

**Senator Wayne L. Niederhauser** proposes the following substitute bill:

**CONTESTING PUBLIC PROCUREMENTS**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Wayne L. Niederhauser**

House Sponsor: Ken Ivory

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**LONG TITLE**

**General Description:**

This bill amends provisions of the Utah Procurement Code relating to protests, legal action, and appeals.

**Highlighted Provisions:**

This bill:

- ▶ increases the number of members on the Procurement Policy Board;
- ▶ describes procedures and requirements for a protest before a protest officer and an appeal of a protest decision;
- ▶ makes the procedures and requirements described in the preceding paragraph applicable to state agencies, state purchasing agencies, and to most local public procurement units;
- ▶ grants rulemaking authority to the Procurement Policy Board;
- ▶ requires a person who files an appeal of a protest decision to, subject to certain exceptions, pay a security deposit or post a bond;
- ▶ describes the requirements and procedures relating to paying a security deposit or posting a bond;
- ▶ provides for the forfeiture of a bond if an appeal or protest is frivolous or if its primary purpose is to harass or cause a delay;



- 26           ▶ requires a person who desires to protest a procurement to exhaust administrative
- 27 remedies;
- 28           ▶ establishes procedures and requirements relating to protests and appeals of state
- 29 procurements, contracts, debarments, and suspensions;
- 30           ▶ dissolves the procurement appeals board;
- 31           ▶ provides for appeals to be made to the Procurement Policy Board and provides for
- 32 appointment of procurement appeals panels from among the membership of the
- 33 Procurement Policy Board or approved designees;
- 34           ▶ provides for dismissal of appeals that are not filed in accordance with the
- 35 requirements of this bill;
- 36           ▶ amends provisions relating to the statute of limitations and the jurisdiction of the
- 37 district court in procurement matters;
- 38           ▶ prohibits the award of consequential damages in relation to an action brought under
- 39 this bill;
- 40           ▶ provides an uncodified transitions clause; and
- 41           ▶ makes technical changes.

42 **Money Appropriated in this Bill:**

43           None

44 **Other Special Clauses:**

45           This bill provides an immediate effective date.

46 **Utah Code Sections Affected:**

47 AMENDS:

48           **26-8a-405.3**, as last amended by Laws of Utah 2011, Chapter 297

49           **63A-5-208**, as last amended by Laws of Utah 2008, Chapter 382

50           **63G-6-104**, as renumbered and amended by Laws of Utah 2008, Chapter 382

51           **63G-6-201**, as last amended by Laws of Utah 2011, Chapter 376

52           **63G-6-202**, as last amended by Laws of Utah 2011, Chapter 376

53           **63G-6-801**, as last amended by Laws of Utah 2011, Chapter 361

54           **63G-6-802**, as renumbered and amended by Laws of Utah 2008, Chapter 382

55           **63G-6-803**, as renumbered and amended by Laws of Utah 2008, Chapter 382

56           **63G-6-805**, as renumbered and amended by Laws of Utah 2008, Chapter 382

- 57           **63G-6-806**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 58           **63G-6-812**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 59           **63G-6-813**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 60           **63G-6-816**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 61           **63G-6-817**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 62           **63G-6-819**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 63           **63G-10-403**, as enacted by Laws of Utah 2011, Chapter 361

64 ENACTS:

- 65           **63G-6-801.5**, Utah Code Annotated 1953
- 66           **63G-6-807.5**, Utah Code Annotated 1953
- 67           **63G-6-814.5**, Utah Code Annotated 1953

68 REPEALS AND REENACTS:

- 69           **63G-6-807**, as last amended by Laws of Utah 2010, Chapter 286
- 70           **63G-6-815**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 71           **63G-6-907**, as renumbered and amended by Laws of Utah 2008, Chapter 382

72 REPEALS:

- 73           **63G-6-808**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 74           **63G-6-809**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 75           **63G-6-810**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 76           **63G-6-811**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 77           **63G-6-814**, as renumbered and amended by Laws of Utah 2008, Chapter 382

78 **Uncodified Material Affected:**

79 ENACTS UNCODIFIED MATERIAL



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

82           Section 1. Section **26-8a-405.3** is amended to read:

83           **26-8a-405.3. Use of competitive sealed proposals -- Procedure -- Appeal rights.**

84           (1) (a) Competitive sealed proposals for paramedic or 911 ambulance services under  
85 Section 26-8a-405.2, or for non-911 services under Section 26-8a-405.4, shall be solicited  
86 through a request for proposal and the provisions of this section.

