

**PROCUREMENT CODE BIDDING AND
CONTRACTUAL AMENDMENTS**

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Ed Mayne

LONG TITLE

General Description:

This bill modifies the Utah Procurement Code's bidding procedures and contractual requirements.

Highlighted Provisions:

This bill:

- ▶ modifies the Utah Procurement Code to require that all contracts awarded by competitive sealed bidding be issued to the second lowest bid;
- ▶ modifies the Utah Procurement Code by providing a 5% preference for any bid offering Utah products that constitute at least 80% of the total cost of all products required under the contract or invitation for bids;
- ▶ modifies the Utah Procurement Code by providing a 5% preference for any bid submitted by a business that participates in an apprenticeship program that is certified by the U.S. Department of Labor's Bureau of Apprenticeship;
- ▶ modifies the Utah Procurement Code by requiring certain businesses to provide qualified health care coverage to employees as a condition for contracting with the state;
- ▶ modifies the Utah Procurement Code by requiring certain businesses to pay employees time and 1/2 for all hours of overtime worked under the contract in excess of an eight hour day and 40 hour week as a condition for contracting with the state;



► modifies the Utah Procurement Code by requiring certain businesses to employ Utah residents for at least 80% of each type or class of labor provided under a contract as a condition for contracting with the state; and

► permits public procurement units to terminate contracts with or to debar businesses that do not comply with the health care, overtime, and Utah labor requirements.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

63-56-20, as last amended by Chapter 142, Laws of Utah 1998
63-56-20.5, as last amended by Chapter 2, Laws of Utah 1988, Second Special Session
63-56-20.6, as enacted by Chapter 2, Laws of Utah 1988, Second Special Session
63-56-20.7, as last amended by Chapter 13, Laws of Utah 1998
63-56-20.8, as enacted by Chapter 114, Laws of Utah 1996
63-56-40, as enacted by Chapter 75, Laws of Utah 1980
63-56-48, as enacted by Chapter 75, Laws of Utah 1980

ENACTS:

63-56-20.9, Utah Code Annotated 1953
63-56-40.2, Utah Code Annotated 1953
63-56-40.3, Utah Code Annotated 1953
63-56-40.4, Utah Code Annotated 1953

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

Section 1. Section **63-56-20** is amended to read:

63-56-20. 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 second 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]~~ second lowest 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]~~ second lowest 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 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 2. Section **63-56-20.5** is amended to read:

63-56-20.5. Preference for providers of state products.

(1) As used in this section, "Utah products" means goods, supplies, equipment, materials, or printing produced, manufactured, mined, grown, or performed in Utah.

~~[(1)]~~ (2) (a) All public procurement units shall, in all purchases of goods, supplies, equipment, materials, and printing, give a [reciprocal] 5% preference to those [bidders] bids 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] to use Utah products that constitute at least 80% of the total cost of all goods, supplies, equipment, material, or printing that is required to be furnished under the bid.

121 ~~[(b) The amount of reciprocal preference shall be equal to the amount of the preference~~
122 ~~applied by the other state for that particular good, supply, equipment, material, or printing.]~~

123 ~~[(c) (i) The bidder]~~ (b) A bidder seeking a preference for providing Utah products
124 shall certify on the bid that:

125 (i) the goods, supplies, equipment, materials, or printing offered are produced,
126 manufactured, mined, grown, or performed in Utah[:]; and

127 ~~[(ii) The reciprocal preference is waived if that certification does not appear on the~~
128 ~~bid.]~~

129 (ii) the cost of the Utah products is at least 80% of the total cost of all goods, supplies,
130 equipment, material, or printing to be furnished under the bid.

131 ~~[(2)]~~ (3) (a) If the bidder submitting the second lowest ~~[responsive and responsible bid~~
132 ~~offers goods, supplies, equipment, materials, or printing produced, manufactured, mined,~~
133 ~~grown, or performed in a state that gives or requires a preference, and if another bidder has~~
134 ~~submitted a responsive and responsible bid offering goods, supplies, equipment, materials, or~~
135 ~~printing produced, manufactured, mined, grown, or performed in Utah, and]~~ bid does not
136 qualify for a preference under Subsection (2) and if another bidder has submitted a bid that
137 qualifies for the preference and, with the benefit of the ~~[reciprocal]~~ 5% preference, ~~[his bid]~~ is
138 equal to or less than the original second lowest bid, the procurement officer shall:

