56-907**, which is renumbered from Section 63-56-71 is renumbered and amended to read:

**[63-56-71]. 63-56-907. Resolution of local public procurement controversies.**

Any local public procurement unit is authorized to enter into an agreement with the State Procurement Appeals Board to resolve controversies between the local public procurement unit and its contractors, whether or not such controversy arose from a cooperative purchasing agreement.

Section 97. Section **63-56-1001**, which is renumbered from Section 63-56-72 is renumbered and amended to read:

#### **Part 10. Illegal Activities**

**[63-56-72]. 63-56-1001. Felony to accept emolument.**

Any person acting as a procurement officer for the state of Utah or any subdivision thereof, or who in any official capacity participates in the procurement of any supplies, services, construction, real property, or insurance for any such political units, is guilty of a felony if the person asks, receives, or offers to receive any emolument, gratuity, contribution, loan, or reward, or any promise thereof, either for the person's own use or the use or benefit of any other person or organization from any person interested in the sale of such supplies, services, construction, real

property, or insurance.

Section 98. Section **63-56-1002**, which is renumbered from Section 63-56-73 is renumbered and amended to read:

**~~[63-56-73]~~. 63-56-1002. Felony to offer emolument.**

A person who is interested in any way in the sale of any supplies, services, construction, real property, or insurance to the state of Utah or any political subdivision thereof, is guilty of a felony if the person gives or offers to give any emolument, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer, or who in any official capacity participates in the procurement of such supplies, services, construction, real property, or insurance, whether it is given for his own use or for the use or benefit of any other person or organization.

Section 99. Section **63A-5-208** is amended to read:

**63A-5-208. Definitions -- Certain public construction bids to list subcontractors -- Changing subcontractors -- Bidders as subcontractors -- Dispute resolution process -- Penalties.**

(1) As used in this section:

(a) "First-tier subcontractor" means a subcontractor who contracts directly with the prime contractor.

(b) "Subcontractor" means any person or entity under contract with a contractor or another subcontractor to provide services or labor for the construction, installation, or repair of an improvement to real property.

(c) "Subcontractor" includes a trade contractor or specialty contractor.

(d) "Subcontractor" does not include suppliers who provide only materials, equipment, or supplies to a contractor or subcontractor.

(2) The director shall apply the provisions of this section to achieve fair and competitive bidding and to discourage bid-shopping by contractors.

(3) (a) (i) (A) On each public construction project, the director shall require the apparent lowest three bidders to submit a list of their first-tier subcontractors indicating each

subcontractor's name, bid amount, and other information required by rule.

(B) Other bidders who are not one of the apparent lowest three bidders may also submit a list of their first-tier subcontractors containing the information required by this Subsection (3).

(C) The director may not consider any bid submitted by a bidder if the bidder fails to submit a subcontractor list meeting the requirements of this section.

(ii) On projects where the contractor's total bid is less than \$500,000, subcontractors whose bid is less than \$20,000 need not be listed.

(iii) On projects where the contractor's total bid is \$500,000 or more, subcontractors whose bid is less than \$35,000 need not be listed.

(b) (i) The bidders shall submit this list within 24 hours after the bid opening time, not including Saturdays, Sundays, and state holidays.

(ii) This list does not limit the director's right to authorize a change in the listing of any subcontractor.

(c) The bidders shall verify that all subcontractors listed as part of their bids are licensed as required by state law.

(d) Twenty-four hours after the bid opening, the contractor may change his subcontractors only after:

(i) receiving permission from the director; and

(ii) establishing that:

(A) the change is in the best interest of the state; and

(B) the contractor establishes reasons for the change that meet the standards established by the State Building Board.

(e) If the director approves any changes in subcontractors that result in a net lower contract price for subcontracted work, the total of the prime contract may be reduced to reflect the changes.

(4) (a) A bidder may list himself as a subcontractor when the bidder is currently licensed to perform the portion of the work for which the bidder lists himself as a subcontractor and:

(i) the bidder intends to perform the work of a subcontractor himself; or

(ii) the bidder intends to obtain a subcontractor to perform the work at a later date because the bidder was unable to:

(A) obtain a bid from a qualified subcontractor; or

(B) obtain a bid from a qualified subcontractor at a cost that the bidder considers to be reasonable.