87           (b) The governing body of the political subdivision shall approve the request for

88 proposal prior to the notice of the request for proposals under Subsection (1)(c).

89 (c) (i) Notice of the request for proposals shall be published:

90 (A) at least once a week for three consecutive weeks in a newspaper of general  
91 circulation published in the county; or

92 (B) if there is no such newspaper, then notice shall be posted for at least 20 days in at  
93 least five public places in the county; and

94 (ii) in accordance with Section 45-1-101 for at least 20 days.

95 (2) (a) Proposals shall be opened so as to avoid disclosure of contents to competing  
96 offerors during the process of negotiations.

97 (b) (i) Subsequent to the published notice, and prior to selecting an applicant, the  
98 political subdivision shall hold a presubmission conference with interested applicants for the  
99 purpose of assuring full understanding of, and responsiveness to, solicitation requirements.

100 (ii) A political subdivision shall allow at least 90 days from the presubmission  
101 conference for the proposers to submit proposals.

102 (c) Subsequent to the presubmission conference, the political subdivision may issue  
103 addenda to the request for proposals. An addenda to a request for proposal shall be finalized  
104 and posted by the political subdivision at least 45 days before the day on which the proposal  
105 must be submitted.

106 (d) Offerors to the request for proposals shall be accorded fair and equal treatment with  
107 respect to any opportunity for discussion and revisions of proposals, and revisions may be  
108 permitted after submission and before a contract is awarded for the purpose of obtaining best  
109 and final offers.

110 (e) In conducting discussions, there shall be no disclosures of any information derived  
111 from proposals submitted by competing offerors.

112 (3) (a) (i) A political subdivision may select an applicant approved by the department  
113 under Section 26-8a-404 to provide 911 ambulance or paramedic services by contract to the  
114 most responsible offeror as defined in Subsection 63G-6-103(24).

115 (ii) An award under Subsection (3)(a)(i) shall be made to the responsible offeror whose  
116 proposal is determined in writing to be the most advantageous to the political subdivision,  
117 taking into consideration price and the evaluation factors set forth in the request for proposal.

118 (b) The applicants who are approved under Section 26-8a-405 and who are selected

119 under this section may be the political subdivision issuing the request for competitive sealed  
120 proposals, or any other public entity or entities, any private person or entity, or any  
121 combination thereof.

122 (c) A political subdivision may reject all of the competitive proposals.

123 (4) In seeking competitive sealed proposals and awarding contracts under this section,  
124 a political subdivision:

125 (a) shall apply the public convenience and necessity factors listed in Subsections  
126 26-8a-408(2) through (6);

127 (b) shall require the applicant responding to the proposal to disclose how the applicant  
128 will meet performance standards in the request for proposal;

129 (c) may not require or restrict an applicant to a certain method of meeting the  
130 performance standards, including:

131 (i) requiring ambulance medical personnel to also be a firefighter; or

132 (ii) mandating that offerors use fire stations or dispatch services of the political  
133 subdivision;

134 (d) shall require an applicant to submit the proposal:

135 (i) based on full cost accounting in accordance with generally accepted accounting  
136 principals; and

137 (ii) if the applicant is a governmental entity, in addition to the requirements of  
138 Subsection (4)(e)(i), in accordance with generally accepted government auditing standards and  
139 in compliance with the State of Utah Legal Compliance Audit Guide; and

140 (e) shall set forth in the request for proposal:

141 (i) the method for determining full cost accounting in accordance with generally  
142 accepted accounting principles, and require an applicant to submit the proposal based on such  
143 full cost accounting principles;

144 (ii) guidelines established to further competition and provider accountability; and

145 (iii) a list of the factors that will be considered by the political subdivision in the award  
146 of the contract, including by percentage, the relative weight of the factors established under this  
147 Subsection (4)(e), which may include such things as:

148 (A) response times;

149 (B) staging locations;