139 (i) give ~~[notice to the bidder offering goods, supplies, equipment, materials, or printing~~
140 ~~produced, manufactured, mined, grown, or performed in Utah]~~ the bidder that qualifies for the
141 preference notice that he qualifies as a preferred bidder; and

142 (ii) make the purchase from the preferred bidder if[:];

143 (A) the Utah products offered in the bid are reasonably available;

144 (B) the Utah products offered in the bid meet the requirements or criteria set forth in
145 the contract or invitation for bids; and

146 (C) within 72 hours after notification to him that he is a preferred bidder, [he] the
147 preferred bidder agrees, in writing, to meet the ~~[low]~~ original second lowest bid.

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

150 (c) The procurement officer may not enter into a contract with any other bidder for the
151 purchase until 72 hours have elapsed after notification to the preferred bidder.

[~~(3)~~] (4) (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)~~] (5) The provisions of this section do not apply if application of this section might jeopardize the receipt of federal funds.

Section 3. Section **63-56-20.6** is amended to read:

63-56-20.6. 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 second 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 second 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~~ original second lowest bid.

(b) The procurement officer shall include the exact price submitted by the second 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 4. Section **63-56-20.7** is amended to read:

63-56-20.7. 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.

(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, which requires public procurement units to purchase products from the second 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 second 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 5. Section **63-56-20.8** is amended to read:

63-56-20.8. 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, which requires public procurement units to purchase products from the second 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 second 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 6. Section **63-56-20.9** is enacted to read:

63-56-20.9. Preference for contractors participating in a registered apprenticeship program.

(1) As used in this section:

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

(b) "Registered apprenticeship program" means an apprenticeship training program that is registered with the U.S. Department of Labor's Bureau of Apprenticeship Training and meets the apprenticeship standards required by the U.S. Department of Labor.

(2) (a) Notwithstanding Section 63-56-20, which requires public procurement units to purchase products from the second lowest bidder, each public procurement unit issuing bids involving the provision of labor shall give a 5% preference to bids that are submitted by a bidder that participates in a registered apprenticeship program.

(b) A bidder seeking a preference shall certify on the bid that the bidder participates in a registered apprenticeship program at the time of submitting the bid.

(3) (a) If the bidder submitting the second lowest bid does not qualify for the preference under Subsection (2) and if another bidder has submitted a bid that does qualify and, with the benefit of the 5% preference, is equal to or less than the original second lowest bid, the procurement officer shall:

(i) give the bidder that qualifies for the preference notice that he qualifies as a preferred bidder; and

(ii) make the purchase from the preferred bidder if:

(A) the labor offered in the bid is reasonably available;

(B) the labor offered in the bid meets the requirements or criteria set forth in the contract or invitation for bids; and

(C) within 72 hours after notification that he is a preferred bidder, the preferred bidder agrees, in writing, to meet the original second lowest bid.

(b) The procurement officer shall include the exact price submitted by the original second lowest bidder in the notice the procurement officer 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.

(4) (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.

(5) The provisions of this section do not apply if application of this section might jeopardize the receipt of federal funds.

Section 7. Section **63-56-40** is amended to read:

63-56-40. 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(1) and subject to the provisions of Part H of this chapter.

(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.

(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) A contract awarded under Section 63-56-20 shall include:

(a) the qualified health insurance requirement of Section 63-56-40.2;

(b) the employee hours and compensation requirements of Section 63-56-40.3; and

(c) the resident labor requirements of Section 63-56-40.4.

~~[(5)]~~ (6) 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 8. Section ~~63-56-40.2~~ is enacted to read:

63-56-40.2. Required contract clauses -- Health insurance requirement.

(1) As used in this section:

(a) "Business" means a corporation, limited liability company, partnership, sole proprietorship, or individual whose volume of business with the state exceeds \$500,000.

(b) (i) "Contract" means a contract with a public procurement unit that is awarded by sealed bid as required by Section 63-56-20.

(ii) "Contract" does not mean an agreement between a business and an academic or clinical researcher, institution, or subunit of an institution.

(c) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who works at least 20 hours per calendar week.

(d) "Qualified health insurance coverage" means health insurance in which the employer pays at least 75% of the premium for the employee and at least 50% of the premium for any dependents of the employee.

(e) "Volume of business" means the sum of the value of all contracts that the person or entity entering the contract has with the state.