(b) (i) When the bidder intends to perform the work of a subcontractor himself, the director may, by written request, require that the bidder provide the director with information indicating the bidder's:

(A) previous experience in the type of work to be performed; and

(B) qualifications for performing the work.

(ii) The bidder must respond in writing within five business days of receiving the director's written request.

(iii) If the bidder's submitted information causes the director to reasonably believe that self-performance of the portion of the work by the bidder is likely to yield a substandard finished product, the director shall:

(A) require the bidder to use a subcontractor for the portion of the work in question and obtain the subcontractor bid under the supervision of the director; or

(B) reject the bidder's bid.

(c) (i) When the bidder intends to obtain a subcontractor to perform the work at a later date, the bidder shall provide documentation with the subcontractor list describing:

(A) the bidder's efforts to obtain a bid of a qualified subcontractor at a reasonable cost; and

(B) why the bidder was unable to obtain a qualified subcontractor bid.

(ii) If the bidder who intends to obtain a subcontractor to perform the work at a later date is awarded a contract, the director shall supervise the bidder's efforts to obtain a qualified subcontractor bid.

(iii) The director may not adjust the amount of the contract awarded in order to reflect the actual amount of the subcontractor's bid.



(5) The division may not disclose any subcontractor bid amounts obtained under this section until the division has awarded the project to a contractor.

(6) (a) The director shall, in consultation with the State Building Board, prepare draft rules establishing a process for resolving disputes involved with contracts under the division's procurement authority.

(b) The draft rules shall be presented to the Government Operations Interim Committee for review, comment, and recommendations before August 31, 2004.

(c) The director shall consider, and the rules may include:

(i) requirements regarding preliminary resolution efforts between the parties directly involved with the dispute;

(ii) requirements for the filing of claims, including notification, timeframes, and documentation;

(iii) identification of the types of costs eligible for allocation and a method for allocating costs among the parties to the dispute;

(iv) required time periods, not to exceed 60 days, for the resolution of the claim;

(v) provision for an independent hearing officer, panel, or arbitrator to extend the time period for resolution of the claim by not to exceed 60 additional days for good cause;

(vi) provision for the extension of required time periods if the claimant agrees;

(vii) requirements that decisions be issued in writing;

(viii) provisions for administrative appeals of the decision;

(ix) provisions for the timely payment of claims after resolution of the dispute, including any appeals;

(x) a requirement that the final determination resulting from the dispute resolution process provided for in the rules is a final agency action subject to judicial review as provided in Sections 63-46b-14 and 63-46b-15;

(xi) a requirement that a claim or dispute that does not include a monetary claim against the division or its agents is not limited to the dispute resolution process provided for in this Subsection (6);

(xii) requirements for claims and disputes to be eligible for this dispute resolution process;

(xiii) the use of an independent hearing officer, panel, arbitration, or mediation; and

(xiv) the circumstances under which a subcontractor may file a claim directly with the division.

(d) Persons pursuing claims under the process required by this Subsection (6):

(i) are bound by the decision reached under this process unless the decision is properly appealed; and

(ii) may not pursue claims or disputes under the dispute resolution process established in Sections [~~63-56-49~~] 63-56-805 through [~~63-56-58~~] 63-56-814.

(7) In addition to all other reasons allowed by law or rule, the director may reject all bids if none of the bidders whose bid is within the budget of the project submit a subcontractor list that meets the requirements of this section.

(8) Any violation of this section, or any fraudulent misrepresentation by a contractor, subcontractor, or supplier, may be grounds for:

(a) the contractor, subcontractor, or supplier to be suspended or debarred by the director;

or

(b) the contractor or subcontractor to be disciplined by the Division of Professional and Occupational Licensing.

Section 100. Section **63B-2-102** is amended to read:

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

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

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

(b) These costs may include the cost of acquiring land, interests in land, easements and rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or

convenient to the facilities, interest estimated to accrue on these bonds during the period to be covered by construction of the projects plus a period of six months after the end of the construction period and all related engineering, architectural, and legal fees.

