

336 education, appointed by the board of regents;

337 (ii) ~~[an employee]~~ a representative of the Department of Human Services, appointed by
338 the executive director of that department;

339 (iii) ~~[an employee]~~ a representative of the Department of Transportation, appointed by
340 the executive director of that department;

341 (iv) ~~[an employee of a school district]~~ two representatives of school districts, appointed
342 by ~~[a cooperative purchasing entity for school districts]~~ the State Office of Education;

343 (v) ~~[an employee]~~ a representative of the Division of Facilities Construction and
344 Management appointed by the director of that division;

345 (vi) ~~[an employee of a county]~~ one representative of a county, appointed by the Utah
346 Association of Counties;

347 (vii) ~~[an employee of a city]~~ one representative of a city or town, appointed by the Utah
348 League of Cities and Towns;

349 (viii) ~~[an employee of a local district]~~ two ~~§~~ → [representative] representatives ← ~~§~~ of local
349a districts or special

350 service ~~[district]~~ districts, appointed by the Utah Association of Special Districts;

351 (ix) the executive director of the Department of Technology Services or the executive
352 director's designee; ~~[and]~~

353 (x) the chief procurement officer or the chief procurement officer's designee~~[-];~~ and

354 (xi) two representatives of state agencies, other than a state agency already represented
355 on the board, appointed by the executive director of the Department of Administrative
356 Services, with the approval of the executive director of the state agency that employs the
357 employee.

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

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

362 (3) (a) The policy board shall:

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

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

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

366 (c) The chief procurement officer shall designate an employee of the Division of

398 (a) as it relates to a purchasing agency, the head of the purchasing agency or a designee
 399 of the head of the purchasing agency;

400 (b) as it relates to a local public procurement unit, the purchasing officer or the
 401 governing body of the local public procurement ~~§~~ → **unit** ← ~~§~~ , or a designee of either;

402 (c) as it relates to a public procurement unit other than a public procurement unit
 403 described in Subsection (1) (a) or (b), the chief procurement officer or the chief procurement
 404 officer's designee.

405 ~~[(1) Any]~~ (2) Except as provided in Subsection (3), a person who is an actual or
 406 prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation
 407 or award of a contract may protest to the ~~§~~ → **[chief procurement officer or, if the solicitation or**
 408 award of the contract is the responsibility of a purchasing agency, the head of [a] the
 409 purchasing agency] protest officer ← ~~§~~ [. A protest], by filing the protest in writing, with the
 409a ~~§~~ → [chief procurement
 410 officer or the head of the purchasing agency] protest officer ← ~~§~~ as follows:

411 (a) with respect to an invitation for bids or a request for proposals [shall be submitted
 412 in writing prior to];

413 (i) before the opening of bids or the closing date for proposals[~~, unless~~]; or

414 (ii) if the [aggrieved] person did not know and should not have known of the facts
 415 giving rise to the protest [prior to] before the bid opening or the closing date for proposals[~~-~~
 416 The protest shall be submitted in writing within five working days after the aggrieved person
 417 knows or should have known of the facts giving rise thereto.], within seven days after the day
 418 on which the person knows or should have known of the facts giving rise to the protest; or

419 ~~[(2) Subject to the applicable requirements in Section 63G-10-403, the chief~~
 420 ~~procurement officer, the head of a purchasing agency, or a designee of either officer shall have~~
 421 ~~the authority, prior to the commencement of an action in court concerning the controversy, to~~
 422 ~~settle and resolve the protest.]~~

423 (b) if Subsection (2)(a) does not apply, within seven days after the day on which the
 424 person knows or should have known of the facts giving rise to the protest.

425 (3) As it relates to a solicitation or award by a local public procurement unit, the
 426 aggrieved actual or prospective bidder, offeror, or contractor shall:

427 (a) file the protest, in writing, with the procurement officer or governing body of the
 428 public procurement unit; and

429 (b) comply with the requirements described in Subsections (2)(a) and (b).

430 (4) A person who is debarred or suspended under this chapter may protest the

431 debarment or suspension to the ~~§→ [chief procurement officer or the head of the purchasing agency]~~

431a **protest officer ←§**

432 that ordered the debarment, as applicable, within seven days after the day on which the

433 debarment or suspension is ordered.

