

SB0153S01 compared with SB0153

~~deleted text~~ shows text that was in SB0153 but was deleted in SB0153S01.

inserted text shows text that was not in SB0153 but was inserted into SB0153S01.

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Senator Wayne L. Niederhauser proposes the following substitute bill:

PROCUREMENT AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne L. Niederhauser

House Sponsor: _____

LONG TITLE

General Description:

This bill recodifies and amends the Utah Procurement Code.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ describes requirements and procedures relating to procurements and procurement processes by public entities;
- ▶ describes the applicability of the Utah Procurement Code;
- ▶ grants rulemaking authority;
- ▶ describes the duties and powers of the Division of Purchasing and General Services;
- ▶ provides for exemptions from certain provisions of the Utah Procurement Code;
- ▶ describes the duties and powers of the Utah State Procurement Policy Board and the

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procurement advisory councils;

- ▶ describes the duties and powers of the chief procurement officer;
- ▶ provides for exceptions to procurement process requirements;
- ▶ addresses cancellations, rejections, and debarment;
- ▶ addresses reciprocal preferences and purchase from community rehabilitation programs;
- ▶ describes the duties and powers of the Purchasing from Persons with Disabilities Advisory Board;
- ▶ describes bid security and bond requirements;
- ▶ describes requirements relating to contracts and change orders;
- ▶ describes requirements relating to construction procurement and contracts;
- ▶ describes requirements relating to architect-engineer services;
- ▶ describes procedures, requirements, and limitations relating to controversies, protests, appeals, and judicial action;
- ▶ addresses the retention of records;
- ▶ addresses interaction between public procurement units;
- ▶ establishes ethical practice provisions relating to procurements;
- ▶ amends existing, and enacts new, criminal provisions and penalties relating to procurements; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on January 1, 2013.

Utah Code Sections Affected:

AMENDS:

7-1-323, as last amended by Laws of Utah 2008, Chapter 382

7-2-21, as last amended by Laws of Utah 2008, Chapter 382

9-4-704, as last amended by Laws of Utah 2011, Chapter 342

9-4-906, as last amended by Laws of Utah 2008, Chapter 382

9-4-1602, as enacted by Laws of Utah 2011, Chapter 217

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10-3-1304, as last amended by Laws of Utah 2008, Chapter 382
10-3-1305, as last amended by Laws of Utah 2008, Chapter 382
10-7-86, as last amended by Laws of Utah 2008, Chapter 382
11-17-20, as last amended by Laws of Utah 2008, Chapter 382
11-39-101, as last amended by Laws of Utah 2008, Chapters 360 and 382
11-39-107, as last amended by Laws of Utah 2011, Chapter 387
11-44-202, as enacted by Laws of Utah 2010, Chapter 244
11-44-301, as enacted by Laws of Utah 2010, Chapter 244
13-2-9, as last amended by Laws of Utah 2008, Chapter 382
14-1-18, as last amended by Laws of Utah 2008, Chapter 382
17-16a-4, as last amended by Laws of Utah 2008, Chapter 382
17-43-202, as last amended by Laws of Utah 2008, Chapter 382
17-43-302, as last amended by Laws of Utah 2008, Chapter 382
17-53-225, as last amended by Laws of Utah 2008, Chapter 382
17-53-313, as last amended by Laws of Utah 2008, Chapter 382
17B-1-108, as last amended by Laws of Utah 2008, Chapter 382
17B-2a-818, as last amended by Laws of Utah 2010, Chapter 281
17B-2a-818.5, as last amended by Laws of Utah 2011, Chapters 297 and 400
17D-1-106, as last amended by Laws of Utah 2011, Chapters 40, 106, 205, and 209
17D-2-108, as enacted by Laws of Utah 2008, Chapter 360
19-1-206, as last amended by Laws of Utah 2011, Chapters 297 and 400
20A-11-701, as last amended by Laws of Utah 2011, Chapter 396
26-8a-405.3, as last amended by Laws of Utah 2011, Chapter 297
26-8a-405.5, as last amended by Laws of Utah 2011, Chapter 297
26-10-8, as enacted by Laws of Utah 2010, Chapter 413
26-10b-102, as last amended by Laws of Utah 2011, Chapter 297
26-18-2.6, as enacted by Laws of Utah 2011, Chapter 344
26-40-110, as last amended by Laws of Utah 2011, Chapter 297
30-3-11.3, as last amended by Laws of Utah 2011, Chapter 51
30-3-11.4, as last amended by Laws of Utah 2011, Chapter 51
30-3-38, as last amended by Laws of Utah 2008, Chapters 44 and 382

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31A-29-110, as last amended by Laws of Utah 2008, Chapter 382
31A-29-111, as last amended by Laws of Utah 2008, Chapters 382 and 385
31A-33-104, as last amended by Laws of Utah 2008, Chapter 382
31A-33-107, as last amended by Laws of Utah 2008, Chapter 382
34A-2-203, as last amended by Laws of Utah 2008, Chapter 382
35A-5-202, as last amended by Laws of Utah 2008, Chapter 382
38-1-30, as last amended by Laws of Utah 2011, Chapter 299
38-1-39, as last amended by Laws of Utah 2008, Chapter 382
41-12a-803, as last amended by Laws of Utah 2011, Chapter 342
53-2-404, as last amended by Laws of Utah 2011, Chapter 342
53A-1-706, as last amended by Laws of Utah 2008, Chapter 382
53A-1a-511, as last amended by Laws of Utah 2008, Chapter 382
53A-20-101, as last amended by Laws of Utah 2008, Chapter 382
53A-25b-105, as enacted by Laws of Utah 2009, Chapter 294
53C-1-201 (Effective 07/01/12), as last amended by Laws of Utah 2011, Chapters 247
and 353
54-3-29, as last amended by Laws of Utah 2011, Chapter 340
54-8b-10, as last amended by Laws of Utah 2011, Chapters 329 and 342
62A-1-108.5, as last amended by Laws of Utah 2011, Chapter 366
62A-3-104, as last amended by Laws of Utah 2008, Chapter 382
62A-3-104.1, as last amended by Laws of Utah 2008, Chapter 382
62A-14-109, as last amended by Laws of Utah 2008, Chapter 382
63A-5-205, as last amended by Laws of Utah 2011, Chapter 400
63A-5-208, as last amended by Laws of Utah 2008, Chapter 382
63A-5-302, as last amended by Laws of Utah 2010, Chapter 324
63B-2-102, as last amended by Laws of Utah 2008, Chapter 382
63B-3-102, as last amended by Laws of Utah 2008, Chapter 382
63B-4-102, as last amended by Laws of Utah 2008, Chapter 382
63B-5-102, as last amended by Laws of Utah 2008, Chapter 382
63B-6-102, as last amended by Laws of Utah 2008, Chapter 382
63B-6-402, as last amended by Laws of Utah 2008, Chapter 382

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63B-7-102, as last amended by Laws of Utah 2008, Chapter 382
63B-7-402, as last amended by Laws of Utah 2008, Chapter 382
63B-8-102, as last amended by Laws of Utah 2008, Chapter 382
63B-8-402, as last amended by Laws of Utah 2008, Chapter 382
63B-9-103, as last amended by Laws of Utah 2008, Chapter 382
63B-11-202, as last amended by Laws of Utah 2008, Chapter 382
63C-7-210, as last amended by Laws of Utah 2008, Chapter 382
63C-9-301, as last amended by Laws of Utah 2008, Chapters 10 and 382
63C-9-403, as last amended by Laws of Utah 2011, Chapter 400
63E-2-109, as last amended by Laws of Utah 2008, Chapter 382
63F-1-205, as last amended by Laws of Utah 2011, Chapter 376
63G-7-804, as renumbered and amended by Laws of Utah 2008, Chapter 382
63G-10-403, as enacted by Laws of Utah 2011, Chapter 361
63H-2-504, as enacted by Laws of Utah 2009, Chapter 378
63H-3-109, as renumbered and amended by Laws of Utah 2011, Chapter 370
63H-4-108, as renumbered and amended by Laws of Utah 2011, Chapter 370
63H-5-108, as renumbered and amended by Laws of Utah 2011, Chapter 370
63H-6-103, as renumbered and amended by Laws of Utah 2011, Chapter 370
63I-1-263, as last amended by Laws of Utah 2011, Chapters 199, 370, 408, and 411
63M-1-2602, as enacted by Laws of Utah 2008, Chapter 352
63M-1-2603, as enacted by Laws of Utah 2008, Chapter 352
63M-1-2605, as enacted by Laws of Utah 2008, Chapter 352
63M-1-2606, as enacted by Laws of Utah 2008, Chapter 352
63M-1-2607, as enacted by Laws of Utah 2008, Chapter 352
63M-1-2608, as enacted by Laws of Utah 2008, Chapter 352
63M-1-2610, as enacted by Laws of Utah 2008, Chapter 352
64-13a-13, as last amended by Laws of Utah 2008, Chapter 382
67-16-4, as last amended by Laws of Utah 2008, Chapter 382
67-16-5, as last amended by Laws of Utah 2008, Chapter 382
67-16-5.3, as last amended by Laws of Utah 2008, Chapter 382
67-16-6, as last amended by Laws of Utah 2008, Chapter 382

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72-6-107, as last amended by Laws of Utah 2010, Chapter 90

72-6-107.5, as last amended by Laws of Utah 2011, Chapter 400

72-6-108, as last amended by Laws of Utah 2009, Chapter 388

72-6-205, as last amended by Laws of Utah 2009, Chapter 183

72-7-504, as last amended by Laws of Utah 2008, Chapter 382

73-10-27, as last amended by Laws of Utah 2008, Chapters 267 and 382

73-23-3, as last amended by Laws of Utah 2008, Chapter 382

76-10-1602, as last amended by Laws of Utah 2011, Chapter 320

78A-2-112, as renumbered and amended by Laws of Utah 2008, Chapter 3

79-2-404, as last amended by Laws of Utah 2011, Chapter 400

79-4-203, as renumbered and amended by Laws of Utah 2009, Chapter 344

ENACTS:

63G-6a-104, Utah Code Annotated 1953

63G-6a-110, Utah Code Annotated 1953

63G-6a-201, Utah Code Annotated 1953

63G-6a-301, Utah Code Annotated 1953

63G-6a-401, Utah Code Annotated 1953

63G-6a-402, Utah Code Annotated 1953

63G-6a-403, Utah Code Annotated 1953

63G-6a-404, Utah Code Annotated 1953

63G-6a-405, Utah Code Annotated 1953

63G-6a-406, Utah Code Annotated 1953

63G-6a-408, Utah Code Annotated 1953

63G-6a-501, Utah Code Annotated 1953

63G-6a-502, Utah Code Annotated 1953

63G-6a-503, Utah Code Annotated 1953

63G-6a-504, Utah Code Annotated 1953

63G-6a-601, Utah Code Annotated 1953

63G-6a-602, Utah Code Annotated 1953

63G-6a-603, Utah Code Annotated 1953

63G-6a-604, Utah Code Annotated 1953

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63G-6a-605, Utah Code Annotated 1953
63G-6a-606, Utah Code Annotated 1953
63G-6a-607, Utah Code Annotated 1953
63G-6a-608, Utah Code Annotated 1953
63G-6a-609, Utah Code Annotated 1953
63G-6a-610, Utah Code Annotated 1953
63G-6a-611, Utah Code Annotated 1953
63G-6a-612, Utah Code Annotated 1953
63G-6a-701, Utah Code Annotated 1953
63G-6a-702, Utah Code Annotated 1953
63G-6a-703, Utah Code Annotated 1953
63G-6a-704, Utah Code Annotated 1953
63G-6a-705, Utah Code Annotated 1953
63G-6a-706, Utah Code Annotated 1953
63G-6a-707, Utah Code Annotated 1953
63G-6a-708, Utah Code Annotated 1953
63G-6a-709, Utah Code Annotated 1953
63G-6a-710, Utah Code Annotated 1953
63G-6a-801, Utah Code Annotated 1953
63G-6a-803, Utah Code Annotated 1953
63G-6a-901, Utah Code Annotated 1953
63G-6a-1001, Utah Code Annotated 1953
63G-6a-1004, **Utah Code Annotated 1953**
63G-6a-1101, Utah Code Annotated 1953
63G-6a-1201, Utah Code Annotated 1953
63G-6a-1204, Utah Code Annotated 1953
63G-6a-1301, Utah Code Annotated 1953
63G-6a-1401, Utah Code Annotated 1953
63G-6a-1501, Utah Code Annotated 1953
63G-6a-1601, Utah Code Annotated 1953
63G-6a-1701, Utah Code Annotated 1953

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63G-6a-1801, Utah Code Annotated 1953

63G-6a-1901, Utah Code Annotated 1953

63G-6a-2001, Utah Code Annotated 1953

63G-6a-2101, Utah Code Annotated 1953

63G-6a-2201, Utah Code Annotated 1953

63G-6a-2202, Utah Code Annotated 1953

63G-6a-2301, Utah Code Annotated 1953

63G-6a-2303, Utah Code Annotated 1953

63G-6a-2304, Utah Code Annotated 1953

63G-6a-2305, Utah Code Annotated 1953

63G-6a-2306, Utah Code Annotated 1953

63G-6a-2307, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

63G-6a-101, (Renumbered from 63G-6-101, as enacted by Laws of Utah 2008, Chapter 382)

63G-6a-102, (Renumbered from 63G-6-102, as renumbered and amended by Laws of Utah 2008, Chapter 382)

63G-6a-103, (Renumbered from 63G-6-103, as last amended by Laws of Utah 2011, Chapter 376)

63G-6a-105, (Renumbered from 63G-6-104, as renumbered and amended by Laws of Utah 2008, Chapter 382)

63G-6a-106, (Renumbered from 63G-6-207, as last amended by Laws of Utah 2008, Chapter 3 and renumbered and amended by Laws of Utah 2008, Chapter 382)

63G-6a-109, (Renumbered from 63G-6-105, as renumbered and amended by Laws of Utah 2008, Chapter 382)

63G-6a-202, (Renumbered from 63G-6-201, as last amended by Laws of Utah 2011, Chapter 376)

63G-6a-203, (Renumbered from 63G-6-202, as last amended by Laws of Utah 2011, Chapter 376)

63G-6a-204, (Renumbered from 63G-6-208, as last amended by Laws of Utah 2009, Chapter 132)

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- 63G-6a-205**, (Renumbered from 63G-6-209, as renumbered and amended by Laws of Utah 2008, Chapter 382)
- 63G-6a-302**, (Renumbered from 63G-6-203, as renumbered and amended by Laws of Utah 2008, Chapter 382)
- 63G-6a-303**, (Renumbered from 63G-6-204, as last amended by Laws of Utah 2008, Chapter 352 and renumbered and amended by Laws of Utah 2008, Chapter 382)
- 63G-6a-304**, (Renumbered from 63G-6-205, as last amended by Laws of Utah 2008, Chapter 352 and renumbered and amended by Laws of Utah 2008, Chapter 382)
- 63G-6a-305**, (Renumbered from 63G-6-302, as last amended by Laws of Utah 2011, Chapter 376)
- 63G-6a-407**, (Renumbered from 63G-6-303, as renumbered and amended by Laws of Utah 2008, Chapter 382)
- 63G-6a-711**, (Renumbered from 63G-6-408.5, as enacted by Laws of Utah 2008, Chapter 352)
- 63G-6a-802**, (Renumbered from 63G-6-410, as renumbered and amended by Laws of Utah 2008, Chapter 382)
- 63G-6a-804**, (Renumbered from 63G-6-423, as renumbered and amended by Laws of Utah 2008, Chapter 382)
- 63G-6a-805**, (Renumbered from 63G-6-425, as renumbered and amended by Laws of Utah 2008, Chapter 382)
- 63G-6a-902**, (Renumbered from 63G-6-412, as renumbered and amended by Laws of Utah 2008, Chapter 382)
- 63G-6a-903**, (Renumbered from 63G-6-413, as renumbered and amended by Laws of Utah 2008, Chapter 382)
- 63G-6a-904**, (Renumbered from 63G-6-804, as renumbered and amended by Laws of Utah 2008, Chapter 382)
- 63G-6a-1002**, (Renumbered from 63G-6-404, as renumbered and amended by Laws of Utah 2008, Chapter 382)
- 63G-6a-1003**, (Renumbered from 63G-6-405, as renumbered and amended by Laws of Utah 2008, Chapter 382)
- 63G-6a-1102**, (Renumbered from 63G-6-504, as renumbered and amended by Laws of

