

**Representative Bradley G. Last** proposes the following substitute bill:

**PROCUREMENT CODE AMENDMENTS**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Bradley G. Last**

Senate Sponsor: Wayne L. Niederhauser

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**LONG TITLE**

**General Description:**

This bill amends Title 63G, Chapter 6, Utah Procurement Code, to address procurement of technology and changes to the State Procurement Policy Board.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
  - ▶ amends provisions relating to the State Procurement Policy Board to:
    - designate the executive director of the Department of Technology Services and the chief procurement officer as voting members;
    - change board member terms; and
    - designate an employee of the Division of Purchasing and General Services as the secretary;
  - ▶ requires that specifications for purposes of procurement provisions include specifications for technology;
  - ▶ requires the State Procurement Policy Board to make rules governing technology;
- and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**



26 None

27 **Other Special Clauses:**

28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **63F-1-205**, as last amended by Laws of Utah 2008, Chapters 352 and 382

32 **63G-6-103**, as renumbered and amended by Laws of Utah 2008, Chapter 382

33 **63G-6-201**, as last amended by Laws of Utah 2010, Chapter 286

34 **63G-6-202**, as last amended by Laws of Utah 2009, Chapter 132

35 **63G-6-301**, as renumbered and amended by Laws of Utah 2008, Chapter 382

36 **63G-6-302**, as last amended by Laws of Utah 2008, Chapter 352 and renumbered and  
37 amended by Laws of Utah 2008, Chapter 382



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

40 Section 1. Section **63F-1-205** is amended to read:

41 **63F-1-205. Approval of acquisitions of information technology.**

42 (1) (a) Except as provided in Title 63M, Chapter 1, Part 26, Government Procurement  
43 Private Proposal Program, in accordance with Subsection (2), the chief information officer  
44 shall approve the acquisition by an executive branch agency of:

- 45 (i) information technology equipment;
- 46 (ii) telecommunications equipment;
- 47 (iii) software;
- 48 (iv) services related to the items listed in Subsections (1)(a)(i) through (iii); and
- 49 (v) data acquisition.

50 (b) The chief information officer may negotiate the purchase, lease, or rental of private  
51 or public information technology or telecommunication services or facilities in accordance with  
52 this section.

53 (c) Where practical, efficient, and economically beneficial, the chief information  
54 officer shall use existing private and public information technology or telecommunication  
55 resources.

56 (d) Notwithstanding another provision of this section, an acquisition authorized by this

57 section shall comply with rules made by the State Procurement Policy Board under Title 63G,  
58 Chapter 6, Utah Procurement Code.

59 (2) Before negotiating a purchase, lease, or rental under Subsection (1) for an amount  
60 that exceeds the value established by the chief information officer by rule in accordance with  
61 Section 63F-1-206, the chief information officer shall:

62 (a) conduct an analysis of the needs of executive branch agencies and subscribers of  
63 services and the ability of the proposed information technology or telecommunications services  
64 or supplies to meet those needs; and

65 (b) for purchases, leases, or rentals not covered by an existing statewide contract,  
66 provide in writing to the chief procurement officer in the Division of Purchasing and General  
67 Services that:

68 (i) the analysis required in Subsection (2)(a) was completed; and

69 (ii) based on the analysis, the proposed purchase, lease, rental, or master contract of  
70 services, products, or supplies is practical, efficient, and economically beneficial to the state  
71 and the executive branch agency or subscriber of services.

72 (3) In approving an acquisition described in Subsections (1) and (2), the chief  
73 information officer shall:

74 (a) establish by administrative rule, in accordance with Section 63F-1-206, standards  
75 under which an agency must obtain approval from the chief information officer before  
76 acquiring the items listed in Subsections (1) and (2);

77 (b) for those acquisitions requiring approval, determine whether the acquisition is in  
78 compliance with:

79 (i) the executive branch strategic plan;

80 (ii) the applicable agency information technology plan;

81 (iii) the budget for the executive branch agency or department as adopted by the  
82 Legislature; and

83 (iv) Title 63G, Chapter 6, Utah Procurement Code; and

84 (c) in accordance with Section 63F-1-207, require coordination of acquisitions between  
85 two or more executive branch agencies if it is in the best interests of the state.

86 (4) (a) Each executive branch agency shall provide the chief information officer with  
87 complete access to all information technology records, documents, and reports:

88 (i) at the request of the chief information officer; and  
89 (ii) related to the executive branch agency's acquisition of any item listed in Subsection  
90 (1).

91 (b) Beginning July 1, 2006 and in accordance with administrative rules established by  
92 the department under Section 63F-1-206, no new technology projects may be initiated by an  
93 executive branch agency or the department unless the technology project is described in a  
94 formal project plan and the business case analysis has been approved by the chief information  
95 officer and agency head. The project plan and business case analysis required by this  
96 Subsection (4) shall be in the form required by the chief information officer, and shall include:

- 97 (i) a statement of work to be done and existing work to be modified or displaced;
- 98 (ii) total cost of system development and conversion effort, including system analysis  
99 and programming costs, establishment of master files, testing, documentation, special  
100 equipment cost and all other costs, including overhead;
- 101 (iii) savings or added operating costs that will result after conversion;
- 102 (iv) other advantages or reasons that justify the work;
- 103 (v) source of funding of the work, including ongoing costs;
- 104 (vi) consistency with budget submissions and planning components of budgets; and
- 105 (vii) whether the work is within the scope of projects or initiatives envisioned when the  
106 current fiscal year budget was approved.