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

**CAPITAL IMPROVEMENTS**

1	Alterations, Repairs, and Improvements	\$8,413,900
<b>TOTAL IMPROVEMENTS</b>		<b>\$8,413,900</b>

**CAPITAL FACILITIES CONSTRUCTION**

	PROJECT PRIORITY	PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATIONS AND MAINTENANCE COSTS
1		Corrections - Northern Utah Community Corrections Center Phase II	\$2,729,700	\$158,000
2		University of Utah Marriot Library Phase II	\$10,200,000	\$881,600
3		Ogden Courts Building Phase II	\$12,096,000	\$340,000
4		Utah National Guard - Southeast Utah Armory Phase II	\$397,800	\$70,500
5		Southern Utah University Library Phase II	\$7,004,400	\$427,000
6		Utah Valley Special Events Center Phase II	\$11,845,300	\$536,900
7		Salt Lake Community College - Land	\$1,300,000	\$0
8		Tax Commission Building	\$14,224,000	\$812,000
9		Dixie College Business Building	\$2,823,300	\$187,800

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10	Salt Lake Community College South City 3rd Floor and Boiler	\$4,009,500	\$257,600
11	Public Education - Deaf and Blind Classrooms	\$3,456,100	\$124,800
	TOTAL CONSTRUCTION	\$70,086,100	
	TOTAL IMPROVEMENTS AND CONSTRUCTION	\$78,500,000	

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

(i) are estimates only;

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

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

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

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

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

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

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

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

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

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

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

(c) Those contracts shall contain a provision for termination of the contract for the convenience of the state as required by Section [~~63-56-40~~] 63-56-601.

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

Section 101. Section **63B-3-102** is amended to read:

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

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

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

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

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

**CAPITAL IMPROVEMENTS**

1	Alterations, Repairs, and Improvements	\$5,000,000
	<b>TOTAL IMPROVEMENTS</b>	<b>\$5,000,000</b>

**CAPITAL AND ECONOMIC DEVELOPMENT**

**ESTIMATED**

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		OPERATIONS AND MAINTENANCE	
PROJECT PRIORITY	PROJECT DESCRIPTION	AMOUNT FUNDED	COSTS
1	University of Utah Marriott Library Phase III (Final)	\$13,811,500	\$881,600
2	Bridgerland Applied Technology Center Utah State University Space	\$2,400,000	\$0
3	Weber State University - Heat Plant	\$2,332,100	\$9,600
4	Department of Human Services - Division of Youth Corrections renamed in 2003 to the Division of Juvenile Justice Services	\$4,180,000	\$400,000
5	Snow College - Administrative Services/Student Center	\$3,885,100	\$224,500
6	Ogden Weber Applied Technology Center - Metal Trades Building Design and Equipment Purchase	\$750,000	\$0
7	Department of Corrections B-Block Remodel	\$1,237,100	\$72,000
8	Utah State University - Old Main Phase III Design	\$550,000	\$0
9	Department of Corrections - 144 bed Uintah Expansion	\$6,700,000	\$168,800
10	Southern Utah University Administrative Services/Student Center	\$5,630,400	\$314,200

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11	Anasazi Museum	\$760,200	\$8,500
12	Hill Air Force Base - Easements Purchase	\$9,500,000	\$0
13	Signetics Building Remodel	\$2,000,000	\$0
14	Antelope Island Visitors Center	\$750,000	\$30,000
15	State Fair Park - Master Study	\$150,000	\$0
16	Utah National Guard - Draper Land	\$380,800	\$0
17	Davis Applied Technology Center - Design	\$325,000	\$0
18	Palisade State Park - Land and Park Development	\$800,000	\$0
19	Department of Human Services - Cedar City Land	\$80,000	\$0
20	Department of Human Services - Clearfield Land	\$163,400	\$0
21	Electronic technology, equipment, and hardware	\$2,500,000	\$0
TOTAL CAPITAL AND ECONOMIC DEVELOPMENT		\$58,885,600	
TOTAL IMPROVEMENTS AND CAPITAL AND ECONOMIC DEVELOPMENT		\$63,885,600	

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

(i) are estimates only;

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

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

(3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not

constitute a limitation on the amount that may be expended for any project.

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

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

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

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

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

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

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

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

(c) Those contracts shall contain a provision for termination of the contract for the convenience of the state as required by Section [~~63-56-40~~] 63-56-601.

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

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

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

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

(2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide



funds to pay all or part of the cost of acquiring and constructing the projects listed in this Subsection (2).