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63G-6a-1103, (Renumbered from 63G-6-505, as renumbered and amended by Laws of Utah 2008, Chapter 382)

63G-6a-1104, (Renumbered from 63G-6-506, as last amended by Laws of Utah 2011, Chapter 299)

63G-6a-1105, (Renumbered from 63G-6-507, as renumbered and amended by Laws of Utah 2008, Chapter 382)

63G-6a-1202, (Renumbered from 63G-6-601, as renumbered and amended by Laws of Utah 2008, Chapter 382)

63G-6a-1203, (Renumbered from 63G-6-603, as enacted by Laws of Utah 2009, Chapter 217)

63G-6a-1205, (Renumbered from 63G-6-416, as renumbered and amended by Laws of Utah 2008, Chapter 382)

63G-6a-1206, (Renumbered from 63G-6-415, as renumbered and amended by Laws of Utah 2008, Chapter 382)

63G-6a-1207, (Renumbered from 63G-6-602, as renumbered and amended by Laws of Utah 2008, Chapter 382)

63G-6a-1302, (Renumbered from 63G-6-501, as renumbered and amended by Laws of Utah 2008, Chapter 382)

63G-6a-1303, (Renumbered from 63G-6-604, as enacted by Laws of Utah 2010, Chapter 18)

63G-6a-1402, (Renumbered from 63G-6-502, as last amended by Laws of Utah 2010, Chapter 358)

63G-6a-1403, (Renumbered from 63G-6-503, as renumbered and amended by Laws of Utah 2008, Chapter 382)

63G-6a-1502, (Renumbered from 63G-6-701, as renumbered and amended by Laws of Utah 2008, Chapter 382)

63G-6a-1503, (Renumbered from 63G-6-702, as renumbered and amended by Laws of Utah 2008, Chapter 382)

63G-6a-1504, (Renumbered from 63G-6-703, as renumbered and amended by Laws of Utah 2008, Chapter 382)

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- 63G-6a-1505**, (Renumbered from 63G-6-704, as renumbered and amended by Laws of Utah 2008, Chapter 382)
- 63G-6a-1506**, (Renumbered from 63G-6-705, as renumbered and amended by Laws of Utah 2008, Chapter 382)
- 63G-6a-1602**, (Renumbered from 63G-6-805, as renumbered and amended by Laws of Utah 2008, Chapter 382)
- 63G-6a-1603**, (Renumbered from 63G-6-801, as last amended by Laws of Utah 2011, Chapter 361)
- 63G-6a-1604**, (Renumbered from 63G-6-806, as renumbered and amended by Laws of Utah 2008, Chapter 382)
- 63G-6a-1605**, (Renumbered from 63G-6-907, as renumbered and amended by Laws of Utah 2008, Chapter 382)
- 63G-6a-1606**, (Renumbered from 63G-6-802, as renumbered and amended by Laws of Utah 2008, Chapter 382)
- 63G-6a-1607**, (Renumbered from 63G-6-803, as renumbered and amended by Laws of Utah 2008, Chapter 382)
- 63G-6a-1702**, (Renumbered from 63G-6-807, as last amended by Laws of Utah 2010, Chapter 286)
- 63G-6a-1703**, (Renumbered from 63G-6-810, as renumbered and amended by Laws of Utah 2008, Chapter 382)
- 63G-6a-1704**, (Renumbered from 63G-6-808, as renumbered and amended by Laws of Utah 2008, Chapter 382)
- 63G-6a-1705**, (Renumbered from 63G-6-809, as renumbered and amended by Laws of Utah 2008, Chapter 382)
- 63G-6a-1706**, (Renumbered from 63G-6-811, as renumbered and amended by Laws of Utah 2008, Chapter 382)
- 63G-6a-1707**, (Renumbered from 63G-6-812, as renumbered and amended by Laws of Utah 2008, Chapter 382)
- 63G-6a-1708**, (Renumbered from 63G-6-813, as renumbered and amended by Laws of Utah 2008, Chapter 382)
- 63G-6a-1802**, (Renumbered from 63G-6-814, as renumbered and amended by Laws of

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63G-6a-1803, (Renumbered from 63G-6-815, as renumbered and amended by Laws of Utah 2008, Chapter 382)

63G-6a-1804, (Renumbered from 63G-6-817, as renumbered and amended by Laws of Utah 2008, Chapter 382)

63G-6a-1805, (Renumbered from 63G-6-816, as renumbered and amended by Laws of Utah 2008, Chapter 382)

63G-6a-1902, (Renumbered from 63G-6-419, as renumbered and amended by Laws of Utah 2008, Chapter 382)

63G-6a-1903, (Renumbered from 63G-6-818, as renumbered and amended by Laws of Utah 2008, Chapter 382)

63G-6a-1904, (Renumbered from 63G-6-819, as renumbered and amended by Laws of Utah 2008, Chapter 382)

63G-6a-1905, (Renumbered from 63G-6-820, as renumbered and amended by Laws of Utah 2008, Chapter 382)

63G-6a-2002, (Renumbered from 63G-6-106, as renumbered and amended by Laws of Utah 2008, Chapter 382)

63G-6a-2003, (Renumbered from 63G-6-421, as renumbered and amended by Laws of Utah 2008, Chapter 382)

63G-6a-2004, (Renumbered from 63G-6-905, as renumbered and amended by Laws of Utah 2008, Chapter 382)

63G-6a-2102, (Renumbered from 63G-6-901, as renumbered and amended by Laws of Utah 2008, Chapter 382)

63G-6a-2103, (Renumbered from 63G-6-902, as renumbered and amended by Laws of Utah 2008, Chapter 382)

63G-6a-2104, (Renumbered from 63G-6-904, as renumbered and amended by Laws of Utah 2008, Chapter 382)

63G-6a-2105, (Renumbered from 63G-6-424, as renumbered and amended by Laws of Utah 2008, Chapter 382)

63G-6a-2302, (Renumbered from 63G-6-420, as renumbered and amended by Laws of Utah 2008, Chapter 382)

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REPEALS:

10-7-87, as last amended by Laws of Utah 2008, Chapter 382
11-37-101, as last amended by Laws of Utah 2008, Chapter 382
17-15-24, as last amended by Laws of Utah 2008, Chapter 382
17B-1-109, as renumbered and amended by Laws of Utah 2007, Chapter 329
26A-1-108.7, as last amended by Laws of Utah 2008, Chapter 382
63G-6-206, as renumbered and amended by Laws of Utah 2008, Chapter 382
63G-6-301, as last amended by Laws of Utah 2011, Chapter 376
63G-6-401, as last amended by Laws of Utah 2009, Chapter 388
63G-6-402, as renumbered and amended by Laws of Utah 2008, Chapter 382
63G-6-403, as renumbered and amended by Laws of Utah 2008, Chapter 382
63G-6-406, as renumbered and amended by Laws of Utah 2008, Chapter 382
63G-6-407, 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
63G-6-409, as renumbered and amended by Laws of Utah 2008, Chapter 382
63G-6-411, as renumbered and amended by Laws of Utah 2008, Chapter 382
63G-6-414, as renumbered and amended by Laws of Utah 2008, Chapter 382
63G-6-417, as renumbered and amended by Laws of Utah 2008, Chapter 382
63G-6-418, as renumbered and amended by Laws of Utah 2008, Chapter 382
63G-6-422, as renumbered and amended by Laws of Utah 2008, Chapter 382
63G-6-426, as renumbered and amended by Laws of Utah 2008, Chapter 382
63G-6-903, as renumbered and amended by Laws of Utah 2008, Chapter 382
63G-6-906, as renumbered and amended by Laws of Utah 2008, Chapter 382
63G-6-1001, as renumbered and amended by Laws of Utah 2008, Chapter 382
63G-6-1002, as renumbered and amended by Laws of Utah 2008, Chapter 382

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

Section 1. Section 7-1-323 is amended to read:

7-1-323. Regulation of interstate operations -- Coordination of efforts.

(1) The commissioner may:

(a) examine, supervise, and regulate a branch operated in this state by a depository

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institution chartered by another state and take any action or issue any order with regard to that branch;

(b) examine, supervise, and regulate a branch operated in another state by a depository institution chartered by this state and take any action or issue any order with regard to that branch; and

(c) coordinate these activities with any other state or federal agency that shares jurisdiction over the institution.

(2) The commissioner may coordinate the examination, supervision, and regulation of any depository institution chartered by this state with the examination, supervision, and regulation of an affiliated depository institution operating in another state.

(3) The commissioner may take any reasonable and lawful action in furtherance of coordinating the regulation of interstate operations, including:

(a) negotiating and entering into cooperative agreements with an agency of another state or of the federal government;

(b) sharing information and reports in accordance with Section 7-1-802 with an agency that shares jurisdiction over the institution;

(c) accepting as sufficient, if appropriate, examination reports and other information compiled or generated by or for an agency that shares jurisdiction over the institution;

(d) contracting with an agency that shares jurisdiction over the institution to engage the services of its examiners at a reasonable rate of compensation;

(e) offering the services of the department's examiners at a reasonable rate of compensation to an agency that shares jurisdiction over the institution;

(f) collecting fees on behalf of, or receiving payment of fees through, an agency that shares jurisdiction over the institution; and

(g) cooperating in any other way with other supervisory agencies and professional associations to promote the efficient, safe, and sound operation and regulation of interstate depository institution activities, including the formulation of interstate examination policies and procedures and the drafting of model laws, rules, and agreements.

(4) A contract between the department and an agency that shares jurisdiction over a depository institution to provide examiners to aid in interstate examination and regulation is considered a sole source contract under Section [~~63G-6-410~~] 63G-6a-802.

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Section 2. Section 7-2-21 is amended to read:

7-2-21. Applicability of Utah Procurement Code.

No action of the commissioner taken under this chapter or Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies, is subject to the provisions of Title 63G, Chapter [6] 6a, Utah Procurement Code.

Section 3. Section 9-4-704 is amended to read:

9-4-704. Distribution of fund money.

(1) The executive director shall:

(a) make grants and loans from the fund for any of the activities authorized by Section 9-4-705, as directed by the board;

(b) establish the criteria with the approval of the board by which loans and grants will be made; and

(c) determine with the approval of the board the order in which projects will be funded.

(2) The executive director shall distribute, as directed by the board, any federal money contained in the fund according to the procedures, conditions, and restrictions placed upon the use of the money by the federal government.

(3) (a) The executive director shall distribute, as directed by the board, any funds received pursuant to Section 17C-1-412 to pay the costs of providing income targeted housing within the community that created the community development and renewal agency under Title 17C, Limited Purpose Local Government Entities - Community Development and Renewal Agencies Act.

(b) As used in Subsection (3)(a):

(i) "Community" has the meaning as defined in Section 17C-1-102.

(ii) "Income targeted housing" has the meaning as defined in Section 17C-1-102.

(4) Except federal money and money received under Section 17C-1-412, the executive director shall distribute, as directed by the board, all other money from the fund according to the following requirements:

(a) Not less than 30% of all fund money shall be distributed to rural areas of the state.

(b) At least 50% of the money in the fund shall be distributed as loans to be repaid to the fund by the entity receiving them.

(i) (A) Of the fund money distributed as loans, at least 50% shall be distributed to

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benefit persons whose annual income is at or below 50% of the median family income for the state.

(B) The remaining loan money shall be distributed to benefit persons whose annual income is at or below 80% of the median family income for the state.

(i) The executive director or the executive director's designee shall lend money in accordance with this Subsection (4) at a rate based upon the borrower's ability to pay.

(c) Any fund money not distributed as loans shall be distributed as grants.

(i) At least 90% of the fund money distributed as grants shall be distributed to benefit persons whose annual income is at or below 50% of the median family income for the state.

(ii) The remaining fund money distributed as grants may be used by the executive director to obtain federal matching funds or for other uses consistent with the intent of this part, including the payment of reasonable loan servicing costs, but no more than 3% of the revenues of the fund may be used to offset other department or board administrative expenses.

(5) The executive director may with the approval of the board:

(a) enact rules to establish procedures for the grant and loan process by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(b) service or contract, pursuant to Title 63G, Chapter [6] 6a, Utah Procurement Code, for the servicing of loans made by the fund.

Section 4. Section **9-4-906** is amended to read:

9-4-906. Relation to certain acts.

(1) The corporation is exempt from:

(a) Title 51, Chapter 5, Funds Consolidation Act;

(b) Title 51, Chapter 7, State Money Management Act;

(c) Title 63A, Utah Administrative Services Code; [~~and~~]

(d) Title 63G, Chapter [6] 6a, Utah Procurement Code;

(e) Title 63J, Chapter 1, Budgetary Procedures Act;

(f) Title 63J, Chapter 2, Revenue Procedures and Control Act; and

(g) Title 67, Chapter 19, Utah State Personnel Management Act.

(2) The corporation shall comply with:

(a) Title 52, Chapter 4, Open and Public Meetings Act; and

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(b) Title 63G, Chapter 2, Government Records Access and Management Act.

Section 5. Section **9-4-1602** is amended to read:

9-4-1602. Distribution of fund money.

(1) (a) The director shall make loans and loan guarantees from the fund for the Small Business Credit Initiative created under the federal government's Small Business Jobs Act of 2010, to use federal money for programs that leverage private lending to help finance small businesses and manufacturers that are creditworthy but not receiving the loans needed to expand and create jobs.

(b) In making loans and loan guarantees under this part, the director shall give due consideration to small businesses in underserved communities throughout the state that have been deeply impacted by recession and not seen a comparable resurgence in their economies.

(2) The director shall distribute any federal money in the fund according to the procedures, conditions, and restrictions placed upon the use of the money by the federal government.

(3) The director may, with the approval of the executive director of the department:

(a) enact rules to establish procedures for the loan and loan guarantee process by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(b) service or contract, under Title 63G, Chapter ~~[6]~~ 6a, Utah Procurement Code, for the servicing of loans made by the fund.

Section 6. Section **10-3-1304** is amended to read:

10-3-1304. Use of office for personal benefit prohibited.

(1) As used in this section, "economic benefit tantamount to a gift" includes:

(a) a loan at an interest rate that is substantially lower than the commercial rate then currently prevalent for similar loans; and

(b) compensation received for private services rendered at a rate substantially exceeding the fair market value of the services.

(2) It is an offense for an elected or appointed officer or municipal employee, under circumstances not amounting to a violation of Section ~~[63G-6-1001]~~ 63G-6a-2304 or 76-8-105, to:

(a) disclose or improperly use private, controlled, or protected information acquired by

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reason of the officer's or employee's official position or in the course of official duties in order to further substantially the officer's or employee's personal economic interest or to secure special privileges or exemptions for the officer or employee or for others;

(b) use or attempt to use the officer's or employee's official position to:

(i) further substantially the officer's or employee's personal economic interest; or

(ii) secure special privileges for the officer or employee or for others; or

(c) knowingly receive, accept, take, seek, or solicit, directly or indirectly, for the officer or employee or for another, a gift of substantial value or a substantial economic benefit tantamount to a gift that:

(i) would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties; or

(ii) the person knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the person for official action taken.

(3) Subsection (2)(c) does not apply to:

(a) an occasional nonpecuniary gift having a value of less than \$50;

(b) an award publicly presented in recognition of public services;

(c) any bona fide loan made in the ordinary course of business; or

(d) a political campaign contribution.

Section 7. Section **10-3-1305** is amended to read:

10-3-1305. Compensation for assistance in transaction involving municipality -- Public disclosure and filing required.