- 150 (C) experience;
- 151 (D) quality of care; and
- 152 (E) cost, consistent with the cost accounting method in Subsection (4)(e)(i).
- 153 (5) (a) Notwithstanding the provisions of Subsection 63G-6-104(3), the provisions of
- 154 Title 63G, Chapter 6, Part 8, Legal and Contractual Remedies, apply to the procurement
- 155 process required by this section, except as provided in Subsection (5)(c).
- 156 (b) [~~The Procurement Appeals Board created~~] A procurement appeals panel described
- 157 in Section 63G-6-807 shall have jurisdiction to review and determine an appeal of an offeror
- 158 under this section [~~in the same manner as provided in Section 63G-6-810~~].
- 159 (c) (i) An offeror may appeal the solicitation or award as provided by the political
- 160 subdivision's procedures. After all political subdivision appeal rights are exhausted, the offeror
- 161 may appeal under the provisions of Subsections (5)(a) and (b).
- 162 (ii) [~~The factual determination required by Subsection 63G-6-813(1) shall be based on~~]
- 163 A procurement appeals panel described in Section 63G-6-807 shall determine whether the
- 164 solicitation or award was made in accordance with the procedures set forth in this section and
- 165 Section 26-8a-405.2.
- 166 (d) The determination of an issue of fact by the appeals board shall be final and
- 167 conclusive unless arbitrary and capricious or clearly erroneous as provided in Section
- 168 63G-6-813.
- 169 Section 2. Section **63A-5-208** is amended to read:
- 170 **63A-5-208. Definitions -- Certain public construction bids to list subcontractors --**
- 171 **Changing subcontractors -- Bidders as subcontractors -- Dispute resolution process --**
- 172 **Penalties.**
- 173 (1) As used in this section:
- 174 (a) "First-tier subcontractor" means a subcontractor who contracts directly with the
- 175 prime contractor.
- 176 (b) "Subcontractor" means any person or entity under contract with a contractor or
- 177 another subcontractor to provide services or labor for the construction, installation, or repair of
- 178 an improvement to real property.
- 179 (c) "Subcontractor" includes a trade contractor or specialty contractor.
- 180 (d) "Subcontractor" does not include suppliers who provide only materials, equipment,

181 or supplies to a contractor or subcontractor.

182 (2) The director shall apply the provisions of this section to achieve fair and  
183 competitive bidding and to discourage bid-shopping by contractors.

184 (3) (a) (i) (A) On each public construction project, the director shall require the  
185 apparent lowest three bidders to submit a list of their first-tier subcontractors indicating each  
186 subcontractor's name, bid amount, and other information required by rule.

187 (B) Other bidders who are not one of the apparent lowest three bidders may also  
188 submit a list of their first-tier subcontractors containing the information required by this  
189 Subsection (3).

190 (C) The director may not consider any bid submitted by a bidder if the bidder fails to  
191 submit a subcontractor list meeting the requirements of this section.

192 (ii) On projects where the contractor's total bid is less than \$500,000, subcontractors  
193 whose bid is less than \$20,000 need not be listed.

194 (iii) On projects where the contractor's total bid is \$500,000 or more, subcontractors  
195 whose bid is less than \$35,000 need not be listed.

196 (b) (i) The bidders shall submit this list within 24 hours after the bid opening time, not  
197 including Saturdays, Sundays, and state holidays.

198 (ii) This list does not limit the director's right to authorize a change in the listing of any  
199 subcontractor.

200 (c) The bidders shall verify that all subcontractors listed as part of their bids are  
201 licensed as required by state law.

202 (d) Twenty-four hours after the bid opening, the contractor may change the contractor's  
203 subcontractors only after:

204 (i) receiving permission from the director; and

205 (ii) establishing that:

206 (A) the change is in the best interest of the state; and

207 (B) the contractor establishes reasons for the change that meet the standards established  
208 by the State Building Board.

209 (e) If the director approves any changes in subcontractors that result in a net lower  
210 contract price for subcontracted work, the total of the prime contract may be reduced to reflect  
211 the changes.

212 (4) (a) A bidder may list himself as a subcontractor when the bidder is currently  
213 licensed to perform the portion of the work for which the bidder lists himself as a subcontractor  
214 and:

215 (i) the bidder intends to perform the work of a subcontractor himself; or  
216 (ii) the bidder intends to obtain a subcontractor to perform the work at a later date  
217 because the bidder was unable to:

218 (A) obtain a bid from a qualified subcontractor; or  
219 (B) obtain a bid from a qualified subcontractor at a cost that the bidder considers to be  
220 reasonable.