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

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

**CAPITAL IMPROVEMENTS**

Alterations, Repairs, and Improvements	\$7,200,000
<b>TOTAL IMPROVEMENTS</b>	<b>\$7,200,000</b>

**CAPITAL AND ECONOMIC DEVELOPMENT**

PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATIONS AND MAINTENANCE COSTS
Corrections - Uinta IVA	\$11,300,000	\$212,800
Utah County Youth Correctional Facility	\$6,650,000	\$245,000
Ogden Weber Applied Technology Center - Metal Trades	\$5,161,000	\$176,000
Project Reserve Fund	\$3,500,000	None
Weber State University - Browning Center Remodel	\$3,300,000	None
Heber Wells Building Remodel	\$2,000,000	None
Higher Education Davis County - Land Purchase	\$1,600,000	None
National Guard -- Provo Armory	\$1,500,000	\$128,000
Department of Natural Resources - Pioneer	\$900,000	\$65,000

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Trails Visitor Center		
Higher Education Design Projects	\$800,000	Varies depending upon projects selected
Salt Lake Community College - South Valley Planning	\$300,000	None
Division of Youth Corrections renamed in 2003 to the Division of Juvenile Justice Services - Logan Land Purchase	\$120,000	None
<b>TOTAL CAPITAL AND ECONOMIC DEVELOPMENT</b>		<b>\$37,131,000</b>
<b>TOTAL IMPROVEMENTS AND CAPITAL AND ECONOMIC DEVELOPMENT</b>		<b>\$44,331,000</b>

- (d) For purposes of this section, operations and maintenance costs:
- (i) are estimates only;
  - (ii) may include any operations and maintenance costs already funded in existing agency budgets; and
  - (iii) are not commitments by this Legislature or future Legislatures to fund those operations and maintenance costs.

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

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

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

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

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

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

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

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

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

(c) Those contracts shall contain a provision for termination of the contract for the convenience of the state as required by Section ~~[63-56-40]~~ 63-56-601.

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

Section 103. Section **63B-5-102** is amended to read:

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

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

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

(b) These costs may include the cost of acquiring land, interests in land, easements and rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or convenient to the facilities, interest estimated to accrue on these bonds during the period to be

covered by construction of the projects plus a period of six months after the end of the construction period, and all related engineering, architectural, and legal fees.

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

**CAPITAL IMPROVEMENTS**

Alterations, Repairs, and Improvements	\$7,600,000
<b>TOTAL IMPROVEMENTS</b>	<b>\$7,600,000</b>

**CAPITAL AND ECONOMIC DEVELOPMENT**

<b>PROJECT DESCRIPTION</b>	<b>AMOUNT FUNDED</b>	<b>ESTIMATED OPERATIONS AND MAINTENANCE COSTS</b>
Corrections - Gunnison (192 Beds)	\$13,970,000	\$210,000
University of Utah -- Gardner Hall	\$7,361,000	\$203,900
Weber State University Davis Campus -- Land Purchase	\$771,000	None
Department of Workforce Services Cedar City -- Land Purchase	\$148,000	None
College of Eastern Utah Durrant School -- Land Purchase	\$400,000	None
State Hospital - Forensic Design (200 beds)	\$750,000	\$575,000
<b>TOTAL CAPITAL AND ECONOMIC DEVELOPMENT</b>	<b>\$23,400,000</b>	
<b>TOTAL IMPROVEMENTS AND CAPITAL AND ECONOMIC DEVELOPMENT</b>	<b>\$31,000,000</b>	

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

- (i) are estimates only;
- (ii) may include any operations and maintenance costs already funded in existing agency budgets; and
- (iii) are not commitments by this Legislature or future Legislatures to fund those

operations and maintenance costs.

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

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

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

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

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

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

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

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

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

(c) Those contracts shall contain a provision for termination of the contract for the convenience of the state as required by Section [~~63-56-40~~] 63-56-601.

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

Section 104. Section **63B-6-102** is amended to read:

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

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

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

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

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

**CAPITAL AND ECONOMIC DEVELOPMENT**

<b>PROJECT DESCRIPTION</b>	<b>AMOUNT FUNDED</b>	<b>ESTIMATED OPERATIONS AND MAINTENANCE</b>
Youth Corrections - Carbon / Emery (18 beds)	\$2,298,100	\$70,000
State Hospital - 100 bed Forensic Facility	\$13,800,700	\$320,600
Utah State University - Widtsoe Hall	\$23,986,700	\$750,200
Davis Applied Technology Center - Medical/Health Tech Addition	\$6,344,900	\$144,000
Southern Utah University -- Physical Education Building (Design)	\$1,100,000	\$456,100
Salt Lake Community College -- High Technology Building, 90th So. Campus (Design)	\$1,165,000	\$718,500
Department of Natural Resources - Antelope Island Road	\$3,600,000	None
Youth Corrections	\$1,500,000	None