(1) As used in this section, "municipal body" means any public board, commission, committee, or other public group organized to make public policy decisions or to advise persons who make public policy decisions.

(2) It is an offense for an elected officer, or appointed officer, who is a member of a public body, under circumstances not amounting to a violation of Section [~~63G-6-1001~~] 63G-6a-2304 or 76-8-105, to receive or agree to receive compensation for assisting any person or business entity in any transaction involving the municipality in which the member is an officer unless the member:

(a) files with the mayor a sworn statement giving the information required by this section; and

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(b) discloses the information required by Subsection (5) in an open meeting to the members of the body of which the officer is a member immediately before the discussion.

(3) It is an offense for an appointed officer who is not a member of a public body or a municipal employee to receive or agree to receive compensation for assisting any person or business entity in any transaction involving the municipality by which the person is employed unless the officer or employee:

(a) files with the mayor a sworn statement giving the information required by this section; and

(b) discloses the information required by Subsection (5) to:

(i) the officer or employee's immediate supervisor; and

(ii) any other municipal officer or employee who may rely upon the employee's representations in evaluating or approving the transaction.

(4) (a) The officer or employee shall file the statement required to be filed by this section 10 days before the date of any agreement between the elected or appointed officer or municipal employee and the person or business entity being assisted or 10 days before the receipt of compensation by the officer or employee, whichever is earlier.

(b) The statement is public information and shall be available for examination by the public.

(5) The statement and disclosure shall contain:

(a) the name and address of the officer or municipal employee;

(b) the name and address of the person or business entity being or to be assisted or in which the appointed or elected official or municipal employee has a substantial interest; and

(c) a brief description of the transaction as to which service is rendered or is to be rendered and of the nature of the service performed or to be performed.

Section 8. Section **10-7-86** is amended to read:

10-7-86. Municipality may adopt Utah Procurement Code -- Hiring of professional architect, engineer, or surveyor.

(1) The governing body of any municipality may adopt any or all of the provisions of Title 63G, Chapter [6] 6a, Utah Procurement Code, or the rules promulgated pursuant to that code.

(2) Notwithstanding Subsection (1), the governing body of each municipality that

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engages the services of a professional architect, engineer, or surveyor and considers more than one such professional for the engagement:

(a) shall consider, as a minimum, in the selection process:

(i) the qualifications, experience, and background of each firm submitting a proposal;

(ii) the specific individuals assigned to the project and the time commitments of each to the project; and

(iii) the project schedule and the approach to the project that the firm will take; and

(b) may engage the services of a professional architect, engineer, or surveyor based on the criteria under Subsection (2)(a) rather than solely on lowest cost.

Section 9. Section **11-17-20** is amended to read:

11-17-20. Power of the State Charter School Finance Authority.

(1) The State Charter School Finance Authority may exercise the powers granted to municipalities and counties by this chapter, subject to the same limitations as that imposed on a municipality or county under the chapter, except as provided by Title 53A, Chapter 20b, State Charter School Finance Authority Act.

(2) As used in this chapter, "governing body" when applied to the State Charter School Finance Authority means the authority's governing board as described in Section 53A-20b-103.

(3) Notwithstanding Section 11-17-15, a charter school that receives financing under this chapter is subject to Title 63G, Chapter [6] 6a, Utah Procurement Code.

Section 10. Section **11-39-101** is amended to read:

11-39-101. Definitions.

As used in this chapter:

(1) "Bid limit" means:

(a) for a building improvement:

(i) for the year 2003, \$40,000; and

(ii) for each year after 2003, the amount of the bid limit for the previous year, plus an amount calculated by multiplying the amount of the bid limit for the previous year by the lesser of 3% or the actual percent change in the Consumer Price Index during the previous calendar year; and

(b) for a public works project:

(i) for the year 2003, \$125,000; and

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(ii) for each year after 2003, the amount of the bid limit for the previous year, plus an amount calculated by multiplying the amount of the bid limit for the previous year by the lesser of 3% or the actual percent change in the Consumer Price Index during the previous calendar year.

(2) "Building improvement":

(a) means the construction or repair of a public building or structure; and

(b) does not include construction or repair at an international airport.

(3) "Consumer Price Index" means the Consumer Price Index for All Urban Consumers as published by the Bureau of Labor Statistics of the United States Department of Labor.

(4) "Design-build project":

(a) means a building improvement or public works project costing over \$250,000 with respect to which both the design and construction are provided for in a single contract with a contractor or combination of contractors capable of providing design-build services; and

(b) does not include a building improvement or public works project:

(i) that is undertaken by a local entity under contract with a construction manager that guarantees the contract price and is at risk for any amount over the contract price; and

(ii) each component of which is competitively bid.

(5) "Design-build services" means the engineering, architectural, and other services necessary to formulate and implement a design-build project, including its actual construction.

(6) "Emergency repairs" means a building improvement or public works project undertaken on an expedited basis to:

(a) eliminate an imminent risk of damage to or loss of public or private property;

(b) remedy a condition that poses an immediate physical danger; or

(c) reduce a substantial, imminent risk of interruption of an essential public service.

(7) "Governing body" means:

(a) for a county, city, or town, the legislative body of the county, city, or town;

(b) for a local district, the board of trustees of the local district; and

(c) for a special service district:

(i) the legislative body of the county, city, or town that established the special service district, if no administrative control board has been appointed under Section 17D-1-301; or

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(ii) the administrative control board of the special service district, if an administrative control board has been appointed under Section 17D-1-301.

(8) "Local district" has the same meaning as defined in Section 17B-1-102.

(9) "Local entity" means a county, city, town, local district, or special service district.

(10) "Lowest responsive responsible bidder" means a prime contractor who:

(a) has submitted a bid in compliance with the invitation to bid and within the requirements of the plans and specifications for the building improvement or public works project;

(b) is the lowest bidder that satisfies the local entity's criteria relating to financial strength, past performance, integrity, reliability, and other factors that the local entity uses to assess the ability of a bidder to perform fully and in good faith the contract requirements;

(c) has furnished a bid bond or equivalent in money as a condition to the award of a prime contract; and

(d) furnishes a payment and performance bond as required by law.

(11) "Procurement code" means the provisions of Title 63G, Chapter [6] 6a, Utah Procurement Code.

(12) "Public works project":

(a) means the construction of:

(i) a park or recreational facility; or

(ii) a pipeline, culvert, dam, canal, or other system for water, sewage, storm water, or flood control; and

(b) does not include:

(i) the replacement or repair of existing infrastructure on private property;

(ii) construction commenced before June 1, 2003; and

(iii) construction or repair at an international airport.

(13) "Special service district" has the same meaning as defined in Section 17D-1-102.

Section 11. Section **11-39-107** is amended to read:

11-39-107. Procurement code.

(1) This chapter may not be construed to:

(a) prohibit a county or municipal legislative body from adopting the procedures of the procurement code; or

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(b) limit the application of the procurement code to a local district or special service district.

(2) A local entity may adopt procedures for the following construction contracting methods:

(a) construction manager/general contractor, as defined in Section [~~63G-6-103~~] 63G-6a-103; or

(b) a method that requires that the local entity draft a plan, specifications, and an estimate for the building improvement or public works project.

(3) For a public works project only and that costs \$10,000,000 or more, the following may enter into a contract for design-build, as defined in Section [~~63G-6-103~~] 63G-6a-103, and adopt the procedures and follow the provisions of the procurement code for the procurement of and as the procedures and provisions relate to a design-build:

- (a) a city of the first class;
- (b) a local district; or
- (c) a special service district.

(4) (a) In seeking bids and awarding a contract for a building improvement or public works project, a county or a municipal legislative body may elect to follow the provisions of the procurement code, as the county or municipal legislative body considers appropriate under the circumstances, for specification preparation, source selection, or contract formation.

(b) A county or municipal legislative body's election to adopt the procedures of the procurement code may not excuse the county or municipality, respectively, from complying with the requirements to award a contract for work in excess of the bid limit and to publish notice of the intent to award.

(c) An election under Subsection (4)(a) may be made on a case-by-case basis, unless the county or municipality has previously adopted [~~the procurement code as permitted by Subsection 63G-6-104(3)(c)~~] the provisions of Title 63G, Chapter 6a, Utah Procurement Code.

- (d) The county or municipal legislative body shall:
- (i) make each election under Subsection (4)(a) in an open meeting; and
 - (ii) specify in its action the portions of the procurement code to be followed.

(5) If the estimated cost of the building improvement or public works project proposed by a local district or special service district exceeds the bid limit, the governing body of the

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local district or special service district may, if it determines to proceed with the building improvement or public works project, use the competitive procurement procedures of the procurement code in place of the comparable provisions of this chapter.

Section 12. Section **11-44-202** is amended to read:

11-44-202. Types of agreements.

Notwithstanding Section [~~63G-6-416~~] 63G-6a-1205, a political subdivision shall structure an energy service agreement as a guaranteed energy savings performance contract, which shall include:

- (1) the design and installation of an energy efficiency measure, if applicable;
- (2) operation and maintenance of any energy efficiency measure implemented; and
- (3) guaranteed annual cost savings that meet or exceed the total annual contract payments by the political subdivision under the contract, including financing charges incurred by the political subdivision over the life of the contract.

Section 13. Section **11-44-301** is amended to read:

11-44-301. Selection.

(1) A political subdivision shall follow the procedures outlined in Title 63G, Chapter [6] 6a, Utah Procurement Code, when selecting a qualified energy service provider.

(2) The Division of Purchasing shall maintain a list of qualified energy service providers.

(3) The qualified energy service provider selected from the bid process shall prepare an investment grade energy audit, which shall become part of the final contract between the political subdivision and the qualified energy service provider.

(4) The audit shall include:

- (a) a detailed description of the energy efficiency measure;
- (b) an estimated cost; and
- (c) a projected cost savings.

Section 14. Section **13-2-9** is amended to read:

13-2-9. Internet -- Consumer education.

(1) The Division of Consumer Protection shall, subject to appropriation, contract with a person to make public service announcements advising consumers about the dangers of using the Internet, especially:

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- (a) material harmful to minors;
- (b) steps a consumer may take to learn more about the dangers of using the Internet;
- (c) information about how a service provider can help a consumer learn more about the dangers of using the Internet, including the service provider's duties created by this bill; and
- (d) how a consumer can monitor the Internet usage of family members.

(2) Money appropriated under Subsection (1) shall be paid by the Division of Consumer Protection to a person only if:

- (a) the person is a nonprofit organization; and
- (b) the person agrees to spend private money amounting to two times the amount of money provided by the Division of Consumer Protection during each fiscal year in accordance with Subsection (1).

(3) In administering any money appropriated for use under this section, the Division of Consumer Protection shall comply with Title 63G, Chapter [6] 6a, Utah Procurement Code.

Section 15. Section **14-1-18** is amended to read:

14-1-18. Definitions -- Application of Procurement Code to payment and performance bonds.

(1) (a) For purposes of this chapter, "political subdivision" means any county, city, town, school district, local district, special service district, community development and renewal agency, public corporation, institution of higher education of the state, public agency of any political subdivision, and, to the extent provided by law, any other entity which expends public funds for construction.

(b) For purposes of applying Section [~~63G-6-505~~] 63G-6a-1103 to a political subdivision, "state" includes "political subdivision."

(2) [~~Section 63G-6-505~~] Notwithstanding any provision of Title 63G, Chapter 6a, Utah Procurement Code, to the contrary, Section 63G-6a-1103 applies to all contracts for the construction, alteration, or repair of any public building or public work of the state or a political subdivision of the state.

Section 16. Section **17-16a-4** is amended to read:

17-16a-4. Prohibited use of official position -- Exception.

(1) Except as provided in Subsection (3), it is an offense for an elected or appointed officer, under circumstances not amounting to a violation of Section [~~63G-6-1001~~]

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63G-6a-2304 or 76-8-105, to:

(a) disclose confidential information acquired by reason of the officer's official position or use that information to secure special privileges or exemptions for himself or others;

(b) use or attempt to use the officer's official position to secure special privileges for the officer or for others; or

(c) knowingly receive, accept, take, seek or solicit, directly or indirectly, any gift or loan for the officer or for another, if the gift or loan tends to influence the officer in the discharge of the officer's official duties.

(2) This section is inapplicable to:

(a) an occasional nonpecuniary gift having a value of less than \$50;

(b) an award publicly presented;

(c) any bona fide loan made in the ordinary course of business; or

(d) political campaign contributions actually used in a political campaign.

(3) A member of a county legislative body who is also a member of the governing board of a provider of mental health or substance abuse services under contract with the county does not commit an offense under Subsection (1)(a) or (b) by discharging, in good faith, the duties and responsibilities of each position, if the county legislative body member does not participate in the process of selecting the mental health or substance abuse service provider.

Section 17. Section **17-43-202** is amended to read:

17-43-202. Local substance abuse authorities -- Requirements prior to distributing public funds.

(1) Each local substance abuse authority shall award all public funds in compliance with:

(a) the requirements of Title 63G, Chapter [6] 6a, Utah Procurement Code; or

(b) a county procurement ordinance that requires similar procurement practices.

(2) If all initial bids on the project are rejected, the authority shall publish a new invitation to bid. If no satisfactory bid is received by the authority when the bids received from the second invitation are opened, the authority may execute a contract without requiring competitive bidding.

(3) A local substance abuse authority need not comply with the procurement provisions of this section when it disburses public funds to another political subdivision of the state or an

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institution of higher education of the state.

(4) Each contract awarded by a local substance abuse authority shall be for a fixed amount and limited period. A contract may be modified due to changes in available funding for the same contract purpose without competition.

Section 18. Section **17-43-302** is amended to read:

17-43-302. Local mental health authorities -- Requirements prior to distributing public funds.

(1) Each local mental health authority shall award all public funds by complying with the requirements of Title 63G, Chapter [6] 6a, Utah Procurement Code, or by complying with a county procurement ordinance which requires similar procurement practices.

(2) If all initial bids on the project are rejected, the authority shall publish a new invitation to bid in the manner specified in this section. If no satisfactory bid is received by the authority when the bids received from the second invitation are opened, the authority may execute a contract without requiring competitive bidding.

(3) The local mental health authority need not comply with the procurement provisions of this section when it disburses public funds to another political subdivision of the state or an institution of higher education of the state.

(4) Each contract awarded by a local mental health authority shall be for a fixed amount and limited period. A contract may be modified due to changes in available funding for the same contract purpose without competition.

Section 19. Section **17-53-225** is amended to read:

17-53-225. County legislative body may adopt Utah Procurement Code -- Retention of records.

(1) A county legislative body may adopt any or all of the provisions of Title 63G, Chapter [6] 6a, Utah Procurement Code, or the rules promulgated pursuant to that code.

(2) Whenever any county is required by law to receive bids for purchases, construction, repairs, or any other purpose requiring the expenditure of funds, that county shall keep on file all bids received, together with proof of advertisement by publication or otherwise, for:

(a) at least three years following the letting of any contract pursuant to those bids; or

(b) three years following the first advertisement for the bids, if all bids pursuant to that advertisement are rejected.

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Section 20. Section **17-53-313** is amended to read:

17-53-313. Hiring of professional architect, engineer, or surveyor.

Notwithstanding the adoption of some or all of the provisions of Title 63G, Chapter [6] 6a, Utah Procurement Code, under Section 17-53-225, each county executive that engages the services of a professional architect, engineer, or surveyor and considers more than one such professional for the engagement:

- (1) shall consider, as a minimum, in the selection process:
 - (a) the qualifications, experience, and background of each firm submitting a proposal;
 - (b) the specific individuals assigned to the project and the time commitments of each to the project; and
 - (c) the project schedule and the approach to the project that the firm will take; and
- (2) may engage the services of a professional architect, engineer, or surveyor based on the criteria under Subsection (1) rather than solely on lowest cost.

Section 21. Section **17B-1-108** is amended to read:

17B-1-108. Restrictions on local district procurement of architect-engineer services.