434 (5) A person who files a protest under this section shall include in the filing document:

435 (a) the person's address of record and email address of record; and

436 (b) a concise statement of the grounds upon which the protest is made.

437 (6) A person described in Subsection (2), (3), or (4) who fails to timely file a protest

438 under this section may not bring a protest, action, or appeal challenging a solicitation or award

439 of a contract, or a debarment or suspension, before the ~~§→ [chief procurement officer, the head of a~~

440 **purchasing agency] protest officer ←§**, an appeals panel, a court, or any other forum.

441 (7) Subject to the applicable requirements of Section 63G-10-403, ~~§→ [the chief~~

442 **procurement officer, the head of a purchasing agency, or a designee of either] a protest officer, or**

442a **the protest officer's designee ←§**, may enter into a

443 settlement agreement to resolve a protest.

444 Section 7. Section **63G-6-801.5** is enacted to read:

445 **63G-6-801.5. Requirement to exhaust administrative remedies -- Protests and**

446 **appeals.**

447 (1) A person may not challenge a procurement, a procurement process, the award of a

448 contract relating to a procurement, a debarment, or a suspension, in a court, before an

449 administrative officer or body, or in any other forum other than the forum permitted in this

450 chapter.

451 (2) A person who desires to challenge a procurement, a procurement process, the award

452 of a contract relating to a procurement, a debarment, or a suspension, shall bring the challenge,

453 in accordance with the requirements of this chapter, by timely filing:

454 (a) a protest in accordance with Section 63G-6-801;

455 (b) any appeal of the protest decision in accordance with Section 63G-6-807; and

456 (c) any appeal from a procurement appeals panel in accordance with Section

457 63G-6-815.

458 (3) A person who files a protest or appeal under this chapter is limited to protesting or

459 appealing on the grounds specified in the filing document described in Subsection

460 63G-6-801(3)(b).

461 (4) In hearing a protest or an appeal under this chapter relating to an expenditure of
 462 federal assistance, federal contract funds, or a federal grant, the person who hears the appeal
 463 shall ensure compliance with federal law and regulations relating to the expenditure.

464 Section 8. Section **63G-6-802** is amended to read:

465 **63G-6-802. Effect of timely protest or appeal.**

466 In the event of a timely protest under [~~Subsection 63G-6-801(1), 63G-6-810(1), or~~
 467 ~~63G-6-815(1), the state shall]~~ Subsection 63G-6-801(1), or a timely appeal of the protest under
 468 Section 63G-6-807 or 63G-6-815, a state executive branch agency or a local public
 469 procurement unit may not proceed further with the solicitation or with the award of the contract
 470 until:

471 (1) all administrative and judicial remedies [~~have been~~] are exhausted [~~or until~~];

472 (2) for a protest under Section 63G-6-801 or an appeal under Section 63G-6-807:

473 (a) the chief procurement officer, after consultation with the ~~§~~→ **[Attorney General's Office]**
 473a **attorney general's office** ←~~§~~

474 and the head of the using agency [~~or the head of a purchasing agency~~], makes a written
 475 determination that [~~the~~] award of the contract without delay is necessary to protect substantial
 476 interests of the state[-];

477 (b) the head of the purchasing agency, after consultation with the ~~§~~→ **[Attorney General's**
 478 **Office]** **attorney general's office** ←~~§~~ , makes a written determination that award of the contract
 478a without delay is necessary to
 479 protect substantial interests of the state; or

480 (c) for a local public procurement unit that is not represented by the attorney general's
 481 office, the local public procurement unit, after consulting with the attorney for the local public
 482 procurement unit, makes a written determination that award of the contract without delay is
 483 necessary to protect substantial interests of the local public procurement unit; or

484 (3) for an appeal under Section 63G-6-815, or an appeal to a higher court than district
 485 court:

486 (a) the chief procurement officer, after consultation with the ~~§~~→ **[Attorney General's Office]**
 486a **attorney general's office** ←~~§~~
 487 and the head of the using agency, makes a written determination that award of the contract
 488 without delay is in the best interest of the state;

489 (b) the head of the purchasing agency, after consultation with the ~~§~~→ **[Attorney General's**
 490 **Office]** **attorney general's office** ←~~§~~ , makes a written determination that award of the contract
 490a without delay is in the best

491 interest of the state; or

492 (c) for a local public procurement unit that is not represented by the attorney general's
 493 office, the local public procurement unit, after consulting with the attorney for the local public
 494 procurement unit, makes a written determination that award of the contract without delay is
 495 necessary to protect the best interest of the local public procurement unit.