- Region 1 72 Secured Bed Facility

Department of Natural Resources - Dead Horse	\$1,350,000	\$5,700
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Point Visitors Center

TOTAL CAPITAL AND ECONOMIC	\$55,145,400	
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DEVELOPMENT

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

(i) are estimates only;

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

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

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

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

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

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

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

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

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

(5) (a) For those projects for which only partial funding is provided in Subsection (2), it is the intent of the Legislature that the balance necessary to complete the projects be addressed by

future Legislatures, either through appropriations or through the issuance or sale of bonds.

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

(c) Those contracts shall contain a provision for termination of the contract for the convenience of the state as required by Section [~~63-56-40~~] 63-56-601.

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

Section 105. Section **63B-6-402** is amended to read:

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

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

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

(b) These costs may include:

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

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

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

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

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

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



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

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

(c) Those contracts shall contain a provision for termination of the contract for the convenience of the state as required by Section [~~63-56-40~~] 63-56-601.

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

Section 106. Section **63B-7-102** is amended to read:

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

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

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

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

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

PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATIONS AND MAINTENANCE
Southern Utah University Land Purchase	\$4,600,000	\$0

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Salt Lake Community College High Tech Center - Jordan Campus	\$3,980,700	\$507,900
Children's Special Health Care Needs Clinic	\$755,400	\$247,600
Youth Corrections - 2 @ 32 beds (Vernal / Logan)	\$419,500	\$276,000
Corrections - Gunnison 288 bed and Lagoon Expansion	\$8,425,600	\$0
University of Utah - Cowles Building	\$445,500	\$101,700
Utah Valley State College - Technical Building	\$1,166,300	\$391,000
Sevier Valley Applied Technology Center - Shop Expansion	\$3,014,300	\$443,300
Division of Parks and Recreation Statewide Restrooms	\$1,000,000	\$22,700
Murray Highway Patrol Office	\$2,300,000	\$81,000
Department of Workforce Services - Davis County Employment Center	\$2,780,000	\$128,100
State Hospital - Rampton II	\$1,600,000	\$462,000
Courts - 4th District Land - Provo	\$1,368,000	\$0
Dixie College - Land	\$1,000,000	\$0
<b>TOTAL CAPITAL AND ECONOMIC DEVELOPMENT</b>	<b>\$32,855,300</b>	

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

- (i) are estimates only;
- (ii) may include any operations and maintenance costs already funded in existing agency budgets; and
- (iii) are not commitments by this Legislature or future Legislatures to fund those operations and maintenance costs.

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

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

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

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

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

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

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

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

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

(c) Those contracts shall contain a provision for termination of the contract for the convenience of the state as required by Section [~~63-56-40~~] 63-56-601.

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

Section 107. Section **63B-7-402** is amended to read:

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

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

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

(b) These costs may include:

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

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

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

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

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

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

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

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

(c) Those contracts shall contain a provision for termination of the contract for the convenience of the state as required by Section [~~63-56-40~~] 63-56-601.

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

Section 108. Section **63B-8-102** is amended to read:

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

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

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

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

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

PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATIONS AND MAINTENANCE
Southern Utah University - Physical Education Building	\$2,493,200	\$447,744
Utah Valley State College - Information Sciences Building	\$29,000,000	\$721,875
University of Utah - Cowles Building Renovation	\$7,268,500	\$140,217
Vernal District Court	\$4,539,500	\$149,989
Salt Lake Community College -	\$4,200,000	\$281,784

Applied Education Center

TOTAL CAPITAL AND \$47,501,200  
ECONOMIC DEVELOPMENT

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

(i) are estimates only;

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

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

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

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

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

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

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

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

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

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

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

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

(c) Those contracts shall contain a provision for termination of the contract for the convenience of the state as required by Section [~~63-56-40~~] 63-56-601.

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

Section 109. Section **63B-8-402** is amended to read:

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

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

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

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

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

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

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

(i) are estimates only;

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

(iii) are not commitments by this Legislature or future Legislatures to fund those

operations and maintenance costs.