- (1) As used in this section:
 - (a) "Architect-engineer services" means those professional services within the scope of the practice of architecture as defined in Section 58-3a-102.
 - (b) "Engineer services" means those professional services within the scope of the practice of professional engineering as defined in Section 58-22-102.
- (2) When a local district elects to obtain architect services or engineering services by using a competitive procurement process and has provided public notice of its competitive procurement process:
 - (a) a higher education entity, or any part of one, may not submit a proposal in response to the local district's competitive procurement process; and
 - (b) the local district may not award a contract to perform the architect services or engineering services solicited in the competitive procurement process to a higher education entity or any part of one.
- (3) Notwithstanding Subsection [63G-6-104(3)(d)] 63G-6a-105(3), each local district board that engages the services of a professional architect, engineer, or surveyor and considers

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more than one such professional for the engagement:

(a) shall consider, as a minimum, in the selection process:

(i) the qualifications, experience, and background of each firm submitting a proposal;

(ii) the specific individuals assigned to the project and the time commitments of each to the project; and

(iii) the project schedule and the approach to the project that the firm will take; and

(b) may engage the services of a professional architect, engineer, or surveyor based on the criteria under Subsection (3)(a) rather than solely on lowest cost.

Section 22. Section **17B-2a-818** is amended to read:

17B-2a-818. Requirements applicable to public transit district contracts.

(1) A public transit district shall comply with the applicable provisions of Title 63G, Chapter [6] 6a, Utah Procurement Code.

(2) If construction of a district facility or work exceeds \$750,000, the construction shall be let as provided in:

(a) Title 63G, Chapter [6] 6a, Utah Procurement Code; and

(b) Section 17B-2a-818.5.

Section 23. Section **17B-2a-818.5** is amended to read:

17B-2a-818.5. Contracting powers of public transit districts -- Health insurance coverage.

(1) For purposes of this section:

(a) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who:

(i) works at least 30 hours per calendar week; and

(ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following 90 days from the date of hire.

(b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

(c) "Qualified health insurance coverage" is as defined in Section 26-40-115.

(d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

(2) (a) Except as provided in Subsection (3), this section applies to a design or construction contract entered into by the public transit district on or after July 1, 2009, and to a prime contractor or to a subcontractor in accordance with Subsection (2)(b).

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(b) (i) A prime contractor is subject to this section if the prime contract is in the amount of \$1,500,000 or greater.

(ii) A subcontractor is subject to this section if a subcontract is in the amount of \$750,000 or greater.

(3) This section does not apply if:

(a) the application of this section jeopardizes the receipt of federal funds;

(b) the contract is a sole source contract; or

(c) the contract is an emergency procurement.

(4) (a) This section does not apply to a change order as defined in Section [~~63G-6-103~~] 63G-6a-103, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection (2).

(b) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection (2) is guilty of an infraction.

(5) (a) A contractor subject to Subsection (2) shall demonstrate to the public transit district that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employee's dependents during the duration of the contract.

(b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor shall demonstrate to the public transit district that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employee's dependents during the duration of the contract.

(c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with an ordinance adopted by the public transit district under Subsection (6).

(B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (5)(b).

(ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the duration of the contract is subject to penalties in accordance with an ordinance adopted by the public transit district under Subsection (6).

(B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (5)(a).

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(6) The public transit district shall adopt ordinances:

(a) in coordination with:

(i) the Department of Environmental Quality in accordance with Section 19-1-206;

(ii) the Department of Natural Resources in accordance with Section 79-2-404;

(iii) the State Building Board in accordance with Section 63A-5-205;

(iv) the State Capitol Preservation Board in accordance with Section 63C-9-403; and

(v) the Department of Transportation in accordance with Section 72-6-107.5; and

(b) which establish:

(i) the requirements and procedures a contractor shall follow to demonstrate to the public transit district compliance with this section which shall include:

(A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or

(b) more than twice in any 12-month period; and

(B) that the actuarially equivalent determination required for the qualified health insurance coverage in Subsection (1) is met by the contractor if the contractor provides the department or division with a written statement of actuarial equivalency from either:

(I) the Utah Insurance Department;

(II) an actuary selected by the contractor or the contractor's insurer; or

(III) an underwriter who is responsible for developing the employer group's premium rates;

(ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:

(A) a three-month suspension of the contractor or subcontractor from entering into future contracts with the public transit district upon the first violation;

(B) a six-month suspension of the contractor or subcontractor from entering into future contracts with the public transit district upon the second violation;

(C) an action for debarment of the contractor or subcontractor in accordance with Section [~~63G-6-804~~] 63G-6a-904 upon the third or subsequent violation; and

(D) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for employees and dependents of employees of the contractor or subcontractor who were not offered qualified health insurance coverage during the duration of the contract; and

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(iii) a website on which the district shall post the benchmark for the qualified health insurance coverage identified in Subsection (1)(c).

(7) (a) (i) In addition to the penalties imposed under Subsection (6)(b)(ii), a contractor or subcontractor who intentionally violates the provisions of this section shall be liable to the employee for health care costs that would have been covered by qualified health insurance coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection (7)(a)(i) if:

(A) the employer relied in good faith on a written statement of actuarial equivalency provided by an:

(I) actuary; or

(II) underwriter who is responsible for developing the employer group's premium rates;

or

(B) a department or division determines that compliance with this section is not required under the provisions of Subsection (3) or (4).

(b) An employee has a private right of action only against the employee's employer to enforce the provisions of this Subsection (7).

(8) Any penalties imposed and collected under this section shall be deposited into the Medicaid Restricted Account created in Section 26-18-402.

(9) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this section:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section [~~63G-6-801~~] 63G-6a-1603 or any other provision in Title 63G, Chapter [~~6, Part 8, Legal and Contractual Remedies~~] 6a, Utah Procurement Code; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.

Section 24. Section **17D-1-106** is amended to read:

17D-1-106. Special service districts subject to other provisions.

(1) A special service district is, to the same extent as if it were a local district, subject to and governed by:

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(a) Sections 17B-1-105, 17B-1-107, 17B-1-108, [~~17B-1-109,~~] 17B-1-110, 17B-1-111, 17B-1-112, 17B-1-113, 17B-1-116, 17B-1-118, 17B-1-119, 17B-1-120, and 17B-1-121;

(b) Subsections 17B-1-301(3) and (4), Sections 17B-1-304, 17B-1-305, 17B-1-306, 17B-1-307, 17B-1-310, 17B-1-312, 17B-1-313, and 17B-1-314;

(c) Section 20A-1-512;

(d) Title 17B, Chapter 1, Part 6, Fiscal Procedures for Local Districts;

(e) Title 17B, Chapter 1, Part 7, Local District Budgets and Audit Reports;

(f) Title 17B, Chapter 1, Part 8, Local District Personnel Management; and

(g) Title 17B, Chapter 1, Part 9, Collection of Service Fees and Charges.

(2) For purposes of applying the provisions listed in Subsection (1) to a special service district, each reference in those provisions to the local district board of trustees means the governing body.

Section 25. Section **17D-2-108** is amended to read:

17D-2-108. Other statutory provisions.

(1) This chapter is supplemental to existing laws relating to a local entity's acquisition, use, maintenance, management, or operation of a project.

(2) Except as provided in this chapter, a local entity or local building authority that complies with the provisions of this chapter need not comply with any other statutory provision concerning the acquisition, construction, use, or maintenance of a project, including:

(a) a statute relating to public bidding; and

(b) Title 63G, Chapter [6] 6a, Utah Procurement Code.

(3) A local building authority is, to the same extent as if it were a local district, subject to and governed by:

(a) Title 17B, Chapter 1, Part 6, Fiscal Procedures for Local Districts;

(b) Title 17B, Chapter 1, Part 8, Local District Personnel Management; and

(c) Section 17B-1-108.

Section 26. Section **19-1-206** is amended to read:

19-1-206. Contracting powers of department -- Health insurance coverage.

(1) For purposes of this section:

(a) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who:

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- (i) works at least 30 hours per calendar week; and
- (ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following 90 days from the date of hire.
- (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.
- (c) "Qualified health insurance coverage" is as defined in Section 26-40-115.
- (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.
- (2) (a) Except as provided in Subsection (3), this section applies to a design or construction contract entered into by or delegated to the department or a division or board of the department on or after July 1, 2009, and to a prime contractor or subcontractor in accordance with Subsection (2)(b).
 - (b) (i) A prime contractor is subject to this section if the prime contract is in the amount of \$1,500,000 or greater.
 - (ii) A subcontractor is subject to this section if a subcontract is in the amount of \$750,000 or greater.
- (3) This section does not apply to contracts entered into by the department or a division or board of the department if:
 - (a) the application of this section jeopardizes the receipt of federal funds;
 - (b) the contract or agreement is between:
 - (i) the department or a division or board of the department; and
 - (ii) (A) another agency of the state;
 - (B) the federal government;
 - (C) another state;
 - (D) an interstate agency;
 - (E) a political subdivision of this state; or
 - (F) a political subdivision of another state;
 - (c) the executive director determines that applying the requirements of this section to a particular contract interferes with the effective response to an immediate health and safety threat from the environment; or
 - (d) the contract is:
 - (i) a sole source contract; or
 - (ii) an emergency procurement.

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(4) (a) This section does not apply to a change order as defined in Section [~~63G-6-103~~] 63G-6a-103, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection (2).

(b) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection (2) is guilty of an infraction.

(5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive director that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employees' dependents during the duration of the contract.

(b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall demonstrate to the executive director that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the contract.

(c) (i) (A) A contractor who fails to comply with Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (5)(b).

(ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (5)(a).

(6) The department shall adopt administrative rules:

(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(b) in coordination with:

(i) a public transit district in accordance with Section 17B-2a-818.5;

(ii) the Department of Natural Resources in accordance with Section 79-2-404;

(iii) the State Building Board in accordance with Section 63A-5-205;

(iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

(v) the Department of Transportation in accordance with Section 72-6-107.5; and

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(vi) the Legislature's Administrative Rules Review Committee; and

(c) which establish:

(i) the requirements and procedures a contractor shall follow to demonstrate to the public transit district compliance with this section that shall include:

(A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or (b) more than twice in any 12-month period; and

(B) that the actuarially equivalent determination required for the qualified health insurance coverage in Subsection (1) is met by the contractor if the contractor provides the department or division with a written statement of actuarial equivalency from either:

(I) the Utah Insurance Department;

(II) an actuary selected by the contractor or the contractor's insurer; or

(III) an underwriter who is responsible for developing the employer group's premium rates;

(ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:

(A) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation;

(B) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation;

(C) an action for debarment of the contractor or subcontractor in accordance with Section [~~63G-6-804~~] 63G-6a-904 upon the third or subsequent violation; and

(D) notwithstanding Section 19-1-303, monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for an employee and the dependents of an employee of the contractor or subcontractor who was not offered qualified health insurance coverage during the duration of the contract; and

(iii) a website on which the department shall post the benchmark for the qualified health insurance coverage identified in Subsection (1)(c).

(7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or subcontractor who intentionally violates the provisions of this section shall be liable to the employee for health care costs that would have been covered by qualified health insurance coverage.

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(ii) An employer has an affirmative defense to a cause of action under Subsection (7)(a)(i) if:

(A) the employer relied in good faith on a written statement of actuarial equivalency provided by:

(I) an actuary; or

(II) an underwriter who is responsible for developing the employer group's premium rates; or

(B) the department determines that compliance with this section is not required under the provisions of Subsection (3) or (4).

(b) An employee has a private right of action only against the employee's employer to enforce the provisions of this Subsection (7).

(8) Any penalties imposed and collected under this section shall be deposited into the Medicaid Restricted Account created in Section 26-18-402.

(9) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this section:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section [~~63G-6-801~~] 63G-6a-1603 or any other provision in Title 63G, Chapter [~~6, Part 8, Legal and Contractual Remedies~~] 6a, Utah Procurement Code; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.

Section 27. Section **20A-11-701** is amended to read:

20A-11-701. Campaign financial reporting by corporations -- Filing requirements -- Statement contents.

(1) (a) Each corporation that has made expenditures for political purposes that total at least \$750 during a calendar year shall file a verified financial statement with the lieutenant governor's office:

(i) on January 10, reporting expenditures as of December 31 of the previous year;

(ii) seven days before the regular primary election date;

(iii) on August 31; and

(iv) seven days before the regular general election date.

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(b) The corporation shall report:

(i) a detailed listing of all expenditures made since the last statement;

(ii) for financial statements filed under Subsections (1)(a)(ii) through (iv), all expenditures as of five days before the required filing date of the financial statement; and

(iii) whether the corporation, including an officer of the corporation, director of the corporation, or person with at least 10% ownership in the corporation:

(A) has bid since the last financial statement on a contract, as defined in Section ~~[63G-6-103]~~ 63G-6a-103, in excess of \$100,000;

(B) is currently bidding on a contract, as defined in Section ~~[63G-6-103]~~ 63G-6a-103, in excess of \$100,000; or

(C) is a party to a contract, as defined in Section ~~[63G-6-103]~~ 63G-6a-103, in excess of \$100,000.

(c) The corporation need not file a financial statement under this section if the corporation made no expenditures during the reporting period.

(2) The financial statement shall include:

(a) the name and address of each reporting entity that received an expenditure from the corporation, and the amount of each expenditure;

(b) the total amount of expenditures disbursed by the corporation; and

(c) a statement by the corporation's treasurer or chief financial officer certifying the accuracy of the financial statement.

Section 28. Section **26-8a-405.3** is amended to read:

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

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

(b) The governing body of the political subdivision shall approve the request for proposal prior to the notice of the request for proposals under Subsection (1)(c).

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

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

(B) if there is no such newspaper, then notice shall be posted for at least 20 days in at

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least five public places in the county; and

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

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

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

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

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

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

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

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

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

(b) The applicants who are approved under Section 26-8a-405 and who are selected under this section may be the political subdivision issuing the request for competitive sealed proposals, or any other public entity or entities, any private person or entity, or any combination thereof.

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

(4) In seeking competitive sealed proposals and awarding contracts under this section,

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a political subdivision:

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

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

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

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

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

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

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

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

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

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

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

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

(A) response times;

(B) staging locations;

(C) experience;

(D) quality of care; and

(E) cost, consistent with the cost accounting method in Subsection (4)(e)(i).

(5) (a) Notwithstanding [~~the provisions of Subsection 63G-6-104(3), the~~] any provision of Title 63G, Chapter 6a, Utah Procurement Code, to the contrary, the provisions of Title 63G,

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Chapter [~~6, Part 8, Legal and Contractual Remedies~~] 6a, Utah Procurement Code, apply to the procurement process required by this section, except as provided in Subsection (5)(c).

(b) [~~The Procurement Appeals Board created in Section 63G-6-807~~] An appeals board, as defined in Section 63G-6a-103, shall have jurisdiction to review and determine an appeal of an offeror under this section in the same manner as provided in Section [~~63G-6-810~~] 63G-6a-1703.

(c) (i) An offeror may appeal the solicitation or award as provided by the political subdivision's procedures. After all political subdivision appeal rights are exhausted, the offeror may appeal under the provisions of Subsections (5)(a) and (b).

(ii) The factual determination required by Subsection [~~63G-6-813~~] 63G-6a-1708(1) shall be based on whether the solicitation or award was made in accordance with the procedures set forth in this section and Section 26-8a-405.2.

(d) The determination of an issue of fact by the appeals board shall be final and conclusive unless arbitrary and capricious or clearly erroneous as provided in Section [~~63G-6-813~~] 63G-6a-1708.

Section 29. Section ~~26-8a-405.5~~ is amended to read:

26-8a-405.5. Use of competitive sealed proposals -- Procedure -- Appeal rights.

(1) (a) The department shall issue a request for proposal for non-911 services in a geographic service area if the department receives a request from a political subdivision under Subsection 26-8a-405.4(3)(a)(ii)(B) to issue a request for proposal for non-911 services.

(b) Competitive sealed proposals for non-911 services under Subsection (1)(a) shall be solicited through a request for proposal and the provisions of this section.