496 Section 9. Section **63G-6-803** is amended to read:

497 **63G-6-803. Costs to or against protestor.**

498 (1) When a protest is sustained administratively or upon administrative or judicial
 499 review and the protesting bidder or offeror should have been awarded the contract under the
 500 solicitation but is not, the protestor shall be entitled to the following relief as a claim against
 501 the state:

502 (a) the reasonable costs incurred in connection with the solicitation, including bid
 503 preparation and appeal costs; and

504 (b) any equitable relief determined to be appropriate by the reviewing administrative or
 505 judicial body.

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

511 (3) The provisions of Title 63G, Chapter 7, Part 4, Notice of Claim Against a
 512 Governmental Entity or a Government Employee, and Section 63G-7-601 do not apply to
 513 actions brought under this chapter by an aggrieved party for equitable relief or reasonable costs
 514 incurred in preparing or appealing an unsuccessful bid or offer.

515 Section 10. Section **63G-6-805** is amended to read:

516 **63G-6-805. Authority to resolve controversy between state and contractor.**

517 **§→ [The chief procurement officer, the head of a purchasing agency, or a designee of either] A**
 517a **protest officer, or the protest officer's designee, ←§**

518 [~~officer~~] is authorized, [~~prior to~~] before commencement of an action in court concerning [~~the~~
 519 ~~controversy, to settle and resolve~~] a controversy [~~which~~] that arises between the state and a
 520 contractor [~~under or by virtue of a contract between them. This includes, without limitation,~~
 521 in relation to an existing contract between the state and the contractor, including controversies

522 based upon breach of contract, [~~mistakes~~] mistake, misrepresentation, or other cause for
 523 contract modification or rescission, to settle and resolve the controversy.

524 Section 11. Section **63G-6-806** is amended to read:

525 **63G-6-806. Decisions of protest officer to be in writing -- Effect of no writing.**

526 (1) After a timely protest is filed in accordance with Section 63G-6-801, the protest
 527 officer:

528 (a) shall consider the protest; and

529 (b) may hold a hearing on the protest.

530 (2) (a) The protest officer may:

531 (i) subpoena witnesses and compel their attendance at a protest hearing; or

532 (ii) subpoena documents for production at a protest hearing.

533 (b) The Rules of Evidence do not apply to a protest hearing.

534 (c) The Procurement Policy Board shall make rules relating to intervention in a protest,
 535 including designating:

536 (i) who may intervene; and

537 (ii) the time and manner of intervention.

538 (d) If a hearing on a protest is held under this section, the protest officer shall:

539 (i) record the hearing;

540 (ii) preserve all evidence presented at the hearing; and

541 (iii) preserve all records and other evidence relied upon in reaching the written decision
 542 described in this section.

543 (e) Regardless of whether a hearing on a protest is held under this section, the protest
 544 officer shall preserve all records and other evidence relied upon in reaching the written
 545 decision.

546 (f) The records described in Subsections (2) ~~§~~→ [~~(e) and (f)] (d) and (e) ←~~§~~ may not be~~
 546a destroyed until the

547 decision, and any appeal of the decision, becomes final.

548 (g) A protest officer who holds a hearing, considers a protest, or issues a written
 549 decision under this section does not waive the right to, at a later date, question or challenge the
 550 protest officer's jurisdiction to hold the hearing, consider the protest, or render the decision.

551 [(+)] (3) ~~§~~→ [~~The chief procurement officer, the head of a purchasing agency, or the~~
 552 designee of either] A protest officer, or the protest officer's designee ←~~§~~ [officer], shall promptly
 552a issue a written decision regarding any protest,

615 by the public entity responsible for the solicitation, contract award, or other action complained
 616 of.