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

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

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

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

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

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

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

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

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

(c) Those contracts shall contain a provision for termination of the contract for the convenience of the state as required by Section [~~63-56-40~~] 63-56-601.

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

Section 110. Section **63B-9-103** is amended to read:

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



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

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

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

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

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

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

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

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

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

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

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

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

(4) It is the intent of the Legislature that:

(a) the University of Utah use institutional funds to plan, design, and construct an expansion to the bookstore under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated;

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

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

(5) It is the intent of the Legislature that:

(a) the University of Utah use institutional funds to plan, design, and construct a Health Sciences/Basic Sciences Building under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated;

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

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

(6) It is the intent of the Legislature that:

(a) Weber State University use institutional funds to plan, design, and construct an expansion to the stadium under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated;

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

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

(7) It is the intent of the Legislature that:

(a) Utah Valley State College use institutional funds to plan, design, and construct a baseball stadium under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated;

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

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

(8) It is the intent of the Legislature that:

(a) Southern Utah University use institutional funds to plan, design, and construct a weight training room under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated;

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

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

(9) It is the intent of the Legislature that:

(a) Snow College may lease land at the Snow College Richfield campus to a private developer for the construction and operation of student housing;

(b) the oversight and inspection of the construction comply with Section 63A-5-206;

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

(d) the college may not request state funds for operations and maintenance.

(10) It is the intent of the Legislature that:

(a) Salt Lake Community College may lease land at the Jordan campus to Jordan School District for the construction and operation of an Applied Technology Education Center;

(b) the oversight and inspection of the construction comply with Section 63A-5-206;

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

(d) the college may not request state funds for operations and maintenance.

(11) It is the intent of the Legislature that:

(a) the Department of Transportation exchange its maintenance station at Kimball Junction for property located near Highway 40 in Summit County; and

(b) the Department of Transportation use federal funds, rent paid by the Salt Lake Organizing Committee for the use of the maintenance station, and any net proceeds resulting from the exchange of property to construct a replacement facility under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated.

(12) It is the intent of the Legislature that:

(a) the Department of Transportation sell surplus property in Utah County;

(b) the Department of Transportation use funds from that sale to remodel existing space and add an addition to the Region 3 Complex; and

(c) the project cost not exceed the funds received through sale of property.

(13) It is the intent of the Legislature that the Department of Workforce Services use proceeds from property sales to purchase additional property adjacent to its state-owned facility in Logan.

(14) (a) It is the intent of the Legislature that, because only partial funding is provided for

the Heat Plant/Infrastructure Project at Utah State University, the balance necessary to complete this project be addressed by future Legislatures, either through appropriations or through the issuance of bonds.

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

(ii) Those contracts shall contain a provision for termination of the contract for the convenience of the state as required by Section [~~63-56-40~~] 63-56-601.

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

Section 111. Section **63B-11-202** is amended to read:

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

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

(b) When Utah State University certifies to the commission that the university has obtained reliable commitments, convertible to cash, of \$10,000,000 or more in nonstate funds to renovate the existing engineering building, the commission may issue and sell general obligation bonds in a total amount not to exceed \$6,100,000.

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

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

(b) These costs may include the cost of acquiring land, interests in land, easements and rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or convenient to the facilities, interest estimated to accrue on these bonds during the period to be

covered by construction of the projects plus a period of six months after the end of the construction period, and all related engineering, architectural, and legal fees.

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

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

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

- (i) are estimates only;
- (ii) may include any operations and maintenance costs already funded in existing agency budgets; and
- (iii) are not commitments by this Legislature or future Legislatures to fund those operations and maintenance costs.

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

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

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

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

of proceeds of bonds issued under this chapter.

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

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

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

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

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

(c) Those contracts shall contain a provision for termination of the contract for the convenience of the state as required by Section [~~63-56-40~~] 63-56-601.

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

Section 112. Section ~~67-16-4~~ is amended to read:

**67-16-4. Improperly disclosing or using private, controlled, or protected information -- Using position to secure privileges or exemptions -- Accepting employment which would impair independence of judgment or ethical performance.**

(1) It is an offense for a public officer, public employee, or legislator, under circumstances not amounting to a violation of Section [~~63-56-72~~] 63-56-1001 or 76-8-105, to:

(a) accept employment or engage in any business or professional activity that he might reasonably expect would require or induce him to improperly disclose controlled information that he has gained by reason of his official position;

(b) disclose or improperly use controlled, private, or protected information acquired by reason of his official position or in the course of official duties in order to further substantially

the officer's or employee's personal economic interest or to secure special privileges or exemptions for himself or others;

(c) use or attempt to use his official position to:

(i) further substantially the officer's or employee's personal economic interest; or

(ii) secure special privileges or exemptions for himself or others;

(d) accept other employment that he might expect would impair his independence of judgment in the performance of his public duties; or

(e) accept other employment that he might expect would interfere with the ethical performance of his public duties.