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

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

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

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

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

(b) (i) Subsequent to the published notice, and prior to selecting an applicant, the

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department shall hold a presubmission conference with interested applicants for the purpose of assuring full understanding of, and responsiveness to, solicitation requirements.

(ii) The department shall allow at least 90 days from the presubmission conference for the proposers to submit proposals.

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

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

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

(3) (a) (i) The department may select an applicant approved by the department under Section 26-8a-404 to provide non-911 services by contract to the most responsible offeror as defined in [~~Subsection 63G-6-103(24)~~] Section 63G-6a-103.

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

(b) The applicants who are approved under Section 26-8a-405 and who are selected under this section may be the political subdivision responding to the request for competitive sealed proposals, or any other public entity or entities, any private person or entity, or any combination thereof.

(c) The department may reject all of the competitive proposals.

(4) In seeking competitive sealed proposals and awarding contracts under this section, the department:

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

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

(c) may not require or restrict an applicant to a certain method of meeting the

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performance standards, including:

- (i) requiring ambulance medical personnel to also be a firefighter; or
- (ii) mandating that offerors use fire stations or dispatch services of the political

subdivision;

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

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

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

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

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

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

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

- (A) response times;
- (B) staging locations;
- (C) experience;
- (D) quality of care; and
- (E) cost, consistent with the cost accounting method in Subsection (4)(e)(i).

- (5) A license issued under this section:

(a) is for the exclusive geographic service area approved by the department;

(b) is valid for four years;

(c) is not subject to a request for license from another applicant under the provisions of Sections 26-8a-406 through 26-8a-409 during the four-year term, unless the applicant's license is revoked under Section 26-8a-504;

(d) is subject to supervision by the department under Sections 26-8a-503 and 26-8a-504; and

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(e) except as provided in Subsection (4)(a), is not subject to the provisions of Sections 26-8a-406 through 26-8a-409.

Section 30. Section **26-10-8** is amended to read:

26-10-8. Request for proposal required for non-state supplied services.

(1) Funds provided to the department through Sections 51-9-201 and 59-14-204 to be used to provide services, shall be awarded to non-governmental entities based on a competitive process consistent with Title 63G, Chapter [6] 6a, Utah Procurement Code.

(2) Beginning July 1, 2010, and not more than every five years thereafter, the department shall issue requests for proposals for new or renewing contracts to award funding for programs under Subsection (1).

Section 31. Section **26-10b-102** is amended to read:

26-10b-102. Department to award grants and contracts -- Applications.

(1) (a) Within appropriations specified by the Legislature for this purpose, the department may make grants to public and nonprofit entities for the cost of operation of providing primary health care services to medically underserved populations.

(b) The department may, as funding permits, contract with community based organizations for the purpose of developing culturally and linguistically appropriate programs and services for low income and medically underserved populations through a pilot program to accomplish one or more of the following:

(i) to educate individuals:

(A) to use private and public health care coverage programs, products, services, and resources in a timely, effective, and responsible manner;

(B) to make prudent use of private and public health care resources;

(C) to pursue preventive health care, health screenings, and disease management; and

(D) to locate health care programs and services;

(ii) to assist individuals to develop:

(A) personal health management;

(B) self-sufficiency in daily care; and

(C) life and disease management skills;

(iii) to support translation of health materials and information;

(iv) to facilitate an individual's access to primary care services and providers, including

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mental health services; and

(v) to measure and report empirical results of the pilot project.

(2) (a) Grants by the department shall be awarded based on:

(i) applications submitted to the department in the manner and form prescribed by the department; and

(ii) the criteria established in Section 26-10b-103.

(b) The application for a grant under Subsection (2)(a) shall contain:

(i) a requested award amount;

(ii) a budget; and

(iii) a narrative plan of the manner in which the applicant intends to provide the primary health care services described in Subsection 26-10b-101(7).

(c) A contract bid for a service under Subsection (1)(b):

(i) shall be awarded in accordance with Title 63G, Chapter [6] 6a, Utah Procurement Code;

(ii) shall include the information described in Section 26-10b-103; and

(iii) is subject to Subsection (3) [~~of this section~~].

(3) (a) An applicant under this chapter shall demonstrate to the department that the applicant will not deny services to a person because of the person's inability to pay for the services.

(b) Subsection (3)(a) does not preclude an applicant from seeking payment from the person receiving services, a third party, or a government agency if:

(i) the applicant is authorized to charge for the services; and

(ii) the person, third party, or government agency is under legal obligation to pay the charges.

(4) The department shall maximize the use of federal matching funds received for services under Subsection (1)(b) to fund additional contracts under Subsection (1)(b).

Section 32. Section **26-18-2.6** is amended to read:

26-18-2.6. Dental benefits.

(1) (a) The division shall establish a competitive bid process to bid out Medicaid dental benefits under this chapter.

(b) The division may bid out the Medicaid dental benefits separately from other

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program benefits.

(2) The division shall use the following criteria to evaluate dental bids:

- (a) ability to manage dental expenses;
- (b) proven ability to handle dental insurance;
- (c) efficiency of claim paying procedures;
- (d) provider contracting, discounts, and adequacy of network; and
- (e) other criteria established by the department.

(3) The division shall request bids for the program's benefits:

- (a) in 2011; and
- (b) at least once every five years thereafter.

(4) The division's contract with dental plans for the program's benefits shall include risk sharing provisions in which the dental plan must accept 100% of the risk for any difference between the division's premium payments per client and actual dental expenditures.

(5) The division may not award contracts to:

- (a) more than three responsive bidders under this section; or
- (b) an insurer that does not have a current license in the state.

(6) (a) The division may cancel the request for proposals if:

- (i) there are no responsive bidders; or
- (ii) the division determines that accepting the bids would increase the program's costs.

(b) If the division cancels the request for proposals under Subsection (6)(a), the division shall report to the Health and Human Services Committee regarding the reasons for the decision.

(7) Title 63G, Chapter [6] 6a, Utah Procurement Code, shall apply to this section.

Section 33. Section **26-40-110** is amended to read:

26-40-110. Managed care -- Contracting for services.

(1) Program benefits provided to enrollees under the program, as described in Section 26-40-106, shall be delivered in a managed care system if the department determines that adequate services are available where the enrollee lives or resides.

(2) (a) The department shall use the following criteria to evaluate bids from health plans:

- (i) ability to manage medical expenses, including mental health costs;

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- (ii) proven ability to handle accident and health insurance;
- (iii) efficiency of claim paying procedures;
- (iv) proven ability for managed care and quality assurance;
- (v) provider contracting and discounts;
- (vi) pharmacy benefit management;
- (vii) an estimate of total charges for administering the pool;
- (viii) ability to administer the pool in a cost-efficient manner;
- (ix) the ability to provide adequate providers and services in the state; and
- (x) other criteria established by the department.

(b) The dental benefits required by Section 26-40-106 may be bid out separately from other program benefits.

(c) Except for dental benefits, the department shall request bids for the program's benefits in 2008. The department shall request bids for the program's dental benefits in 2009. The department shall request bids for the program's benefits at least once every five years thereafter.

(d) The department's contract with health plans for the program's benefits shall include risk sharing provisions in which the health plan shall accept at least 75% of the risk for any difference between the department's premium payments per client and actual medical expenditures.

(3) The executive director shall report to and seek recommendations from the Health Advisory Council created in Section 26-1-7.5:

(a) if the division receives less than two bids or proposals under this section that are acceptable to the division or responsive to the bid; and

(b) before awarding a contract to a managed care system.

(4) (a) The department shall award contracts to responsive bidders if the department determines that a bid is acceptable and meets the criteria of Subsections (2)(a) and (d).

(b) The department may contract with the Group Insurance Division within the Utah State Retirement Office to provide services under Subsection (1) if:

(i) the executive director seeks the recommendation of the Health Advisory Council under Subsection (3); and

(ii) the executive director determines that the bids were not acceptable to the

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department.

(c) In accordance with Section 49-20-201, a contract awarded under Subsection (4)(b) is not subject to the risk sharing required by Subsection (2)(d).

(5) Title 63G, Chapter [6] 6a, Utah Procurement Code, shall apply to this section.

Section 34. Section **30-3-11.3** is amended to read:

30-3-11.3. Mandatory educational course for divorcing parents -- Purpose -- Curriculum -- Exceptions.

(1) The Judicial Council shall approve and implement a mandatory course for divorcing parents in all judicial districts. The mandatory course is designed to educate and sensitize divorcing parties to their children's needs both during and after the divorce process.

(2) The Judicial Council shall adopt rules to implement and administer this program.

(3) As a prerequisite to receiving a divorce decree, both parties are required to attend a mandatory course on their children's needs after filing a complaint for divorce and receiving a docket number, unless waived under Section 30-3-4. If that requirement is waived, the court may permit the divorce action to proceed.

(4) The court may require unmarried parents to attend this educational course when those parents are involved in a visitation or custody proceeding before the court.

(5) The mandatory course shall instruct both parties:

(a) about divorce and its impacts on:

(i) their child or children;

(ii) their family relationship; and

(iii) their financial responsibilities for their child or children; and

(b) that domestic violence has a harmful effect on children and family relationships.

(6) The Administrative Office of the Courts shall administer the course pursuant to Title 63G, Chapter [6] 6a, Utah Procurement Code, through private or public contracts and organize the program in each of Utah's judicial districts. The contracts shall provide for the recoupment of administrative expenses through the costs charged to individual parties, pursuant to Subsection (8).

(7) A certificate of completion constitutes evidence to the court of course completion by the parties.

(8) (a) Each party shall pay the costs of the course to the independent contractor

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providing the course at the time and place of the course. A fee of \$8 shall be collected, as part of the course fee paid by each participant, and deposited in the Children's Legal Defense Account, described in Section 51-9-408.

(b) Each party who is unable to pay the costs of the course may attend the course without payment upon a prima facie showing of impecuniosity as evidenced by an affidavit of impecuniosity filed in the district court. In those situations, the independent contractor shall be reimbursed for its costs from the appropriation to the Administrative Office of the Courts for "Mandatory Educational Course for Divorcing Parents Program." Before a decree of divorce may be entered, the court shall make a final review and determination of impecuniosity and may order the payment of the costs if so determined.

(9) Appropriations from the General Fund to the Administrative Office of the Courts for the "Mandatory Educational Course for Divorcing Parents Program" shall be used to pay the costs of an indigent parent who makes a showing as provided in Subsection (8)(b).

(10) The Administrative Office of the Courts shall adopt a program to evaluate the effectiveness of the mandatory educational course. Progress reports shall be provided if requested by the Judiciary Interim Committee.

Section 35. Section **30-3-11.4** is amended to read:

30-3-11.4. Mandatory orientation course for divorcing parties -- Purpose -- Curriculum -- Exceptions.

(1) There is established a mandatory divorce orientation course for all parties with minor children who file a petition for temporary separation or for a divorce. A couple with no minor children are not required, but may choose to attend the course. The purpose of the course shall be to educate parties about the divorce process and reasonable alternatives.

(2) A petitioner shall attend a divorce orientation course no more than 60 days after filing a petition for divorce.

(3) The respondent shall attend the divorce orientation course no more than 30 days after being served with a petition for divorce.

(4) The clerk of the court shall provide notice to a petitioner of the requirement for the course, and information regarding the course shall be included with the petition or motion, when served on the respondent.

(5) The divorce orientation course shall be neutral, unbiased, at least one hour in

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duration, and include:

- (a) options available as alternatives to divorce;
- (b) resources available from courts and administrative agencies for resolving custody

and support issues without filing for divorce;

- (c) resources available to improve or strengthen the marriage;
- (d) a discussion of the positive and negative consequences of divorce;
- (e) a discussion of the process of divorce;
- (f) options available for proceeding with a divorce, including:
 - (i) mediation;
 - (ii) collaborative law; and
 - (iii) litigation; and
- (g) a discussion of post-divorce resources.

(6) The course may be provided in conjunction with the mandatory course for divorcing parents required by Section 30-3-11.3.

(7) The Administrative Office of the Courts shall administer the course pursuant to Title 63G, Chapter [6] 6a, Utah Procurement Code, through private or public contracts.

(8) Each participant shall pay the costs of the course, which may not exceed \$20, to the independent contractor providing the course at the time and place of the course.

(a) A fee of \$5 shall be collected, as part of the course fee paid by each participant, and deposited in the Children's Legal Defense Account described in Section 51-9-408.

(b) A participant who is unable to pay the costs of the course may attend without payment and request an Affidavit of Impecuniosity from the provider to be filed with the petition or motion. The provider shall be reimbursed for its costs by the Administrative Office of the Courts. A petitioner who is later determined not to meet the qualifications for impecuniosity may be ordered to pay the costs of the course.

(9) Appropriations from the General Fund to the Administrative Office of the Courts for the divorce orientation course shall be used to pay the costs of an indigent petitioner who is determined to be impecunious as provided in Subsection (8)(b).

(10) The Online Court Assistance Program shall include instructions with the forms for divorce which inform the petitioner of the requirement of this section.

(11) Both parties shall attend a divorce orientation course before a divorce decree may

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be entered, unless waived by the court. A certificate of completion constitutes evidence to the court of course completion by the parties.

(12) It shall be an affirmative defense in all divorce actions that the divorce orientation requirement was not complied with, and the action may not continue until a party has complied.

(13) The Administrative Office of the Courts shall adopt a program to evaluate the effectiveness of the mandatory educational course. Progress reports shall be provided if requested by the Judiciary Interim Committee.

Section 36. Section **30-3-38** is amended to read:

30-3-38. Expedited Parent-time Enforcement Program.

(1) There is established an Expedited Parent-time Enforcement Program in the third judicial district to be administered by the Administrative Office of the Courts.

(2) As used in this section:

(a) "Mediator" means a person who:

(i) is qualified to mediate parent-time disputes under criteria established by the Administrative Office of the Courts; and

(ii) agrees to follow billing guidelines established by the Administrative Office of the Courts and this section.

(b) "Services to facilitate parent-time" or "services" means services designed to assist families in resolving parent-time problems through:

(i) counseling;

(ii) supervised parent-time;

(iii) neutral drop-off and pick-up;

(iv) educational classes; and

(v) other related activities.

(3) (a) If a parent files a motion in the third district court alleging that court-ordered parent-time rights are being violated, the clerk of the court, after assigning the case to a judge, shall refer the case to the administrator of this program for assignment to a mediator, unless a parent is incarcerated or otherwise unavailable. Unless the court rules otherwise, a parent residing outside of the state is not unavailable. The director of the program for the courts, the court, or the mediator may excuse either party from the requirement to mediate for good cause.

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(b) Upon receipt of a case, the mediator shall:

(i) meet with the parents to address parent-time issues within 15 days of the motion being filed;

(ii) assess the situation;

(iii) facilitate an agreement on parent-time between the parents; and

(iv) determine whether a referral to a service provider under Subsection (3)(c) is warranted.

(c) While a case is in mediation, a mediator may refer the parents to a service provider designated by the Department of Human Services for services to facilitate parent-time if:

(i) the services may be of significant benefit to the parents; or

(ii) (A) a mediated agreement between the parents is unlikely; and

(B) the services may facilitate an agreement.

(d) At any time during mediation, a mediator shall terminate mediation and transfer the case to the administrator of the program for referral to the judge or court commissioner to whom the case was assigned under Subsection (3)(a) if:

(i) a written agreement between the parents is reached; or

(ii) the parents are unable to reach an agreement through mediation and:

(A) the parents have received services to facilitate parent-time;

(B) both parents object to receiving services to facilitate parent-time; or

(C) the parents are unlikely to benefit from receiving services to facilitate parent-time.

(e) Upon receiving a case from the administrator of the program, a judge or court commissioner may:

(i) review the agreement of the parents and, if acceptable, sign it as an order;

(ii) order the parents to receive services to facilitate parent-time;

(iii) proceed with the case; or

(iv) take other appropriate action.