221 (b) (i) When the bidder intends to perform the work of a subcontractor himself, the  
222 director may, by written request, require that the bidder provide the director with information  
223 indicating the bidder's:

224 (A) previous experience in the type of work to be performed; and  
225 (B) qualifications for performing the work.

226 (ii) The bidder must respond in writing within five business days of receiving the  
227 director's written request.

228 (iii) If the bidder's submitted information causes the director to reasonably believe that  
229 self-performance of the portion of the work by the bidder is likely to yield a substandard  
230 finished product, the director shall:

231 (A) require the bidder to use a subcontractor for the portion of the work in question and  
232 obtain the subcontractor bid under the supervision of the director; or  
233 (B) reject the bidder's bid.

234 (c) (i) When the bidder intends to obtain a subcontractor to perform the work at a later  
235 date, the bidder shall provide documentation with the subcontractor list describing:

236 (A) the bidder's efforts to obtain a bid of a qualified subcontractor at a reasonable cost;  
237 and

238 (B) why the bidder was unable to obtain a qualified subcontractor bid.

239 (ii) If the bidder who intends to obtain a subcontractor to perform the work at a later  
240 date is awarded a contract, the director shall supervise the bidder's efforts to obtain a qualified  
241 subcontractor bid.

242 (iii) The director may not adjust the amount of the contract awarded in order to reflect



243 the actual amount of the subcontractor's bid.

244 (5) The division may not disclose any subcontractor bid amounts obtained under this  
245 section until the division has awarded the project to a contractor.

246 (6) (a) The director shall, in consultation with the State Building Board, prepare draft  
247 rules establishing a process for resolving disputes involved with contracts under the division's  
248 procurement authority.

249 (b) The draft rules shall be presented to the Government Operations Interim Committee  
250 for review, comment, and recommendations before August 31, 2004.

251 (c) The director shall consider, and the rules may include:

252 (i) requirements regarding preliminary resolution efforts between the parties directly  
253 involved with the dispute;

254 (ii) requirements for the filing of claims, including notification, timeframes, and  
255 documentation;

256 (iii) identification of the types of costs eligible for allocation and a method for  
257 allocating costs among the parties to the dispute;

258 (iv) required time periods, not to exceed 60 days, for the resolution of the claim;

259 (v) provision for an independent hearing officer, panel, or arbitrator to extend the time  
260 period for resolution of the claim by not to exceed 60 additional days for good cause;

261 (vi) provision for the extension of required time periods if the claimant agrees;

262 (vii) requirements that decisions be issued in writing;

263 (viii) provisions for administrative appeals of the decision;

264 (ix) provisions for the timely payment of claims after resolution of the dispute,  
265 including any appeals;

266 (x) a requirement that the final determination resulting from the dispute resolution  
267 process provided for in the rules is a final agency action subject to judicial review as provided  
268 in Sections 63G-4-401 and 63G-4-402;

269 (xi) a requirement that a claim or dispute that does not include a monetary claim  
270 against the division or its agents is not limited to the dispute resolution process provided for in  
271 this Subsection (6);

272 (xii) requirements for claims and disputes to be eligible for this dispute resolution  
273 process;

274 (xiii) the use of an independent hearing officer, panel, arbitration, or mediation; and  
275 (xiv) the circumstances under which a subcontractor may file a claim directly with the  
276 division.

277 (d) Persons pursuing claims under the process required by this Subsection (6):  
278 (i) are bound by the decision reached under this process unless the decision is properly  
279 appealed; and

280 (ii) may not pursue claims or disputes under the dispute resolution process established  
281 in [~~Sections 63G-6-805 through 63G-6-814~~] Title 63G, Chapter 6, Part 8, Legal and  
282 Contractual Remedies.

283 (7) In addition to all other reasons allowed by law or rule, the director may reject all  
284 bids if none of the bidders whose bid is within the budget of the project submit a subcontractor  
285 list that meets the requirements of this section.

286 (8) Any violation of this section, or any fraudulent misrepresentation by a contractor,  
287 subcontractor, or supplier, may be grounds for:

288 (a) the contractor, subcontractor, or supplier to be suspended or debarred by the  
289 director; or

290 (b) the contractor or subcontractor to be disciplined by the Division of Professional and  
291 Occupational Licensing.