(2) (a) Subsection (1) does not apply to the provision of education-related services to public school students by public education employees acting outside their regular employment.

(b) The conduct referred to in Subsection (2)(a) is subject to Section 53A-1-402.5.

Section 113. Section **67-16-5** is amended to read:

**67-16-5. Accepting gift, compensation, or loan -- When prohibited.**

(1) As used in this section, "economic benefit tantamount to a gift" includes:

(a) a loan at an interest rate that is substantially lower than the commercial rate then currently prevalent for similar loans; and

(b) compensation received for private services rendered at a rate substantially exceeding the fair market value of the services.

(2) It is an offense for a public officer, public employee, or legislator, under circumstances not amounting to a violation of Section [~~63-56-72~~] 63-56-1001 or 76-8-105, to knowingly receive, accept, take, seek, or solicit, directly or indirectly for himself or another a gift of substantial value or a substantial economic benefit tantamount to a gift:

(a) that would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties;

(b) that the person knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the person for official action taken;

or

(c) if he recently has been, is now, or in the near future may be involved in any governmental action directly affecting the donor or lender, unless a disclosure of the gift, compensation, or loan and other relevant information has been made in the manner provided in Section 67-16-6.

(3) Subsection (2) does not apply to:

- (a) an occasional nonpecuniary gift, having a value of not in excess of \$50;
- (b) an award publicly presented in recognition of public services;
- (c) any bona fide loan made in the ordinary course of business; or
- (d) a political campaign contribution.

Section 114. Section **67-16-5.3** is amended to read:

**67-16-5.3. Requiring donation, payment, or service to government agency in exchange for approval -- When prohibited.**

(1) It is an offense for a public officer, public employee, or legislator, under circumstances not amounting to a violation of Section [~~63-56-72~~] 63-56-1001 or 76-8-105, to demand from any person as a condition of granting any application or request for a permit, approval, or other authorization, that the person donate personal property, money, or services to any agency.

(2) (a) Subsection (1) does not apply to any donation of property, funds, or services to an agency that is:

- (i) expressly required by statute, ordinance, or agency rule;
- (ii) mutually agreed to between the applicant and the entity issuing the permit, approval, or other authorization;
- (iii) made voluntarily by the applicant; or
- (iv) a condition of a consent decree, settlement agreement, or other binding instrument entered into to resolve, in whole or in part, an actual or threatened agency enforcement action.

(b) If a person donates property, funds, or services to an agency, the agency shall, as part of the permit or other written authorization:

- (i) identify that a donation has been made;



- (ii) describe the donation;
- (iii) certify, in writing, that the donation was voluntary; and
- (iv) place that information in its files.

Section 115. Section **67-16-6** is amended to read:

**67-16-6. Receiving compensation for assistance in transaction involving an agency -- Filing sworn statement.**

(1) It is an offense for a public officer or public employee, under circumstances not amounting to a violation of Section [~~63-56-72~~] 63-56-1001 or 76-8-105, to receive or agree to receive compensation for assisting any person or business entity in any transaction involving an agency unless the public officer or public employee files a sworn, written statement containing the information required by Subsection (2) with:

- (a) the head of his own agency;
- (b) the agency head of the agency with which the transaction is being conducted; and
- (c) the state attorney general.

(2) The statement shall contain:

- (a) the name and address of the public officer or public employee involved;
- (b) the name of the public officer's or public employee's agency;
- (c) the name and address of the person or business entity being or to be assisted; and
- (d) a brief description of:
  - (i) the transaction as to which service is rendered or is to be rendered; and
  - (ii) the nature of the service performed or to be performed.

(3) The statement required to be filed under Subsection (1) shall be filed within ten days after the date of any agreement between the public officer or public employee and the person or business entity being assisted or the receipt of compensation, whichever is earlier.

(4) The statement is public information and shall be available for examination by the public.