(4) (a) If a parent makes a particularized allegation of physical or sexual abuse of a child who is the subject of a parent-time order against the other parent or a member of the other parent's household to a mediator or service provider, the mediator or service provider shall immediately report that information to:

(i) the judge assigned to the case who may immediately issue orders and take other

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appropriate action to resolve the allegation and protect the child; and

(ii) the Division of Child and Family Services within the Department of Human Services in the manner required by Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting Requirements.

(b) If an allegation under Subsection (4)(a) is made against a parent with parent-time rights or a member of that parent's household, parent-time by that parent shall, pursuant to an order of the court, be supervised until:

- (i) the allegation has been resolved; or
- (ii) a court orders otherwise.

(c) Notwithstanding an allegation under Subsection (4)(a), a mediator may continue to mediate parent-time problems and a service provider may continue to provide services to facilitate parent-time unless otherwise ordered by a court.

(5) (a) The Department of Human Services may contract with one or more entities in accordance with Title 63G, Chapter [6] 6a, Utah Procurement Code, to provide:

- (i) services to facilitate parent-time;
- (ii) case management services; and
- (iii) administrative services.

(b) An entity who contracts with the Department of Human Services under Subsection (5)(a) shall:

- (i) be qualified to provide one or more of the services listed in Subsection (5)(a); and
- (ii) agree to follow billing guidelines established by the Department of Human Services

and this section.

(6) (a) Except as provided in Subsection (6)(b), the cost of mediation shall be:

- (i) reduced to a sum certain;
- (ii) divided equally between the parents; and
- (iii) charged against each parent taking into account the ability of that parent to pay

under billing guidelines adopted in accordance with this section.

(b) A judge may order a parent to pay an amount in excess of that provided for in Subsection (6)(a) if the parent:

- (i) failed to participate in good faith in mediation or services to facilitate parent-time;

or

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(ii) made an unfounded assertion or claim of physical or sexual abuse of a child.

(c) (i) The cost of mediation and services to facilitate parent-time may be charged to parents at periodic intervals.

(ii) Mediation and services to facilitate parent-time may only be terminated on the ground of nonpayment if both parents are delinquent.

(7) (a) The Judicial Council may make rules to implement and administer the provisions of this program related to mediation.

(b) The Department of Human Services may make rules to implement and administer the provisions of this program related to services to facilitate parent-time.

(8) (a) The Administrative Office of the Courts shall adopt outcome measures to evaluate the effectiveness of the mediation component of this program. Progress reports shall be provided to the Judiciary Interim Committee as requested by the committee.

(b) The Department of Human Services shall adopt outcome measures to evaluate the effectiveness of the services component of this program. Progress reports shall be provided to the Judiciary Interim Committee as requested by the committee.

(c) The Administrative Office of the Courts and the Department of Human Services may adopt joint outcome measures and file joint reports to satisfy the requirements of Subsections (7)(a) and (b).

(9) The Department of Human Services shall, by following the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures, apply for federal funds as available.

Section 37. Section **31A-29-110** is amended to read:

31A-29-110. Pool administrator -- Selection -- Powers.

(1) The board shall select a pool administrator in accordance with Title 63G, Chapter [6] 6a, Utah Procurement Code. The board shall evaluate bids based on criteria established by the board, which shall include:

- (a) ability to manage medical expenses;
- (b) proven ability to handle accident and health insurance;
- (c) efficiency of claim paying procedures;
- (d) marketing and underwriting;
- (e) proven ability for managed care and quality assurance;

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- (f) provider contracting and discounts;
- (g) pharmacy benefit management;
- (h) an estimate of total charges for administering the pool; and
- (i) ability to administer the pool in a cost-efficient manner.

(2) A pool administrator may be:

- (a) a health insurer;
- (b) a health maintenance organization;
- (c) a third-party administrator; or
- (d) any person or entity which has demonstrated ability to meet the criteria in

Subsection (1).

(3) (a) The pool administrator shall serve for a period of three years, with two one-year extension options, subject to the terms, conditions, and limitations of the contract between the board and the administrator.

(b) At least one year prior to the expiration of the contract between the board and the pool administrator, the board shall invite all interested parties, including the current pool administrator, to submit bids to serve as the pool administrator.

(c) Selection of the pool administrator for a succeeding period shall be made at least six months prior to the expiration of the period of service under Subsection (3)(a).

(4) The pool administrator is responsible for all operational functions of the pool and shall:

(a) have access to all nonpatient specific experience data, statistics, treatment criteria, and guidelines compiled or adopted by the Medicaid program, the Public Employees Health Plan, the Department of Health, or the Insurance Department, and which are not otherwise declared by statute to be confidential;

(b) perform all marketing, eligibility, enrollment, member agreements, and administrative claim payment functions relating to the pool;

(c) establish, administer, and operate a monthly premium billing procedure for collection of premiums from enrollees;

(d) perform all necessary functions to assure timely payment of benefits to enrollees, including:

- (i) making information available relating to the proper manner of submitting a claim

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for benefits to the pool administrator and distributing forms upon which submission shall be made; and

(ii) evaluating the eligibility of each claim for payment by the pool;

(e) submit regular reports to the board regarding the operation of the pool, the frequency, content, and form of which reports shall be determined by the board;

(f) following the close of each calendar year, determine net written and earned premiums, the expense of administration, and the paid and incurred losses for the year and submit a report of this information to the board, the commissioner, and the Division of Finance on a form prescribed by the commissioner; and

(g) be paid as provided in the plan of operation for expenses incurred in the performance of the pool administrator's services.

Section 38. Section **31A-29-111** is amended to read:

31A-29-111. Eligibility -- Limitations.

(1) (a) Except as provided in Subsection (1)(b), an individual who is not HIPAA eligible is eligible for pool coverage if the individual:

(i) pays the established premium;

(ii) is a resident of this state; and

(iii) meets the health underwriting criteria under Subsection (5)(a).

(b) Notwithstanding Subsection (1)(a), an individual who is not HIPAA eligible is not eligible for pool coverage if one or more of the following conditions apply:

(i) the individual is eligible for health care benefits under Medicaid or Medicare, except as provided in Section 31A-29-112;

(ii) the individual has terminated coverage in the pool, unless:

(A) 12 months have elapsed since the termination date; or

(B) the individual demonstrates that creditable coverage has been involuntarily terminated for any reason other than nonpayment of premium;

(iii) the pool has paid the maximum lifetime benefit to or on behalf of the individual;

(iv) the individual is an inmate of a public institution;

(v) the individual is eligible for a public health plan, as defined in federal regulations adopted pursuant to 42 U.S.C. 300gg;

(vi) the individual's health condition does not meet the criteria established under

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Subsection (5);

(vii) the individual is eligible for coverage under an employer group that offers a health benefit plan or a self-insurance arrangement to its eligible employees, dependents, or members as:

(A) an eligible employee;

(B) a dependent of an eligible employee; or

(C) a member;

(viii) the individual is covered under any other health benefit plan;

(ix) at the time of application, the individual has not resided in Utah for at least 12 consecutive months preceding the date of application; or

(x) the individual's employer pays any part of the individual's health benefit plan premium, either as an insured or a dependent, for pool coverage.

(2) (a) Except as provided in Subsection (2)(b), an individual who is HIPAA eligible is eligible for pool coverage if the individual:

(i) pays the established premium; and

(ii) is a resident of this state.

(b) Notwithstanding Subsection (2)(a), a HIPAA eligible individual is not eligible for pool coverage if one or more of the following conditions apply:

(i) the individual is eligible for health care benefits under Medicaid or Medicare, except as provided in Section 31A-29-112;

(ii) the individual is eligible for a public health plan, as defined in federal regulations adopted pursuant to 42 U.S.C. 300gg;

(iii) the individual is covered under any other health benefit plan;

(iv) the individual is eligible for coverage under an employer group that offers a health benefit plan or self-insurance arrangements to its eligible employees, dependents, or members as:

(A) an eligible employee;

(B) a dependent of an eligible employee; or

(C) a member;

(v) the pool has paid the maximum lifetime benefit to or on behalf of the individual;

(vi) the individual is an inmate of a public institution; or

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(vii) the individual's employer pays any part of the individual's health benefit plan premium, either as an insured or a dependent, for pool coverage.

(3) (a) Notwithstanding Subsection (1)(b)(ix), if otherwise eligible under Subsection (1)(a), an individual whose health care insurance coverage from a state high risk pool with similar coverage is terminated because of nonresidency in another state is eligible for coverage under the pool subject to the conditions of Subsections (1)(b)(i) through (viii).

(b) Coverage sought under Subsection (3)(a) shall be applied for within 63 days after the termination date of the previous high risk pool coverage.

(c) The effective date of this state's pool coverage shall be the date of termination of the previous high risk pool coverage.

(d) The waiting period of an individual with a preexisting condition applying for coverage under this chapter shall be waived:

(i) to the extent to which the waiting period was satisfied under a similar plan from another state; and

(ii) if the other state's benefit limitation was not reached.

(4) (a) If an eligible individual applies for pool coverage within 30 days of being denied coverage by an individual carrier, the effective date for pool coverage shall be no later than the first day of the month following the date of submission of the completed insurance application to the carrier.

(b) Notwithstanding Subsection (4)(a), for individuals eligible for coverage under Subsection (3), the effective date shall be the date of termination of the previous high risk pool coverage.

(5) (a) The board shall establish and adjust, as necessary, health underwriting criteria based on:

(i) health condition; and

(ii) expected claims so that the expected claims are anticipated to remain within available funding.

(b) The board, with approval of the commissioner, may contract with one or more providers under Title 63G, Chapter [6] 6a, Utah Procurement Code, to develop underwriting criteria under Subsection (5)(a).

(c) If an individual is denied coverage by the pool under the criteria established in

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Subsection (5)(a), the pool shall issue a certificate of insurability to the individual for coverage under Subsection 31A-30-108(3).

Section 39. Section **31A-33-104** is amended to read:

31A-33-104. Workers' Compensation Fund exempted.

(1) The Workers' Compensation Fund is exempt from the provisions of:

- (a) Title 52, Chapter 4, Open and Public Meetings Act;
- (b) Title 63G, Chapter 2, Government Records Access and Management Act; and
- (c) Title 63A, Utah Administrative Services Code.

(2) The board may specifically exempt the Workers' Compensation Fund from any provisions of:

- (a) Title 67, Chapter 19, Utah State Personnel Management Act; and
- (b) Title 63G, Chapter ~~[6]~~ 6a, Utah Procurement Code.

(3) The provisions of Title 63G, Chapter 4, Administrative Procedures Act, do not govern the initial determination of any person's eligibility for benefits under Title 34A, Chapter 2, Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act.

Section 40. Section **31A-33-107** is amended to read:

31A-33-107. Duties of board -- Creation of subsidiaries -- Entering into joint enterprises.

(1) The board shall:

(a) appoint a chief executive officer to administer the Workers' Compensation Fund;

(b) receive and act upon financial, management, and actuarial reports covering the operations of the Workers' Compensation Fund;

(c) ensure that the Workers' Compensation Fund is administered according to law;

(d) examine and approve an annual operating budget for the Workers' Compensation

Fund;

(e) serve as investment trustees and fiduciaries of the Injury Fund;

(f) receive and act upon recommendations of the chief executive officer;

(g) develop broad policy for the long-term operation of the Workers' Compensation Fund, consistent with its mission and fiduciary responsibility;

(h) subject to Chapter 19a, Part 4, Workers' Compensation Rates, approve any rating plans that would modify a policyholder's premium;

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- (i) subject to Chapter 19a, Part 4, Workers' Compensation Rates, approve the amount of deviation, if any, from standard insurance rates;
- (j) approve the amount of the dividends, if any, to be returned to policyholders;
- (k) adopt a procurement policy consistent with the provisions of Title 63G, Chapter [6] 6a, Utah Procurement Code;
- (l) develop and publish an annual report to policyholders, the governor, the Legislature, and interested parties that describes the financial condition of the Injury Fund, including a statement of expenses and income and what measures were taken or will be necessary to keep the Injury Fund actuarially sound;
- (m) establish a fiscal year;
- (n) determine and establish an actuarially sound price for insurance offered by the fund;
- (o) establish conflict of interest requirements that govern the board, officers, and employees;
- (p) establish compensation and reasonable expenses to be paid to directors on the board subject to the requirements of Section 31A-33-106, so that the board may not approve compensation that exceeds the amount described in Subsection 31A-33-106(18)(a)(i)(B); and
- (q) perform all other acts necessary for the policymaking and oversight of the Workers' Compensation Fund.

(2) Subject to board review and its responsibilities under Subsection (1)(e), the board may delegate authority to make daily investment decisions.

(3) The fund may form or acquire a subsidiary or enter into a joint enterprise:

(a) only if that action is approved by the board; and

(b) subject to the limitations in Section 31A-33-103.5.

Section 41. Section **34A-2-203** is amended to read:

34A-2-203. Payment of premiums for workers' compensation.

(1) Until June 30, 2007, a department, commission, board, or other agency of the state shall pay the insurance premium on its employees direct to the Workers' Compensation Fund.

(2) Beginning July 1, 2007, the state shall secure the payment of workers' compensation benefits for its employees:

(a) by:

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(i) insuring, and keeping insured, the payment of this compensation with the Workers' Compensation Fund;

(ii) insuring, and keeping insured, the payment of this compensation with any stock corporation or mutual association authorized to transact the business of workers' compensation insurance in this state; or

(iii) paying direct compensation as a self-insured employer in the amount, in the manner, and when due as provided for in this chapter or Chapter 3, Utah Occupational Disease Act;

(b) in accordance with Title 63A, Chapter 4, Risk Management; and

(c) subject to Subsection (3).

(3) (a) If the state determines to secure the payment of workers' compensation benefits for its employees by paying direct compensation as a self-insured employer in the amount, in the manner, and due as provided for in this chapter or Chapter 3, Utah Occupational Disease Act, the state is:

(i) exempt from Section 34A-2-202.5 and Subsection 34A-2-704(14); and

(ii) required to pay a premium assessment as provided in Section 34A-2-202.

(b) If the state chooses to pay workers' compensation benefits for its employees through insuring under Subsection (2)(a)(i) or (ii), the state shall obtain that insurance in accordance with Title 63G, Chapter [6] 6a, Utah Procurement Code.

Section 42. Section **35A-5-202** is amended to read:

35A-5-202. Contracts with providers.

(1) In compliance with Title 63G, Chapter [6] 6a, Utah Procurement Code, the department shall enter into a contract with one or more qualified providers to implement the workforce improvement plan created under Section 35A-5-201.

(2) A contract entered into under this section shall be:

(a) performance based; and

(b) structured so that the provider receives reimbursement based on:

(i) job development;

(ii) participant placement in jobs;

(iii) wages and benefits provided; and

(iv) participant retention in jobs over at least a 12-month period.

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(3) If the department determines through the procurement process that there are no qualified providers to implement the workforce improvement plan, the department may implement the plan.

Section 43. Section **38-1-30** is amended to read:

38-1-30. Third party contract -- Designated agent.

(1) The division shall contract in accordance with Title 63G, Chapter [6] 6a, Utah Procurement Code, with a third party to establish and maintain the database for the purposes established under this section, Section 38-1-27, and Sections 38-1-31 through 38-1-36.

(2) (a) The third party under contract under this section is the division's designated agent, and shall develop and maintain a database from the information provided by:

- (i) local government entities issuing building permits;
- (ii) original contractors;
- (iii) subcontractors; and
- (iv) other interested persons.

(b) The database shall accommodate filings by third parties on behalf of clients.

(c) The division and the designated agent shall design, develop, and test the database for full implementation on May 1, 2005.

(3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules and develop procedures for:

(a) the division to oversee and enforce this section, Section 38-1-27, and Sections 38-1-31 through 38-1-36;

(b) the designated agent to administer this section, Section 38-1-27, and Sections 38-1-31 through 38-1-36; and

(c) the form of submission of an alternate filing, which may include procedures for rejecting an illegible or incomplete filing.

(4) (a) The designated agent shall archive computer data files at least semiannually for auditing purposes.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules to allow the designated agent to periodically archive projects from the database.