617 (4) A procurement appeals panel described in Subsection (3) shall:

618 (a) consist of an odd number of members;

619 (b) except as provided in Subsection (5), conduct an informal proceeding on the appeal
 620 within 60 days after the day on which the procurement appeals panel is appointed, unless all
 621 parties stipulate to a later date;

622 (c) at least seven days before the proceeding, mail, email, or hand-deliver a written
 623 notice of the proceeding to the parties to the appeal; and

624 (d) within seven days after the day on which the proceeding ends:

625 (i) issue a written decision on the appeal; and

626 (ii) mail, email, or hand-deliver the written decision on the appeal to the parties to the

627 appeal ~~§→ [; the chief procurement officer, and the head of the applicable purchasing agency] and to~~
 627a ~~the protest officer ←§~~ .

628 (5) A procurement appeals panel may continue a procurement appeals proceeding
 629 beyond the 60-day period described in Subsection (4)(b) if the procurement appeals panel
 630 determines that the continuance is in the interests of justice.

631 (6) A procurement appeals panel:

632 (a) shall consider the appeal based solely on:

633 (i) the protest decision;

634 (ii) the record considered by the person who issued the protest decision; and

635 (iii) if a protest hearing was held, the record of the protest hearing;

636 (b) may not take additional evidence; and

637 (c) shall uphold the decision of the ~~§→ [chief procurement officer or the head of the~~
 638 ~~purchasing agency] protest officer ←§~~ , unless the decision is arbitrary and capricious or clearly
 638a erroneous.

639 (7) If a procurement appeals panel determines that the decision of the ~~§→ [chief~~
 640 ~~procurement officer or the head of the purchasing agency] protest officer ←§~~ is arbitrary and
 640a capricious or clearly

641 erroneous, the procurement appeals panel:

642 (a) shall remand the matter to the ~~§→ [chief procurement officer or the head of the~~
 643 ~~purchasing agency, as applicable;] protest officer ←§~~ to cure the problem or render a new decision;

644 (b) may recommend action that the ~~§→ [chief procurement officer or the head of the~~
 645 ~~purchasing agency] protest officer ←§~~ should take; and

677 deposit or posting a bond may be waived or reduced on grounds, including:

678 (i) that the person filing the appeal is impecunious;

679 (ii) circumstances where certain small purchases are involved; or

680 (iii) other grounds determined by the Division of Purchasing and General Services to

681 be appropriate; and

682 (b) the method used to determine:

683 (i) the estimated contract cost described in Subsections (1)(c)(ii) and (1)(d)(ii); and

684 (ii) the amount described in Subsection (1)(e).

685 (3) The chair of the ~~§~~ → [procurement policy board] Procurement Policy Board ← ~~§~~ shall

685a dismiss a protest filed under

686 Section 63G-6-807 if the actual or prospective bidder, offeror, or contractor fails to timely pay

687 the security deposit or post the bond required under Subsection (1).

688 (4) The chair of the ~~§~~ → [procurement policy board] Procurement Policy Board ← ~~§~~ shall:

689 (a) retain the security deposit or bond until the protest and any appeal of the protest

690 decision is final;

691 (b) as it relates to a security deposit:

692 (i) deposit the security deposit into an interest-bearing account; and

693 (ii) after any appeal of the protest decision becomes final, return the security deposit

694 and the interest it accrues to the person who paid the security deposit, unless the security

695 deposit is forfeited to the ~~§~~ → [general fund] General Fund ← ~~§~~ under Subsection (5); and

696 (c) as it relates to a bond:

697 (i) retain the bond until the protest and any appeal of the protest decision becomes

698 final; and

699 (ii) after the protest and any appeal of the protest decision becomes final, return the

700 bond to the person who posted the bond, unless the bond is forfeited to the ~~§~~ → [general fund]

700a General Fund ← ~~§~~ under

701 Subsection (5).

702 (5) A security deposit that is paid, or a bond that is posted, under this section shall

703 forfeit to the ~~§~~ → [general fund] General Fund ← ~~§~~ if:

704 (a) the person who paid the security deposit or posted the bond fails to ultimately

705 prevail on appeal; and

706 (b) the procurement appeals panel finds that the protest or appeal is frivolous or that its

707 primary purpose is to harass or cause a delay.