(2) To be eligible to contract with a public procurement unit under Section 63-56-20, a business shall provide qualified health insurance coverage to each employee.

(3) Within ten days of a contract being awarded under Section 63-56-20, a business shall submit documentation of current qualified health insurance coverage for its employees to the public procurement unit that awarded the contract.

(4) The public procurement unit shall terminate a contract it has awarded and may seek debarment of the contractor under Section 63-56-48 if the contracting business:

(a) fails to submit documentation of current qualified health insurance coverage as required by Subsection (3); or

(b) submits documentation of current qualified health insurance coverage when none exists.

(5) (a) If a business enters into a contract with the public procurement unit and the

contract is in effect or is expected to be in effect for 60 or more days, the business shall inform the public procurement unit if the business fails to provide qualified health insurance coverage to its employees for 30 or more days during the term of the contract.

(b) (i) A public procurement unit that receives notice that a contractor is not providing qualified health insurance shall terminate the contract unless:

(A) termination would materially harm the interests of the public procurement unit; and

(B) a comparable business to contract with is not readily available.

(ii) Before declining to terminate a contract under this Subsection (5)(b), the public procurement unit shall issue a written finding detailing specifically its basis for declining to terminate the contract.

(c) A public procurement unit that receives notice that a contractor is not providing qualified health insurance may seek debarment of the contractor under Section 63-56-48.

(d) A business may not terminate a contract it has with the public procurement unit because the business does not provide qualified health insurance coverage to its employees.

Section 9. Section **63-56-40.3** is enacted to read:

63-56-40.3. Required contract clauses -- Employee hours and compensation requirements.

(1) As used in this section:

(a) "Business" means a corporation, limited liability company, partnership, sole proprietorship, or individual whose volume of business with the state exceeds \$500,000.

(b) (i) "Contract" means a contract with a public procurement unit that is awarded by sealed bid as required by Section 63-56-20.

(ii) "Contract" does not mean an agreement between a business and an academic or clinical researcher, institution, or subunit of an institution.

(c) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who works at least 20 hours per calendar week.

(2) To be eligible to contract with a public procurement unit under Section 63-56-20, a business shall:

(a) notwithstanding Subsection (2)(b), limit and restrict the hours worked by each employee to eight hours during any one calendar day and to 40 hours during any one calendar

week; or

(b) compensate each employee that performs work related to the contract with the public procurement unit at not less than 1-1/2 times the basic hourly rate of pay for all work performed:

(i) in excess of eight hours per calendar day; or

(ii) in excess of 40 hours per calendar week.

(3) Within ten days of a contract being awarded under Section 63-56-20, a business shall submit a certification to the public procurement unit that awarded the contract that it will provide compensation for its employees in a manner consistent with the requirements of Subsection (2).

(4) The public procurement unit shall terminate a contract it has awarded and may seek debarment of the contractor under Section 63-56-48 if the contracting business fails to submit the certification required by Subsection (3).

(5) (a) If a business enters into a contract with the public procurement unit and the contract is in effect or is expected to be in effect for 60 or more days, the business shall, during the term of the contract, inform the public procurement unit if the business had failed to provide compensation for those employees performing work related to the contract in a manner consistent with Subsection (2).

(b) (i) A public procurement unit that receives notice that a contractor is not providing compensation as required by Subsection (2) shall terminate the contract unless:

(A) termination would materially harm the interests of the public procurement unit;
and

(B) a comparable business to contract with is not readily available.

(ii) Before declining to terminate a contract under this Subsection (5)(b), the public procurement unit shall issue a written finding detailing specifically its basis for declining to terminate the contract.

(c) A public procurement unit that receives notice that a contractor is not providing compensation as required by Subsection (2) may seek debarment of the contractor under Section 63-56-48.

(d) A business may not terminate a contract it has with the public procurement unit because the business does not provide or is unable to provide compensation as required by

493 Subsection (2).

494 Section 10. Section **63-56-40.4** is enacted to read:

495 **63-56-40.4. Required contract clauses -- Resident labor requirement.**

496 (1) As used in this section:

497 (a) "Business" means a corporation, limited liability company, partnership, sole
498 proprietorship, or individual whose volume of business with the state exceeds \$500,000.

499 (b) "Resident labor" means any person who resides in the state at the time of
500 employment.

501 (2) To be eligible to contract with a public procurement unit under Section 63-56-20, a
502 business shall employ resident labor for at least 80% of the employment positions for each type
503 or class of labor that will be performed under the contract.