292 Section 3. Section **63G-6-104** is amended to read:

293 **63G-6-104. Application of chapter.**

294 (1) This chapter applies only to contracts solicited or entered into after the effective  
295 date of this chapter unless the parties agree to its application to a contract solicited or entered  
296 into prior to the effective date. This chapter does not apply to a city or a town.

297 (2) Except as provided in Section 63G-6-105, this chapter shall apply to every  
298 expenditure of public funds irrespective of their source, including federal assistance, by any  
299 state agency under any contract.

300 (3) (a) (i) [~~Only the following sections shall~~] Except as provided in Subsection  
301 (3)(a)(ii), the only sections of this chapter that apply to local public procurement units[:] are  
302 Sections 63G-6-103, 63G-6-105, 63G-6-301, 63G-6-303 through 63G-6-420, 63G-6-422,  
303 63G-6-501 through 63G-6-602, 63G-6-801 through [~~63G-6-806, and 63G-6-815 through~~  
304 63G-6-819; provided, however, that, except as provided in Sections 63G-6-906 and

305 63G-6-907, the jurisdiction of the procurement appeals board is limited to matters involving  
 306 state agencies] 63G-6-820.

307 (ii) (A) Except as provided in Subsection (3)(a)(ii)(B), the only sections of this chapter  
 308 that apply to the Utah Transit Authority are Sections 63G-6-103, 63G-6-105, 63G-6-301,  
 309 63G-6-303 through 63G-6-420, 63G-6-422, 63G-6-501 through 63G-6-602, 63G-6-801  
 310 through 63G-6-806, and 63G-6-815 through 63G-6-819.

311 (B) Except as provided in Section 63G-6-906, the jurisdiction of a procurement appeals  
 312 panel is limited to matters involving state agencies.

313 (b) Subsections 63G-6-208(1)(b), 63G-6-504(4), and 63G-6-505(2) also apply to local  
 314 public procurement units.

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

321 (d) In addition to the sections and subsections listed above and except as provided in  
 322 Subsection 17B-1-108(3) relating to local districts, each local public procurement unit shall  
 323 adopt ordinances relating to the procurement of architect-engineer services not inconsistent  
 324 with the provisions of Part 7, Architect-Engineer Services.

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

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

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

331 Section 4. Section **63G-6-201** is amended to read:

332 **63G-6-201. Creation of Procurement Policy Board.**

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

334 (b) The policy board shall consist of [~~10~~] 15 members as follows:

335 (i) [~~an employee of a state institution~~] two representatives of state institutions of higher

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

367 Purchasing and General Services to serve as the nonvoting secretary to the policy board.

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

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

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

372 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
373 63A-3-107.

374 Section 5. Section **63G-6-202** is amended to read:

375 **63G-6-202. Powers and duties of board.**

376 (1) Except as otherwise provided in Section 63G-6-104 and Subsection  
377 63G-6-208(1)(b), the policy board shall:

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

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

383 (2) (a) The policy board may:

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

386 (ii) upon the request of a local public procurement unit, review that procurement unit's  
387 proposed rules to ensure that they are not inconsistent with the provisions of this chapter; and

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

390 (b) [~~The~~] Except as provided in Section 63G-6-807, the policy board may not exercise  
391 authority over the award or administration of:

392 (i) any particular contract; or

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

394 Section 6. Section **63G-6-801** is amended to read:

395 **63G-6-801. Definitions -- Protest to chief procurement officer or head of a**  
396 **purchasing agency -- Time -- Authority to resolve protest.**

397 (1) As used in this part, "protest officer" means:

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,

553 debarment ~~[or]~~, suspension, or contract controversy if it is not settled by [a] mutual agreement.  
 554 The decision shall state the reasons for the action taken and inform the protestor, contractor, or  
 555 prospective contractor of the right to judicial or administrative review as provided in this  
 556 chapter.