(c) A project shall be archived no earlier than:

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- (i) one year after the day on which a notice of completion is filed for a project;
 - (ii) if no notice of completion is filed, two years after the last filing activity for a project; or
 - (iii) one year after the day on which a filing is cancelled under Subsection 38-1-32(6)(c) or 38-1-33(2)(c).
- (d) The division may audit the designated agent's administration of the database as often as the division considers necessary.
- (5) The designated agent shall carry errors and omissions insurance in the amounts established by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (6) (a) The designated agent shall make reasonable efforts to assure the accurate entry into the database of information provided in alternate filings.
- (b) The designated agent shall meet or exceed standards established by the division for the accuracy of data entry for alternate filings.
- (7) The designated agent is not liable for the correctness of the information contained in an alternate filing it enters into the database.

Section 44. Section **38-1-39** is amended to read:

38-1-39. Waiver or impairment of a lien right -- Forms -- Scope.

- (1) As used in this section:
 - (a) "Check" means a payment instrument on a depository institution including:
 - (i) a check;
 - (ii) a draft;
 - (iii) an order; or
 - (iv) other instrument.
 - (b) "Depository institution" is as defined in Section 7-1-103.
 - (c) "Lien claimant" means a person that claims a lien under this chapter.
 - (d) "Receives payment" means, in the case of a restrictive endorsement, a payee has endorsed a check and the check is presented to and paid by the depository institution on which it is drawn.
- (2) Notwithstanding Section 38-1-29, a written consent given by a lien claimant that waives or limits the lien claimant's lien rights is enforceable only if the lien claimant:

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(a) (i) executes a waiver and release that is signed by the lien claimant or the lien claimant's authorized agent; or

(ii) for a restrictive endorsement on a check, includes a restrictive endorsement on a check that is:

(A) signed by the lien claimant or the lien claimant's authorized agent; and

(B) in substantially the same form set forth in Subsection (4)(d); and

(b) receives payment of the amount identified in the waiver and release or check that includes the restrictive endorsement:

(i) including payment by a joint payee check; and

(ii) for a progress payment, only to the extent of the payment.

(3) (a) Notwithstanding the language of a waiver and release described in Subsection (2), Subsection (3)(b) applies if:

(i) the payment given in exchange for any waiver and release of lien is made by check; and

(ii) the check fails to clear the depository institution on which it is drawn for any reason.

(b) If the conditions of Subsection (3)(a) are met:

(i) the waiver and release described in Subsection (3)(a) is null, void, and of no legal effect; and

(ii) the following will not be affected by the lien claimant's execution of the waiver and release:

(A) any lien;

(B) any lien right;

(C) any bond right;

(D) any contract right; or

(E) any other right to recover payment afforded to the lien claimant in law or equity.

(4) (a) A waiver and release given by a lien claimant meets the requirements of this section if it is in substantially the form provided in this Subsection (4) for the circumstance provided in this Subsection (4).

(b) A waiver and release may be in substantially the following form if the lien claimant is required to execute a waiver and release in exchange for or to induce the payment of a

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progress billing:

"UTAH CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

Property Name: _____

Property Location: _____

Undersigned's Customer: _____

Invoice/Payment Application Number: _____

Payment Amount: _____

Payment Period: _____

To the extent provided below, this document becomes effective to release and the undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38, Chapter 1, Mechanics' Liens, or any bond right under Utah Code Ann., Title 14, Contractors' Bonds, or Section [~~63G-6-505~~] 63G-6a-1103 related to payment rights the undersigned has on the above described Property once:

(1) the undersigned endorses a check in the above referenced Payment Amount payable to the undersigned; and

(2) the check is paid by the depository institution on which it is drawn.

This waiver and release applies to a progress payment for the work, materials, equipment, or a combination of work, materials, and equipment furnished by the undersigned to the Property or to the Undersigned's Customer which are the subject of the Invoice or Payment Application, but only to the extent of the Payment Amount. This waiver and release does not apply to any retention withheld; any items, modifications, or changes pending approval; disputed items and claims; or items furnished or invoiced after the Payment Period.

The undersigned warrants that the undersigned either has already paid or will use the money the undersigned receives from this progress payment promptly to pay in full all the undersigned's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or combination of work, materials, and equipment that are the subject of this waiver and release.

Dated: _____

_____ (Company Name)

By: _____

Its: _____"

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(c) A waiver and release may be in substantially the following form if the lien claimant is required to execute a waiver and release in exchange for or to induce the payment of a final billing:

"UTAH WAIVER AND RELEASE UPON FINAL PAYMENT

Property Name: _____

Property Location: _____

Undersigned's Customer: _____

Invoice/Payment Application Number: _____

Payment Amount: _____

To the extent provided below, this document becomes effective to release and the undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38, Chapter 1, Mechanics' Liens, or any bond right under Utah Code Ann., Title 14, Contractors' Bonds, or Section [~~63G-6-505~~] 63G-6a-1103 related to payment rights the undersigned has on the above described Property once:

(1) the undersigned endorses a check in the above referenced Payment Amount payable to the undersigned; and

(2) the check is paid by the depository institution on which it is drawn.

This waiver and release applies to the final payment for the work, materials, equipment, or combination of work, materials, and equipment furnished by the undersigned to the Property or to the Undersigned's Customer.

The undersigned warrants that the undersigned either has already paid or will use the money the undersigned receives from the final payment promptly to pay in full all the undersigned's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or combination of work, materials, and equipment that are the subject of this waiver and release.

Dated: _____

_____ (Company Name)

By: _____

Its: _____"

(d) A restrictive endorsement placed on a check to effectuate a waiver and release described in this Subsection (4) meets the requirements of this section if it is in substantially

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the following form:

"This check is a progress/ final payment for property described on this check sufficient for identification. Endorsement of this check is an acknowledgment by the endorser that the waiver and release to which the payment applies is effective to the extent provided in Utah Code Ann. Subsection 38-1-39(4)(b) or (c) respectively."

(e) (i) If using a restrictive endorsement under Subsection (4)(d), the person preparing the check shall indicate whether the check is for a progress payment or a final payment by circling the word "progress" if the check is for a progress payment, or the word "final" if the check is for a final payment.

(ii) If a restrictive endorsement does not indicate whether the check is for a progress payment or a final payment, it is considered to be for a progress payment.

(5) (a) If the conditions of Subsection (5)(b) are met, this section does not affect the enforcement of:

(i) an accord and satisfaction regarding a bona fide dispute; or

(ii) an agreement made in settlement of an action pending in any court or arbitration.

(b) Pursuant to Subsection (5)(a), this section does not affect enforcement of an accord and satisfaction or settlement described in Subsection (5)(a) if the accord and satisfaction or settlement:

(i) is in a writing signed by the lien claimant; and

(ii) specifically references the lien rights waived or impaired.

Section 45. Section **41-12a-803** is amended to read:

41-12a-803. Program creation -- Administration -- Selection of designated agent -- Duties -- Rulemaking -- Audits.

(1) There is created the Uninsured Motorist Identification Database Program to:

(a) establish an Uninsured Motorist Identification Database to verify compliance with motor vehicle owner's or operator's security requirements under Section 41-12a-301 and other provisions under this part;

(b) assist in reducing the number of uninsured motor vehicles on the highways of the state;

(c) assist in increasing compliance with motor vehicle registration and sales and use tax laws;

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(d) assist in protecting a financial institution's bona fide security interest in a motor vehicle; and

(e) assist in the identification and prevention of identity theft and other crimes.

(2) The program shall be administered by the department with the assistance of the designated agent and the Motor Vehicle Division.

(3) (a) The department shall contract in accordance with Title 63G, Chapter [6] 6a, Utah Procurement Code, with a third party to establish and maintain an Uninsured Motorist Identification Database for the purposes established under this part.

(b) The contract may not obligate the department to pay the third party more money than is available in the account.

(4) (a) The third party under contract under this section is the department's designated agent, and shall develop and maintain a computer database from the information provided by:

(i) insurers under Section 31A-22-315;

(ii) the division under Subsection (6); and

(iii) the Motor Vehicle Division under Section 41-1a-120.

(b) (i) The database shall be developed and maintained in accordance with guidelines established by the department so that state and local law enforcement agencies and financial institutions as defined in Section 7-1-103 can efficiently access the records of the database, including reports useful for the implementation of the provisions of this part.

(ii) (A) The reports shall be in a form and contain information approved by the department.

(B) The reports may be made available through the Internet or through other electronic medium, if the department determines that sufficient security is provided to ensure compliance with Section 41-12a-805 regarding limitations on disclosure of information in the database.

(5) With information provided by the department and the Motor Vehicle Division, the designated agent shall, at least monthly for submissions under Subsection 31A-22-315(2)(b) or at least twice a month for submissions under Subsection 31A-22-315(2)(a):

(a) update the database with the motor vehicle insurance information provided by the insurers in accordance with Section 31A-22-315; and

(b) compare all current motor vehicle registrations against the database.

(6) The division shall provide the designated agent with the name, date of birth,

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address, and driver license number of all persons on the driver license database.

(7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules and develop procedures in cooperation with the Motor Vehicle Division to use the database for the purpose of administering and enforcing this part.

(8) (a) The designated agent shall archive computer data files at least semi-annually for auditing purposes.

(b) The internal audit unit of the tax commission provided under Section 59-1-206 shall audit the program at least every three years.

(c) The audit under Subsection (8)(b) shall include verification of:

(i) billings made by the designated agent; and

(ii) the accuracy of the designated agent's matching of vehicle registration with insurance data.

Section 46. Section **53-2-404** is amended to read:

53-2-404. State costs for emergency disaster services.

(1) Subject to this section and Section 53-2-403, the division shall expend or commit to expend money described in Subsection 53-2-403(1)(d)(i) to fund costs to the state of emergency disaster services.

(2) Money paid by the division under this section to government entities and private persons providing emergency disaster services are subject to Title 63G, Chapter [6] 6a, Utah Procurement Code.

Section 47. Section **53A-1-706** is amended to read:

53A-1-706. Purchases of educational technology.

(1) (a) A school district or college of education shall comply with Title 63G, Chapter [6] 6a, Utah Procurement Code, in purchasing technology, except as otherwise provided in Subsection (1)(b).

(b) A school district may purchase computers from, and contract for the repair or refurbishing of computers with, the Utah Correctional Industries without going through the bidding or competition procedures outlined in Title 63G, Chapter [~~6, Part 4, Source Selections and Contract Formation~~] 6a, Utah Procurement Code.

(2) A school district or college of education may purchase technology through cooperative purchasing contracts administered by the state Division of Purchasing or through

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its own established purchasing program.

Section 48. Section **53A-1a-511** is amended to read:

53A-1a-511. Waivers from state board rules -- Application of statutes and rules to charter schools.

(1) A charter school shall operate in accordance with its charter and is subject to Title 53A, State System of Public Education, and other state laws applicable to public schools, except as otherwise provided in this part.

(2) (a) A charter school or any other public school or school district may apply to the State Board of Education for a waiver of any state board rule that inhibits or hinders the school or the school district from accomplishing its mission or educational goals set out in its strategic plan or charter.

(b) The state board may grant the waiver, unless:

(i) the waiver would cause the school district or the school to be in violation of state or federal law; or

(ii) the waiver would threaten the health, safety, or welfare of students in the district or at the school.

(c) If the State Board of Education denies the waiver, the reason for the denial shall be provided in writing to the waiver applicant.

(3) (a) Except as provided in Subsection (3)(b), State Board of Education rules governing the following do not apply to a charter school:

(i) school libraries;

(ii) required school administrative and supervisory services; and

(iii) required expenditures for instructional supplies.

(b) A charter school shall comply with rules implementing statutes that prescribe how state appropriations may be spent.

(4) The following provisions of Title 53A, State System of Public Education, and rules adopted under those provisions, do not apply to a charter school:

(a) Sections 53A-1a-108 and 53A-1a-108.5, requiring the establishment of a school community council and school improvement plan;

(b) Sections 53A-3-413 and 53A-3-414, pertaining to the use of school buildings as civic centers;

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- (c) Section 53A-3-420, requiring the use of activity disclosure statements;
 - (d) Section 53A-12-207, requiring notification of intent to dispose of textbooks;
 - (e) Section 53A-13-107, requiring annual presentations on adoption;
 - (f) Chapter 19, Part 1, Fiscal Procedures, pertaining to fiscal procedures of school districts and local school boards; and
 - (g) Section 53A-14-107, requiring an independent evaluation of instructional materials.
- (5) For the purposes of Title 63G, Chapter [6] 6a, Utah Procurement Code, a charter school shall be considered a local public procurement unit.

(6) Each charter school shall be subject to:

- (a) Title 52, Chapter 4, Open and Public Meetings Act; and
- (b) Title 63G, Chapter 2, Government Records Access and Management Act.

(7) (a) The State Charter School Board shall, in concert with the charter schools, study existing state law and administrative rules for the purpose of determining from which laws and rules charter schools should be exempt.

(b) (i) The State Charter School Board shall present recommendations for exemption to the State Board of Education for consideration.

(ii) The State Board of Education shall consider the recommendations of the State Charter School Board and respond within 60 days.

Section 49. Section **53A-20-101** is amended to read:

53A-20-101. Construction and alteration of schools and plants -- Advertising for bids -- Payment and performance bonds -- Contracts -- Bidding limitations on local school boards -- Interest of local school board members.

(1) As used in this section, the word "sealed" does not preclude acceptance of electronically sealed and submitted bids or proposals in addition to bids or proposals manually sealed and submitted.

(2) (a) Prior to the construction of any school or the alteration of any existing school plant, if the total estimated accumulative building project cost exceeds \$80,000, a local school board shall advertise for bids on the project at least 10 days before the bid due date.

(b) The board shall have the advertisement published in a newspaper having general circulation throughout the state and in appropriate construction trade publications that offer free listings.

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(c) A similar advertisement is required in a newspaper published or having general circulation in any city or county that would be affected by the proposed project.

(d) The advertisement shall:

(i) require sealed proposals for the building project in accordance with plans and specifications furnished by the local school board;

(ii) state where and when the proposals will be opened and shall reserve the right of the board to reject any and all proposals; and

(iii) require a certified check or bid bond of not less than 5% of the bid to accompany the bid.

(3) (a) The board shall meet at the time and place specified in the advertisement and publicly open and read all received proposals.

(b) If satisfactory bids are received, the board shall award the contract to the lowest responsible bidder.

(c) If none of the proposals are satisfactory, all shall be rejected.

(d) The board shall again advertise in the manner provided in this section.

(e) If, after advertising a second time no satisfactory bid is received, the board may proceed under its own direction with the required project.

(4) (a) The check or bond required under Subsection (2)(d) shall be drawn in favor of the local school board.

(b) If the successful bidder fails or refuses to enter into the contract and furnish the additional bonds required under this section, then the bidder's check or bond is forfeited to the district.

(5) A local school board shall require payment and performance bonds of the successful bidder as required in Section [~~63G-6-505~~] 63G-6a-1103.

(6) (a) A local school board may require in the proposed contract that at least 10% of the contract price be withheld until the project is completed and accepted by the board.

(b) If money is withheld, the board shall place it in an interest bearing account, and the interest accrues for the benefit of the contractor and subcontractors.

(c) This money shall be paid upon completion of the project and acceptance by the board.

(7) (a) A local school board may not bid on projects within the district if the total

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accumulative estimated cost exceeds \$80,000.

(b) The board may use its resources if no satisfactory bids are received under this section.

(8) If the local school board determines in accordance with Section [~~63G-6-501~~] 63G-6a-1302 to use a construction manager/general contractor as its method of construction contracting management on projects where the total estimated accumulative cost exceeds \$80,000, it shall select the construction manager/general contractor [~~using one of the source selection methods provided for in Sections 63G-6-401 through 63G-6-501~~] in accordance with the requirements of Title 63G, Chapter 6a, Utah Procurement Code.

(9) A local school board member may not have a direct or indirect financial interest in the construction project contract.

Section 50. Section **53A-25b-105** is amended to read:

53A-25b-105. Applicability of statutes to the Utah Schools for the Deaf and the Blind.