504 (3) Within ten days of a contract being awarded under Section 63-56-20, a business
505 shall submit a certification to the public procurement unit that awarded the contract that it will
506 employ resident labor in a manner consistent with the requirements of Subsection (2).

507 (4) The public procurement unit shall terminate a contract it has awarded and may seek
508 debarment of the contractor under Section 63-56-48 if the contracting business fails to submit
509 the certification required by Subsection (3).

510 (5) (a) If a business enters into a contract with the public procurement unit and the
511 contract is in effect or is expected to be in effect for 60 or more days, the business shall, during
512 the term of the contract, inform the public procurement unit if the business had failed to
513 comply with the requirements of Subsection (2).

514 (b) (i) A public procurement unit that receives notice that a contractor has not met the
515 resident labor requirements under Subsection (2) shall terminate the contract unless:

516 (A) termination would materially harm the interests of the public procurement unit;
517 and

518 (B) a comparable business to contract with is not readily available.

519 (ii) Before declining to terminate a contract under this Subsection (5)(b), the public
520 procurement unit shall issue a written finding detailing specifically its basis for declining to
521 terminate the contract.

522 (c) A public procurement unit that receives notice that a contractor is not employing
523 resident labor as required by Subsection (2) may seek debarment of the contractor under

524 Section 63-56-48.

525 (d) A business may not terminate a contract it has with the public procurement unit
526 because the business does not employ or is unable to employ resident labor as required by
527 Subsection (2).

528 Section 11. Section **63-56-48** is amended to read:

529 **63-56-48. Debarment from consideration for award of contracts -- Causes for**
530 **debarment.**

531 (1) After reasonable notice to the person involved and reasonable opportunity for that
532 person to be heard, the chief procurement officer or the head of a purchasing agency, after
533 consultation with the using agency and the attorney general, shall have authority to debar a
534 person for cause from consideration for award of contracts. The debarment shall not be for a
535 period exceeding three years. The same officer, after consultation with the using agency and the
536 attorney general, shall have authority to suspend a person from consideration for award of
537 contracts if there is probable cause to believe that the person has engaged in any activity which
538 might lead to debarment. The suspension shall not be for a period exceeding three months
539 unless an indictment has been issued for an offense which would be a cause for debarment
540 under Subsection (2) of this section, in which case the suspension shall, at the request of the
541 attorney general, remain in effect until after the trial of the suspended person.

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

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

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

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

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

551 [or]

552 (e) violation of the qualified health insurance requirement of Section 63-56-40.2;

553 (f) violation of the employee hours and compensation requirements of Section
554 63-56-40.3;

555 (g) violation of the resident labor requirements of Section 63-56-40.4; or
556 [~~e~~] (h) any other cause the chief procurement officer, or the head of a purchasing
557 agency determines to be so serious and compelling as to affect responsibility as a state
558 contractor, including debarment by another governmental entity for any cause listed in rules
559 and regulations.

Legislative Review Note
as of 2-7-05 5:56 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

State Impact

Measurable costs to the state include seven FTEs (step 47-64) for the Division of Purchasing, Department of Transportation (UDOT), and Division of Facilities Construction and Management (DFCM) to monitor contracts and enforce requirements of this bill.

Studies done by the Division of Purchasing, UDOT and DFCM estimate the requirement to accept the second lowest bid would increase costs (or decrease purchasing) by \$77 million annually. Higher Education and Public Education may also see cost increases.

There may be cost offsets through lowered dependence on government programs such as public health care and food stamps.

	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2006</u> <u>Revenue</u>	<u>FY 2007</u> <u>Revenue</u>
General Fund	\$297,600	\$297,600	\$0	\$0
TransportationFund	\$124,000	\$124,000	\$0	\$0
Restricted Funds	\$12,400	\$12,400	\$0	\$0
TOTAL	\$434,000	\$434,000	\$0	\$0

Individual and Business Impact

This will initially increase costs for employers who do not offer health coverage or strict overtime but do business with the state. These employers may begin to see savings in future years as turnover slows and preventive health care saves lost days.

Individuals in low wage jobs will benefit from more overtime and lower costs for health care coverage.

Hospitals may see lower costs from lower "write-off" expenses since newly covered employees will be able to make regular doctor visits rather than using expensive emergency rooms as primary care facilities.

Producers of Utah Products may benefit from a preference on contractors using their products.