557 ~~[(2)]~~ (4) A decision shall be effective until stayed or reversed on appeal, except to the  
 558 extent provided in Section 63G-6-802. A copy of the decision ~~[under]~~ described in Subsection  
 559 (1) shall be mailed, emailed, or otherwise furnished immediately to the protestor, prospective  
 560 contractor, or contractor. The decision shall be final and conclusive unless the protestor,  
 561 prospective contractor, or contractor ~~[appeals administratively to the procurement appeals~~  
 562 ~~board in accordance with Subsection 63G-6-810(2) or the protestor, prospective contractor, or~~  
 563 ~~contractor]~~:

564 (a) for a controversy described in Section 63G-6-805, commences an action in district  
 565 court in accordance with [Section 63G-6-815.] Subsection 63G-6-815(5);

566 (b) for a controversy related to a solicitation or the award of a contract, files an appeal  
 567 under Section 63G-6-807; or

568 (c) for a debarment or suspension, files an appeal under Section 63G-6-807.

569 ~~[(3)]~~ (5) If the ~~[chief procurement officer, the head of a purchasing agency, or the~~  
 570 ~~designee of either]~~ protest officer does not issue the written decision regarding a protest or a  
 571 contract controversy within [60] 30 calendar days after the day on which a written request for a  
 572 final decision is filed with the protest officer, or within [such] a longer period as may be agreed  
 573 upon by the parties, [then] the protestor, prospective contractor, or contractor may proceed as if  
 574 an adverse decision had been received.

575 (6) Except for a controversy described in Section 63G-6-805, a determination under  
 576 this section by the protest officer regarding an issue of fact may not be overturned on appeal  
 577 unless the decision is arbitrary and capricious or clearly erroneous.

578 Section 12. Section **63G-6-807** is repealed and reenacted to read:

579 **63G-6-807. Appeal to procurement policy board -- Appointment of procurement**  
 580 **appeals panel -- Proceedings.**

581 (1) A party to a protest may appeal the protest decision to the procurement policy board  
 582 by:

583 (a) filing a written notice of appeal with the chair of the procurement policy board

584 within seven days after:

585 (i) the day on which the written decision described in Section 63G-6-806 is:

586 (A) personally served on the party or the party's representative; or

587 (B) emailed or mailed to the address or email address of record provided by the party

588 under Subsection 63G-6-801(2); or

589 (ii) the day on which the 30-day period described in Subsection 63G-6-806(5) ends, if a  
590 written decision is not issued before the end of the 30-day period;

591 (b) including in the filing document the person's address of record and email address of  
592 record; and

593 (c) at the time that the notice of appeal described in Subsection (1)(a) is filed,  
594 complying with the requirements of Section 63G-6-807.5 regarding the posting of a security  
595 deposit or a bond.

596 (2) A person may not appeal from a protest described in Section 63G-6-801, unless:

597 (a) a decision on the protest has been issued; or

598 (b) a decision is not issued and the 30-day period described in Subsection  
599 63G-6-806(5) has passed.

600 (3) The chair of the procurement policy board or a designee of the chair who is not  
601 employed by the public entity responsible for the solicitation, contract award, or other action  
602 complained of:

603 (a) shall, within seven days after the day on which the chair receives a timely written  
604 notice of appeal under Subsection (1), appoint:

605 (i) a procurement appeals panel to hear and decide the appeal, consisting of at least  
606 three individuals, each of whom shall be:

607 (A) a member of the Procurement Policy Board; or

608 (B) a designee of a member appointed under Subsection (3)(a)(i)(A), if the designee is  
609 approved by the chair; and

610 (ii) one of the members of the procurement appeals panel to be the chair of the panel;

611 (b) may:

612 (i) appoint the same procurement appeals panel to hear more than one appeal; or

613 (ii) appoint a separate procurement appeals panel for each appeal; and

614 (c) may not appoint a person to a procurement appeals panel if the person is employed

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

646 (c) may not order that:  
647 (i) a contract be awarded to a certain person;  
648 (ii) a contract or solicitation be cancelled; or  
649 (iii) any other action be taken other than the action described in Subsection (7)(a).  
650 (8) The Procurement Policy Board shall make rules relating to the conduct of an  
651 appeals proceeding, including rules that provide for:

652 (a) expedited proceedings; and  
653 (b) electronic participation in the proceedings by panel members and participants.  
654 (9) The Rules of Evidence do not apply to an appeals proceeding.