739 appeal the decision of a procurement appeals panel, unless the appeal is:

740 (a) recommended by the ~~§~~→ [chief procurement officer or the head of the purchasing
 741 agency] protest officer ←~~§~~ involved; and

742 (b) except for a local public procurement unit that is not represented by the attorney
 743 general's office, approved by the attorney general.

744 (3) The Utah Court of Appeals:

745 (a) shall consider the appeal as an appellate court;

746 (b) may not hear the matter as a trial de novo; and

747 (c) may not overturn a finding or decision of the protest officer or a procurement
 748 appeals panel, unless the finding or decision is arbitrary and capricious or clearly erroneous.

749 (4) The Utah Court of Appeals is encouraged to:

750 (a) give an appeal made under Subsection (1) priority; and

751 (b) consider the appeal and render a decision in an expeditious manner.

752 (5) The district court shall ~~§~~→ [also] ←~~§~~ have original jurisdiction in a cause of action
 752a between a

753 contractor and the state for any cause of action that arises under, or in relation to, an existing
 754 contract between the contractor and the state.

755 Section 18. Section **63G-6-816** is amended to read:

756 **63G-6-816. Effect of prior determination by agents of state.**

757 In any judicial action under Section 63G-6-815, determinations by employees, agents,
 758 or other persons appointed by the state shall be final and conclusive only as provided in
 759 Sections 63G-6-419 [and], 63G-6-806, and [Subsection] 63G-6-813[(2)].

760 Section 19. Section **63G-6-817** is amended to read:

761 **63G-6-817. Statutes of limitations.**

762 [(1) Any action under Subsection 63G-6-815(1)(a) shall be initiated as follows:]

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

769 [(b) within 14 calendar days after receipt of a final administrative decision pursuant to

832 (b) The Legislative Management Committee may recommend approval or rejection of
833 the settlement agreement.

834 (6) (a) The department may not enter into a settlement agreement that resolves a bid or
835 request for proposal protest, in accordance with [~~Section 63G-6-801~~] Subsection 63G-6-801(9),
836 that might cost government entities more than \$100,000 to implement until the Transportation
837 Commission has approved the agreement.

838 (b) The department may not enter into a settlement agreement that resolves a bid or
839 request for proposal protest, in accordance with [~~Section 63G-6-801~~] Subsection 63G-6-801(9),
840 that might cost government entities more than \$500,000 to implement until the Transportation
841 Commission and the governor have approved the agreement.

842 (c) The department may not enter into a settlement agreement that resolves a bid or
843 request for proposal protest in accordance with [~~Section 63G-6-801~~] Subsection 63G-6-801(9)
844 that might cost government entities more than \$1,000,000 to implement until:

- 845 (i) the Transportation Commission has approved the agreement;
- 846 (ii) the governor has approved the agreement; and
- 847 (iii) the Legislative Management Committee has reviewed the agreement.

848 **Section 23. Repealer.**

849 This bill repeals:

850 **Section 63G-6-808, Rules of procedure to be adopted.**

851 **Section 63G-6-809, Decisions to be in writing.**

852 **Section 63G-6-810, Jurisdiction of Procurement Appeals Board.**

853 **Section 63G-6-811, Time limits to file protest or appeal -- Effect of filing.**

854 **Section 63G-6-814, Right to appeal to Court of Appeals.**

855 **Section 24. Transition.**

856 (1) The Procurement Appeals Board is dissolved after all cases pending before the
857 Procurement Appeals Board on February 1, 2012 are heard and become final.

858 (2) All appeals made to the Procurement Appeals Board on or after February 2, 2012

858a **§→, ←§**

859 shall be assigned to a procurement appeals panel by the chair of the Procurement Policy Board
860 within 30 days after the day on which this bill becomes law.

861 (3) Payment of a security deposit or the posting of a bond required in this bill is not
862 required for: