

HB0476S01 compared with HB0476

~~{deleted text}~~ shows text that was in HB0476 but was deleted in HB0476S01.

inserted text shows text that was not in HB0476 but was inserted into HB0476S01.

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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: _____

LONG TITLE

General Description:

This bill amends ~~{the}~~ Title 63G, Chapter 6, Utah Procurement Code, to address ~~{specifications for a construction item, service, supply, or}~~ procurement of technology and changes to the State Procurement Policy Board.

Highlighted Provisions:

This bill:

- ▶ ~~{provides}~~ 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

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the secretary:

- ▶ requires that specifications for purposes of procurement provisions include specifications for technology;
- ▶ ~~{addresses specifications for a construction item, service, supply, or technology, including:~~
 - ~~requiring the chief procurement officer to conduct a review of specifications, provide recommendations, and issue a written notice containing those recommendations;~~
 - ~~providing that the chief information officer shall obtain the written notice containing the chief procurement officer's recommendations before making certain acquisitions; and~~
 - ~~providing that the written notice containing the chief procurement officer's recommendations shall be given substantial weight in evaluating certain bids and proposals;~~ requires the State Procurement Policy Board to make rules governing technology; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

~~{**63G-6-204**;~~ **63G-6-103**, as ~~{last amended by Laws of Utah 2008, Chapter 352 and}~~

renumbered and amended by Laws of Utah 2008, Chapter 382

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

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

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

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

~~{ **63G-6-401**, as last amended by Laws of Utah 2009, Chapter 388~~

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~~63G-6-402, as renumbered and amended by Laws of Utah 2008, Chapter 382~~

~~63G-6-408, as renumbered and amended by Laws of Utah 2008, Chapter 382~~

ENACTS:

~~63G-6-304, Utah Code Annotated 1953~~

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

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

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

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

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

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

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

(d) ~~{(i)}~~ Notwithstanding ~~{any other}~~ another provision of this section ~~{and subject to Subsection (1)(d)(ii), the chief information officer may not approve or make}~~, an acquisition ~~{in accordance with this section unless the chief information officer obtains a written notice from the chief procurement officer in accordance with Section 63G-6-304.~~

~~(ii) This Subsection (1)(d)(i) applies to an acquisition requested through:~~

~~(A) an invitation for bids as defined in Section 63G-6-103 if that invitation for bids is issued on or after May 10, 2011; or~~

~~(B) request for proposals as defined in Section 63G-6-103 if that request for proposals is issued on or after May 10, 2011}~~ authorized by this section shall comply with rules made by

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the State Procurement Policy Board under Title 63G, Chapter 6, Utah Procurement Code.

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

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

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

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

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

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

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

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

(i) the executive branch strategic plan;

(ii) the applicable agency information technology plan;

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

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

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

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

(i) at the request of the chief information officer; and

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(ii) related to the executive branch agency's acquisition of any item listed in Subsection (1).

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

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

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

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

~~(6) The chief information officer shall provide assistance to the chief procurement officer in conducting the review required by Section 63G-6-304 as requested by the chief procurement officer.~~

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

63G-6-103. 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

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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

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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, 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.

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

(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

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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, technology, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, technology, 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 3. Section 63G-6-201 is amended to read:

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

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

(b) The policy board shall consist of ~~[eight]~~ 10 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]~~

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

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

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

(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)]]~~

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

~~[(4)] (3) (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 designate an employee of the Division of Purchasing and General Services to serve as the nonvoting secretary to the policy board.

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

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

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

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

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

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

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

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

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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 contract; or

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

Section ~~{2}~~5. Section ~~{63G-6-204}~~63G-6-301 is amended to read:

~~{~~ **63G-6-204. 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 63G-6-406 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~~

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paper;

~~—— (7) before July 1, 1992:~~

~~—— (a) establish standards and specifications for determining which supplies are considered recycled, based upon the chief procurement officer's 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 63G-6-103; 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[.];~~

~~—— (i) the chief information officer and the agency have provided in writing to the division, that the needs analysis required in Section 63F-1-205 was completed, unless the purchase, lease, or rental is approved in accordance with Title 63M, Chapter 1, Part 26, Government Procurement Private Proposal Program; and~~

~~—— (ii) the chief information officer has obtained a written notice from the chief procurement officer in accordance with Section 63G-6-304; and~~

~~—— (b) the oversight authority required by Subsection (8)(a) is not delegated outside the~~

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~~Division of Purchasing and General Services[.]; and~~

~~— (9) conduct the review required by Section 63G-6-304.~~

~~— Section 3. Section 63G-6-301 is amended to read:~~

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

~~[Rules and regulations]~~

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

~~(2) The administrative rules described in Subsection (1) 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 4}6. Section 63G-6-302 is amended to read:~~

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

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

~~(2) 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.~~

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

~~{ — Section 5. Section 63G-6-304 is enacted to read:~~

~~— **63G-6-304. Chief procurement officer review of specifications -- Application.**~~

~~— (1) The chief procurement officer shall review a specification before the specification is included in a purchase description for an invitation for bids or request for proposals.~~

~~— (2) The review shall provide written recommendations as to whether a specification includes:~~

~~— (a) a state of the art construction item, service, supply, or technology;~~

~~— (b) a new construction item, service, supply, or technology that the using agency does~~

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~~not currently use but that the chief procurement officer determines to be practical, efficient, or economically beneficial to the using agency or the state; or~~

~~—— (c) future technology that may result in future cost savings or efficiency to the using agency or the state.~~

~~—— (3) The chief procurement officer shall complete the review and provide the written recommendations required by this section within 30 days after the date the chief procurement officer begins the review required by this section.~~

~~—— (4) The chief procurement officer shall:~~

~~—— (a) issue a written notice containing the recommendations required by this section; and~~

~~—— (b) make the written notice described in Subsection (4)(a) available to a using agency and to the public;~~

~~—— (5) (a) Subject to Subsection (5)(b), the chief procurement officer may not delegate the requirements of this section to another person.~~

~~—— (b) The chief procurement officer may obtain expert advice and assistance from the chief information officer as defined in Section 63F-1-102 or a using agency in conducting the review required by this section.~~

~~—— (6) This section applies to a specification prepared, issued, or revised on or after May 10, 2011.~~

~~—— Section 6. Section ~~63G-6-401~~ is amended to read:~~

~~—— ~~63G-6-401. 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:~~

~~—— (i) publication in a newspaper of general circulation a reasonable time before bid opening; and~~

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~~—— (ii) publication, in accordance with Section 45-1-101, for 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:~~

~~—— (d) Notwithstanding any other provision of this section, a recommendation provided in a written notice issued by the chief procurement officer in accordance with Section 63G-6-304 shall be given substantial weight in evaluating a bid:~~

~~—— (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~~

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~~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 7. Section **63G-6-402** is amended to read:~~

~~—— **63G-6-402. Contracts awarded by reverse auction -- Procedures:**~~

~~—— (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:~~

~~—— (3) A recommendation provided in a written notice issued by the chief procurement officer in accordance with Section 63G-6-304 shall be given substantial weight in evaluating a bid made through a reverse auction.~~

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~~Section 8. Section 63G-6-408 is amended to read:~~

~~63G-6-408. 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:~~

HB0476S01 compared with HB0476

~~—— (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.]~~

~~—— (b) A recommendation provided in a written notice issued by the chief procurement officer in accordance with Section 63G-6-304 shall be given substantial weight in evaluating an award procured through a competitive sealed proposal:~~

~~—— (c) An evaluation made under this Subsection (6) may not consider a factor, criterion, or recommendation other than as provided in Subsection (6)(a) or (b):~~

~~—— [(c)] (d) The contract file shall contain the basis on which the award is made.~~

Legislative Review Note

~~—— as of 2-25-11 5:38 PM~~

~~————— Office of Legislative Research and General Counsel}~~