655 Section 13. Section **63G-6-807.5** is enacted to read:

656 **63G-6-807.5. Requirement to post a security deposit or bond -- Exceptions --**  
657 **Forfeiture of security deposit or bond.**

658 (1) Except as provided by rule made under Subsection (2)(a), a person who files an  
659 appeal under Section 63G-6-807 shall, at the time that the appeal is filed, pay a security deposit  
660 or post a bond with the protest officer in an amount that is the greater of:

661 (a) for the appeal of a debarment or suspension, \$1,000;

662 (b) for any type of procurement, \$1,000;

663 (c) for an invitation for bids, 5% of:

664 (i) the lowest bid amount, if the bid opening has occurred; or

665 (ii) the estimated contract cost, established in accordance with Subsection (2)(b), if the  
666 bid opening has not yet occurred;

667 (d) for a request for proposals, 5% of:

668 (i) the lowest cost proposed in a response to a request for proposals, if the opening of  
669 proposals has occurred; or

670 (ii) the estimated contract cost, established in accordance with Subsection (2)(b), if the  
671 opening of proposals has not occurred; or

672 (e) for a type of procurement other than an invitation for bids or a request for  
673 proposals, the amount established in accordance with Subsection (2).

674 (2) The Procurement Policy Board shall make rules, in accordance with Title 63G,  
675 Chapter 3, Utah Administrative Rulemaking Act, that establish:

676 (a) circumstances and procedures under which the requirement for paying a security

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.

708 Section 14. Section **63G-6-812** is amended to read:

709 **63G-6-812. Discontinued appeal with prejudice, except as authorized.**

710 After notice of an appeal [~~has been filed with the Procurement Appeals Board~~] to the  
711 procurement policy board is filed under Section 63G-6-807, no party may discontinue the  
712 appeal without prejudice, except as authorized by the [~~Procurement Appeals Board~~]  
713 procurement appeals panel appointed for the appeal.

714 Section 15. Section **63G-6-813** is amended to read:

715 **63G-6-813. Factual determination of procurement appeals panel final and**  
716 **conclusive.**

717 [~~(1) On any protest or appeal under Section 63G-6-810, the Procurement Appeals~~  
718 ~~Board shall promptly decide the contract controversy or whether the solicitation or award was~~  
719 ~~in accordance with this chapter. Any prior determinations by administrative officials regarding~~  
720 ~~protests of solicitations or awards, suspension or debarments, contract controversies, or breach~~  
721 ~~of contract controversies shall not be final or conclusive.]~~

722 [(2)] A determination of an issue of fact by [~~the Procurement Appeals Board under~~  
723 ~~Subsection (1) shall be final and conclusive unless~~] a procurement appeals panel may not be  
724 overturned on appeal, unless the determination is arbitrary and capricious or clearly erroneous.  
725 [~~No determination on an issue of law shall be final or conclusive.]~~

726 Section 16. Section **63G-6-814.5** is enacted to read:

727 **63G-6-814.5. Dismissal of an appeal not filed in compliance with requirements.**

728 (1) The protest officer may dismiss a protest described in Section 63G-6-801 that is not  
729 filed in accordance with the requirements of this chapter.

730 (2) A procurement appeals panel may dismiss an appeal that is assigned to the  
731 procurement appeals panel if the appeal is not filed in accordance with the requirements of this  
732 chapter.

733 Section 17. Section **63G-6-815** is repealed and reenacted to read:

734 **63G-6-815. Appeal to Utah Court of Appeals -- Jurisdiction of district court.**

735 (1) Subject to Subsection (2), a person who receives an adverse decision, or the state,  
736 may appeal a decision of a procurement appeals panel to the Utah Court of Appeals within  
737 seven days after the day on which the decision is issued.

738 (2) An agency in the state executive branch or a local public procurement unit may not



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

770 either Section 63G-6-806 or Section 63G-6-813, whichever is applicable.]

771 ~~[(2) Any]~~ (1) An action [under] described in Subsection 63G-6-815[(1)(b)](5) shall be  
 772 commenced within six months after ~~[receipt of a final administrative decision pursuant to~~  
 773 ~~Section 63G-6-806 or Section 63G-6-813, whichever is applicable]~~ the person bringing the  
 774 action knew or should have known of the circumstances upon which the action is based.