Section 116. Section **72-6-107** is amended to read:

**72-6-107. Construction or improvement of highway -- Contracts -- Retainage.**

(1) (a) The department shall make plans, specifications, and estimates prior to the construction or improvement of any state highway.

(b) Except as provided in Section [~~63-56-36.1~~] 63-56-502 and except for construction or improvements performed with state prison labor, a construction or improvement project with an estimated cost exceeding the bid limit as defined in Section 72-6-109 for labor and materials shall be performed under contract awarded to the lowest responsible bidder.

(c) The advertisement for bids shall be published in a newspaper of general circulation in the county in which the work is to be performed, at least once a week for two consecutive weeks, with the last publication at least ten days before bids are opened.

(d) The department shall receive sealed bids and open the bids at the time and place designated in the advertisement. The department may then award the contract but may reject any and all bids.

(e) If the department's estimates are substantially lower than any responsible bid received, the department may perform any work by force account.

(2) If any payment on a contract with a private contractor for construction or improvement of a state highway is retained or withheld, the payment shall be retained or withheld and released as provided in Section 13-8-5.

(3) If the department performs a construction or improvement project by force account, the department shall:

(a) provide an accounting of the costs and expenditures of the improvement including material and labor;

(b) disclose the costs and expenditures to any person upon request and allow the person to make a copy and pay for the actual cost of the copy; and

(c) perform the work using the same specifications and standards that would apply to a private contractor.

(4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the department shall establish procedures for:

(a) hearing evidence that a region within the department violated this section; and

(b) administering sanctions against the region if the region is found in violation.

Section 117. Section **73-10-27** is amended to read:

**73-10-27. Project priorities -- Considerations -- Determinations of feasibility -- Bids and contracts -- Definitions -- Retainage.**

(1) In considering the priorities for projects to be built with funds made available under Section 73-10-24, the board shall give preference to those projects which:

- (a) are sponsored by the state or a political subdivision of the state;
- (b) meet a critical local need;
- (c) have greater economic feasibility;
- (d) will yield revenue to the state within a reasonable time or will return a reasonable rate of interest, based on financial feasibility; and
- (e) meet other considerations deemed necessary by the board, including, but not limited to, wildlife management and recreational needs.

(2) In determining the economic feasibility the board shall establish a benefit-to-cost ratio for each project, using a uniform standard of procedure for all projects. In considering whether a project should be built, the benefit-to-cost ratio for each project shall be weighted based on the relative cost of the project. A project, when considered in total with all other projects constructed under this chapter and still the subject of a repayment contract, may not cause the accumulative benefit-to-cost ratio of the projects to be less than one to one.

(3) Under no circumstances may a project be built that is not in the public interest as determined by the Board of Water Resources, and no project may be built which is not adequately designed based on sound engineering and geologic considerations.

(4) The board in the preparation of a project for construction shall comply with the following:

- (a) All flood control projects involving cities and counties costing in excess of \$35,000, and all contracts for the construction of a storage reservoir in excess of 100 acre-feet or for the construction of a hydroelectric generating facility, shall be awarded on the basis of competitive bid. Advertisement for competitive bids shall be published by the board at least once a week for

three consecutive weeks in a newspaper with general circulation in the state. The advertisement shall indicate that the board will award the contract to the lowest responsible bidder but that it reserves to itself the right to reject any and all bids. The date of last publication shall appear at least five days before the scheduled bid opening.

(b) If all initial bids on the project are rejected, the board shall readvertise the project in the manner specified in Subsection (4)(a). If no satisfactory bid is received by the board upon the readvertisement of the project, it may proceed to construct the project but only in accordance with the plans and specifications used to calculate the estimated cost of the project.

(c) The board shall keep an accurate record of all facts and representations relied upon in preparing its estimated cost for any project which is subject to the competitive bidding requirements of this section.

(d) For the purposes of this Subsection (4):

(i) "Estimated cost" means the cost of all labor, material, and equipment necessary for construction of the contemplated project.

(ii) "Lowest responsible bidder" means any licensed contractor who submits the lowest bid, whose bid is in compliance with the invitation for bids, whose bid meets the plans and specifications, and who furnishes bonds under Sections 14-1-18 and ~~[63-56-38]~~ 63-56-504.

(5) If any payment on a contract with a private contractor for construction of projects under this section is retained or withheld, it shall be retained or withheld and released as provided in Section 13-8-5.