107 (5) (a) The chief information officer and the Division of Purchasing and General  
108 Services shall work cooperatively to establish procedures under which the chief information  
109 officer shall monitor and approve acquisitions as provided in this section.

110 (b) The procedures established under this section shall include at least the written  
111 certification required by Subsection 63G-6-204(8).

112 Section 2. Section **63G-6-103** is amended to read:

113 **63G-6-103. Definitions.**

114 As used in this chapter:

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

118 (2) "Business" means any corporation, partnership, individual, sole proprietorship,

119 joint stock company, joint venture, or any other private legal entity.

120 (3) "Change order" means a written order signed by the procurement officer, directing  
121 the contractor to suspend work or make changes, which the appropriate clauses of the contract  
122 authorize the procurement officer to order without the consent of the contractor or any written  
123 alteration in specifications, delivery point, rate of delivery, period of performance, price,  
124 quantity, or other provisions of any contract accomplished by mutual action of the parties to the  
125 contract.

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

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

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

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

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

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

144 (8) "Cost-reimbursement contract" means a contract under which a contractor is  
145 reimbursed for costs which are allowed and allocated in accordance with the contract terms and  
146 the provisions of this chapter, and a fee, if any.

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

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

150 supplying the site as part of the contract.

151 (10) "Established catalogue price" means the price included in a catalogue, price list,  
152 schedule, or other form that:

153 (a) is regularly maintained by a manufacturer or contractor;

154 (b) is either published or otherwise available for inspection by customers; and

155 (c) states prices at which sales are currently or were last made to a significant number  
156 of any category of buyers or buyers constituting the general buying public for the supplies or  
157 services involved.

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

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

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

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

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

179 (16) "Policy board" means the procurement policy board created by Section  
180 63G-6-201.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

224 Section 3. Section **63G-6-201** is amended to read:

225 **63G-6-201. Creation of procurement policy board.**

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

227 (b) The policy board shall consist of [~~eight~~] 10 members [~~who shall be appointed~~] as  
228 follows:

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

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

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

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

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

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

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

241 (viii) an employee of a local district or special service district, appointed by the Utah  
242 Association of Special Districts[~~;~~];



243 (ix) the executive director of the Department of Technology Services or the executive  
244 director's designee; and

245 (x) the chief procurement officer or the chief procurement officer's designee.

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

248 [~~(2) Members shall be appointed to four-year staggered terms.~~]

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

251 (2) A board member shall serve as long as the member meets the description in  
252 Subsection (1)(b) unless removed by the person or entity who appointed the board member.

253 [~~(4)~~] (3) (a) The policy board shall:

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

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

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

257 (c) The chief procurement officer shall designate an employee of the Division of  
258 Purchasing and General Services to serve as the nonvoting secretary to the policy board.

259 [~~(5)~~] (4) A member may not receive compensation or benefits for the member's service,  
260 but may receive per diem and travel expenses in accordance with:

261 (a) Section 63A-3-106;

262 (b) Section 63A-3-107; and

263 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
264 63A-3-107.

265 Section 4. Section **63G-6-202** is amended to read:

266 **63G-6-202. Powers and duties of board.**

267 (1) Except as otherwise provided in Section 63G-6-104 and Subsection  
268 63G-6-208(1)(b), the policy board shall:

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

272 (b) consider and decide matters of policy within the provisions of this chapter,  
273 including those referred to it by the chief procurement officer.

274 (2) (a) The policy board may:  
275 (i) audit and monitor the implementation of its rules and the requirements of this  
276 chapter;  
277 (ii) upon the request of a local public procurement unit, review that procurement unit's  
278 proposed rules to ensure that they are not inconsistent with the provisions of this chapter; and  
279 (iii) approve the use of innovative procurement methods proposed by local public  
280 procurement units.

281 (b) The policy board may not exercise authority over the award or administration of:  
282 (i) any particular contract; or  
283 (ii) over any dispute, claim, or litigation pertaining to any particular contract.

284 Section 5. Section **63G-6-301** is amended to read:

285 **63G-6-301. Rules for specifications of supplies.**

286 [~~Rules and regulations~~]

287 (1) Administrative rules shall be [~~promulgated~~] issued in accordance with Title 63G,  
288 Chapter 3, Utah Administrative Rulemaking Act, to govern the preparation, maintenance, and  
289 content of specifications for supplies, services, [~~and~~] construction, and technology required by  
290 the state. [~~Rules and regulations~~]

291 (2) The administrative rules described in Subsection (1) shall determine the extent to  
292 which a nonemployee who has prepared specifications for use by the state may participate in  
293 any state procurement using such specifications.

294 Section 6. Section **63G-6-302** is amended to read:

295 **63G-6-302. Duty of chief procurement officer in maintaining specifications.**

296 (1) The chief procurement officer shall prepare, issue, revise, maintain, and monitor the  
297 use of specifications for supplies, services, [~~and~~] construction, and technology required by the  
298 state.

299 (2) The chief procurement officer shall obtain expert advice and assistance from  
300 personnel of using agencies in the development of specifications and may delegate in writing to  
301 a using agency the authority to prepare and utilize its own specifications.

302 (3) For a procurement process under Title 63M, Chapter 1, Part 26, Government  
303 Procurement Private Proposal Program, any delegation by the chief procurement officer under  
304 this section shall be made to the Governor's Office of Economic Development.