775 ~~[(3)]~~ (2) The statutory limitations on an action between private persons on a contract or  
 776 for breach of contract shall apply to any action commenced pursuant to Subsection  
 777 63G-6-815[(1)(c)](2); ~~except notice of appeals from the Procurement Appeals Board pursuant~~  
 778 ~~to Section 63G-6-814 concerning actions on a contract or for breach of contract shall be filed~~  
 779 ~~within one year after the date of the Procurement Appeals Board decision].~~

780 Section 20. Section **63G-6-819** is amended to read:

781 **63G-6-819. Effect of violation after award of contract.**

782 (1) If after ~~[an]~~ award of a contract it is determined administratively or upon  
 783 administrative or judicial review that a solicitation or award of a contract is in violation of law:

784 ~~[(1) If]~~ (a) (i) if the person awarded the contract [has not acted] did not act  
 785 fraudulently or in bad faith:

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

788 ~~[(b) The]~~ (B) the contract may be terminated; and

789 (ii) the person awarded the contract shall be compensated for the actual expenses  
 790 reasonably incurred under the contract [prior to] before the termination, plus a reasonable  
 791 profit; or

792 ~~[(2) If]~~ (b) if the person awarded the contract [has] acted fraudulently or in bad faith:

793 ~~[(a) The]~~ (i) the contract may be declared null and void; or

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

796 (2) Under no circumstances is a person entitled to consequential damages in relation to  
 797 a solicitation or award of a contract under this chapter, including consequential damages for  
 798 lost profits, loss of business opportunities, or damage to reputation.

799 Section 21. Section **63G-6-907** is repealed and reenacted to read:

800 **63G-6-907. Resolution of local public procurement controversies.**

801           (1) The provisions of this chapter relating to protests and appeals apply to a local  
802 public procurement unit.

803           (2) An agreement is not required for Subsection (1) to apply.

804           Section 22. Section **63G-10-403** is amended to read:

805           **63G-10-403. Department of Transportation bid or request for proposal protest**  
806 **settlement agreement approval and review.**

807           (1) As used in this section:

808           (a) "Department" means the Department of Transportation created in Section 72-1-201.

809           (b) "Settlement agreement" includes stipulations, consent decrees, settlement  
810 agreements, or other legally binding documents or representations resolving a dispute between  
811 the department and another party when the department is required to pay money or required to  
812 take legally binding action.

813           (2) The department shall obtain the approval of the Transportation Commission or the  
814 governor or review by the Legislative Management Committee of a settlement agreement that  
815 involves a bid or request for proposal protest in accordance with this section.

816           (3) A settlement agreement that is being settled by the department as part of a bid or  
817 request for proposal protest, in accordance with [~~Section 63G-6-801~~] Subsection 63G-6-801(9),  
818 that might cost government entities more than \$100,000 to implement shall be presented to the  
819 Transportation Commission for approval or rejection.

820           (4) A settlement agreement that is being settled by the department as part of a bid or  
821 request for proposal protest, in accordance with [~~Section 63G-6-801~~] Subsection 63G-6-801(9),  
822 that might cost government entities more than \$500,000 to implement shall be presented:

823           (a) to the Transportation Commission for approval or rejection; and

824           (b) to the governor for approval or rejection.

825           (5) (a) A settlement agreement that is being settled by the department as part of a bid or  
826 request for proposal protest, in accordance with [~~Section 63G-6-801~~] Subsection 63G-6-801(9),  
827 that might cost government entities more than \$1,000,000 to implement shall be presented:

828           (i) to the Transportation Commission for approval or rejection;

829           (ii) to the governor for approval or rejection; and

830           (iii) if the settlement agreement is approved by the Transportation Commission and the  
831 governor, to the Legislative Management Committee.

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:

863 (a) an appeal that is pending before the Procurement Appeals Board on February 1,  
864 2012; or

865 (b) a case that is pending before a district court or an appellate court on February 1,  
866 2012.

867 (4) Until the rules described in Subsections 63G-6-807.5(1)(c)(ii), (d)(ii), and (e) are  
868 made and in effect, the amount of a security deposit or bond described in this bill shall be the  
869 lesser of:

870 (a) \$1,000; or

871 (b) an amount set by the chief procurement officer.

872 (5) Uncodified Section 24, Transition, is repealed on July 1, 2014.

873 **Section 25. Effective date.**

874 If approved by two-thirds of all the members elected to each house, this bill takes effect  
875 upon approval by the governor, or the day following the constitutional time limit of Utah  
876 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,  
877 the date of veto override.