(1) The Utah Schools for the Deaf and the Blind is subject to Title 53A, State System of Public Education, and other state laws applicable to public schools, except as otherwise provided by this chapter.

(2) The following provisions of Title 53A, State System of Public Education, do not apply to the Utah Schools for the Deaf and the Blind:

(a) provisions governing the budgets, funding, or finances of school districts or charter schools; and

(b) provisions governing school construction.

(3) Except as provided in this chapter, the Utah Schools for the Deaf and the Blind is subject to state laws governing state agencies, including:

(a) Title 51, Chapter 5, Funds Consolidation Act;

(b) Title 51, Chapter 7, State Money Management Act;

(c) Title 52, Chapter 4, Open and Public Meetings Act;

(d) Title 63A, Utah Administrative Services Code;

(e) Title 63G, Chapter 2, Government Records Access and Management Act;

(f) Title 63G, Chapter 4, Administrative Procedures Act;

(g) Title 63G, Chapter [~~6~~] 6a, Utah Procurement Code;

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- (h) Title 63J, Chapter 1, Budgetary Procedures Act;
- (i) Title 63J, Chapter 2, Revenue Procedures and Control Act; and
- (j) Title 67, Chapter 19, Utah State Personnel Management Act.

Section 51. Section **53C-1-201 (Effective 07/01/12)** is amended to read:

53C-1-201 (Effective 07/01/12). Creation of administration -- Purpose -- Director.

(1) (a) There is established within state government the School and Institutional Trust Lands Administration.

(b) The administration shall manage all school and institutional trust lands and assets within the state, except as otherwise provided in Title 53C, Chapter 3, Deposit and Allocation of Revenue from Trust Lands, and Sections 51-7a-201 and 51-7a-202.

(2) The administration is an independent state agency and not a division of any other department.

(3) (a) It is subject to the usual legislative and executive department controls except as provided in this Subsection (3).

(b) (i) The director may make rules as approved by the board that allow the administration to classify a business proposal submitted to the administration as protected under Section 63G-2-305, for as long as is necessary to evaluate the proposal.

(ii) The administration shall return the proposal to the party who submitted the proposal, and incur no further duties under Title 63G, Chapter 2, Government Records Access and Management Act, if the administration determines not to proceed with the proposal.

(iii) The administration shall classify the proposal pursuant to law if it decides to proceed with the proposal.

(iv) Section 63G-2-403 does not apply during the review period.

(c) The director shall make rules in compliance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, except that the administration is not subject to Subsections 63G-3-301(6) and (7) and Section 63G-3-601, and the director, with the board's approval, may establish a procedure for the expedited approval of rules, based on written findings by the director showing:

- (i) the changes in business opportunities affecting the assets of the trust;
- (ii) the specific business opportunity arising out of those changes which may be lost without the rule or changes to the rule;

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(iii) the reasons the normal procedures under Section 63G-3-301 cannot be met without causing the loss of the specific opportunity;

(iv) approval by at least five board members; and

(v) that the director has filed a copy of the rule and a rule analysis, stating the specific reasons and justifications for its findings, with the Division of Administrative Rules and notified interested parties as provided in Subsection 63G-3-301(10).

(d) (i) The administration shall comply with Title 67, Chapter 19, Utah State Personnel Management Act, except as provided in this Subsection (3)(d).

(ii) The board may approve, upon recommendation of the director, that exemption for specific positions under Subsections 67-19-12(2) and 67-19-15(1) is required in order to enable the administration to efficiently fulfill its responsibilities under the law. The director shall consult with the executive director of the Department of Human Resource Management prior to making such a recommendation.

(iii) The positions of director, deputy director, associate director, assistant director, legal counsel appointed under Section 53C-1-305, administrative assistant, and public affairs officer are exempt under Subsections 67-19-12(2) and 67-19-15(1).

(iv) Salaries for exempted positions, except for the director, shall be set by the director, after consultation with the executive director of the Department of Human Resource Management, within ranges approved by the board. The board and director shall consider salaries for similar positions in private enterprise and other public employment when setting salary ranges.

(v) The board may create an annual incentive and bonus plan for the director and other administration employees designated by the board, based upon the attainment of financial performance goals and other measurable criteria defined and budgeted in advance by the board.

(e) The administration shall comply with Title 63G, Chapter [6] 6a, Utah Procurement Code, except where the board approves, upon recommendation of the director, exemption from the Utah Procurement Code, and simultaneous adoption of rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for procurement, which enable the administration to efficiently fulfill its responsibilities under the law.

(f) (i) Except as provided in Subsection (3)(f)(ii), the administration is not subject to the fee agency requirements of Section 63J-1-504.

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(ii) The following fees of the administration are subject to the requirements of Section 63J-1-504: application, assignment, amendment, affidavit for lost documents, name change, reinstatement, grazing nonuse, extension of time, partial conveyance, patent reissue, collateral assignment, electronic payment, and processing.

(4) The administration is managed by a director of school and institutional trust lands appointed by a majority vote of the board of trustees with the consent of the governor.

(5) (a) The board of trustees shall provide policies for the management of the administration and for the management of trust lands and assets.

(b) The board shall provide policies for the ownership and control of Native American remains that are discovered or excavated on school and institutional trust lands in consultation with the Division of Indian Affairs and giving due consideration to Title 9, Chapter 9, Part 4, Native American Grave Protection and Repatriation Act. The director may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement policies provided by the board regarding Native American remains.

(6) In connection with joint ventures and other transactions involving trust lands and minerals approved under Sections 53C-1-303 and 53C-2-401, the administration, with board approval, may become a member of a limited liability company under Title 48, Chapter 3, Utah Revised Uniform Limited Liability Company Act, and is considered a person under Section 48-3-102.

Section 52. Section **54-3-29** is amended to read:

54-3-29. Removal, relocation, or alteration of utility facility in public highway construction or reconstruction -- Notice -- Cooperation.

(1) As used in this section:

(a) "Design-build" means a design-build transportation project for which a design-build transportation project contract is issued, within the meaning of Section [~~63G-6-502~~]

63G-6a-1402.

(b) "Municipality" is as defined in Section 10-1-104.

(c) "Political subdivision" means a:

(i) county; or

(ii) municipality.

(d) "Public agency" means an entity of state government or a political subdivision.

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(e) "Public highway" means a highway, street, road, or alley constructed for public use in the state.

(f) "Utility company" means a privately, cooperatively, or publicly owned utility, including a utility owned by a political subdivision, that provides service using a utility facility.

(g) "Utility facility" means:

(i) a telecommunications, gas, electricity, cable television, water, sewer, or data facility;

(ii) a video transmission line;

(iii) a drainage and irrigation system; or

(iv) a facility similar to those listed in Subsections (1)(g)(i) through (iii) located in, on, along, across, over, through, or under any public highway.

(2) If a public agency engages in or proposes to engage in a construction or reconstruction project on a public highway that may require the removal, relocation, or alteration of a utility facility, the public agency shall:

(a) contact an association, established under Title 54, Chapter 8a, Damage to Underground Utility Facilities, to identify each utility company that may have a utility facility in the area of the construction or reconstruction project;

(b) identify a utility company that has an above-ground utility facility in the area of the proposed construction or reconstruction project; and

(c) electronically notify each utility company identified in accordance with Subsections (2)(a) and (b).

(3) The notice required by Subsection (2)(c) shall:

(a) be made as early as practicable and at least 30 days:

(i) before the preliminary design or project development meeting;

(ii) before issuance of a request for proposal for a design-build project; or

(iii) after a change in scope of a design-build project;

(b) include:

(i) information concerning the proposed project design;

(ii) the proposed date of a required removal, relocation, or alteration of a utility facility;

(iii) the federal identifying project number, if applicable; and

(c) advise the utility company if the proposed project may qualify for aid for the utility

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company's expense in removing, relocating, or altering a utility facility.

(4) A public agency shall permit a utility company notified under Subsection (2) to participate in the preliminary design or project development meeting, or similar meeting at which the project design is addressed.

(5) (a) A public agency shall, not less than 30 days after providing notice under Subsection (2) to each utility company, provide the utility company an opportunity to meet with the public agency to allow the utility company to:

(i) review project plans;

(ii) understand the objectives and funding sources for the proposed project;

(iii) provide and discuss recommendations to the public agency that may reasonably eliminate or minimize utility removal, relocation, or alteration costs, limit the disruption of utility company services, or eliminate or reduce the need for present or future utility facility removal, relocation, or alteration; and

(iv) provide reasonable schedules to enable coordination of the construction project and removal, relocation, or alteration of a utility facility.

(b) If a public agency provides a utility company with reasonable opportunities to meet in accordance with Subsection (5)(a), the utility company's failure to meet does not affect the public agency's ability to proceed with the project.

(6) While recognizing the essential goals and objectives of the public highway agency in proceeding with and completing a project, the parties shall use their best efforts to find ways to:

(a) eliminate the cost to the utility of relocation of the utility facilities; or

(b) if elimination of the costs is not feasible, minimize the relocation costs to the extent reasonably possible.

(7) A utility company notified under Subsection (2) shall coordinate with the public agency concerning the utility facility removal, relocation, or alteration, including the scheduling of the utility facility removal, relocation, or alteration.

(8) A public agency and a utility company may address the removal, relocation, or alteration of a utility facility in relation to a construction or reconstruction project on a public highway in a franchise agreement in lieu of this section, if the public agency is otherwise permitted to enter into the franchise agreement.

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(9) This chapter does not affect a public agency's authority over a public right-of-way, including any rule, ordinance, order to relocate a utility as provided in Section 72-6-116, or other valid provision governing the use of the public right-of-way.

Section 53. Section **54-8b-10** is amended to read:

54-8b-10. Imposing a surcharge to provide hearing and speech impaired persons with telecommunication devices -- Definitions -- Procedures for establishing program -- Surcharge -- Administration and disposition of surcharge money.

(1) As used in this section:

(a) "Certified deaf or severely hearing or speech impaired person" means any state resident who:

(i) is so certified by:

(A) a licensed physician;

(B) an otolaryngologist;

(C) a speech language pathologist;

(D) an audiologist; or

(E) a qualified state agency; and

(ii) qualifies for assistance under any low income public assistance program administered by a state agency.

(b) "Certified interpreter" means a person who is a certified interpreter under Title 53A, Chapter 26a, Interpreter Services for the Hearing Impaired Act.

(c) (i) "Telecommunication device" means any mechanical adaptation device that enables a deaf or severely hearing or speech impaired person to use the telephone.

(ii) "Telecommunication device" includes:

(A) telecommunication devices for the deaf (TDD);

(B) telephone amplifiers;

(C) telephone signal devices;

(D) artificial larynxes; and

(E) adaptive equipment for TDD keyboard access.

(2) The commission shall hold hearings to establish a program whereby a certified deaf or severely hearing or speech impaired customer of a telecommunications corporation that provides service through a local exchange or of a wireless telecommunications provider may

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obtain a telecommunication device capable of serving the customer at no charge to the customer beyond the rate for basic service.

(3) (a) The program described in Subsection (2) shall provide a dual party relay system using third party intervention to connect a certified deaf or severely hearing or speech impaired person with a normal hearing person by way of telecommunication devices designed for that purpose.

(b) The commission may, by rule, establish the type of telecommunications device to be provided to ensure functional equivalence.

(4) (a) The commission shall impose a surcharge on each residential and business access line of each customer of local-exchange telephone service in this state, and each residential and business telephone number of each customer of mobile telephone service in this state, not including a telephone number used exclusively to transfer data to and from a mobile device, which shall be collected by the telecommunications corporation providing public telecommunications service to the customer, to cover the costs of:

(i) the program described in Subsection (2); and

(ii) payments made under Subsection (5).

(b) The commission shall establish by rule the amount to be charged under this section, provided that:

(i) the surcharge does not exceed 20 cents per month for each residential and business access line for local-exchange telephone service, and for each residential and business telephone number for mobile telephone service, not including a telephone number used exclusively to transfer data to and from a mobile device; and

(ii) if the surcharge is related to a mobile telecommunications service, the surcharge may be imposed, billed, and collected only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

(c) The telecommunications corporation shall collect the surcharge from its customers and transfer the money collected to the commission under rules adopted by the commission.

(d) The surcharge shall be separately identified on each bill to a customer.

(5) (a) Money collected from the surcharge imposed under Subsection (4) shall be deposited in the state treasury as dedicated credits to be administered as determined by the commission.

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(b) These dedicated credits may be used only:

(i) for the purchase, maintenance, repair, and distribution of telecommunication devices;

(ii) for the acquisition, operation, maintenance, and repair of a dual party relay system;

(iii) to reimburse telephone corporations for the expenses incurred in collecting and transferring to the commission the surcharge imposed by the commission;

(iv) for the general administration of the program;

(v) to train persons in the use of telecommunications devices; and

(vi) by the commission to contract, in compliance with Title 63G, Chapter [6] 6a, Utah Procurement Code, with:

(A) an institution within the state system of higher education listed in Section 53B-1-102 for a program approved by the Board of Regents that trains persons to qualify as certified interpreters; or

(B) the Division of Services to the Deaf and Hard of Hearing for a program that trains persons to qualify as certified interpreters.

(c) (i) The commission shall make rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the administration of money under Subsection (5)(b)(vi).

(ii) In the initial rulemaking to determine the administration of money under Subsection (5)(b)(vi), the commission shall give notice and hold a public hearing.

(d) Money received by the commission under Subsection (4) is nonlapsing.

(6) (a) The telephone surcharge need not be collected by a telecommunications corporation if the amount collected would be less than the actual administrative costs of the collection.

(b) If Subsection (6)(a) applies, the telecommunications corporation shall submit to the commission, in lieu of the revenue from the surcharge collection, a breakdown of the anticipated costs and the expected revenue from the collection, showing that the costs exceed the revenue.

(7) The commission shall solicit the advice, counsel, and physical assistance of severely hearing or speech impaired persons and the organizations serving them in the design and implementation of the program.

Section 54. Section **62A-1-108.5** is amended to read:

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62A-1-108.5. Mental illness and intellectual disability examinations --

Responsibilities of the department.

(1) In accomplishing its duties to conduct mental illness and intellectual disability examinations under Title 77, Utah Code of Criminal Procedure, the department shall proceed as outlined in this section and within appropriations authorized by the Legislature. The executive director may delegate the executive director's responsibilities under this section to one or more divisions within the department.

(2) When the department is ordered by the court to conduct a mental illness or intellectual disability examination, the executive director shall:

(a) direct that the examination be performed at the Utah State Hospital; or

(b) designate at least one examiner, selected under Subsection (3), to examine the defendant in the defendant's current custody or status.

(3) The department shall establish criteria, in consultation with the Commission on Criminal and Juvenile Justice, and shall contract with persons or organizations to conduct mental illness and intellectual disability examinations under Subsection (2)(b). In making this selection, the department shall follow the provisions of Title 63G, Chapter [6] 6a, Utah Procurement Code.

(4) Nothing in this section prohibits the executive director, at the request of defense counsel or a prosecuting attorney in a criminal proceeding under Title 77, Utah Code of Criminal Procedure, and for good cause shown, from proposing a person who has not been previously selected under Subsection (3) to contract with the department to conduct the examination. In selecting that person, the criteria of the department established under Subsection (3) and the provisions of Title 63G, Chapter [6] 6a, Utah Procurement Code, shall be met.

Section 55. Section **62A-3-104** is amended to read:

62A-3-104. Authority of division.

(1) The division is the sole state agency, as defined by the Older Americans Act of 1965, 42 U.S.C. 3001 et seq., to:

(a) serve as an effective and visible advocate for the aging and adult population of this state;

(b) develop and administer a state plan under the policy direction of the board; and

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(c) take primary responsibility for state activities relating to provisions of the Older Americans Act of 1965, as amended.

(2) (a) The division has authority to designate:

(i) planning and service areas for the state; and

(ii) an area agency on aging within each planning and service area to design and implement a comprehensive and coordinated system of services and programs for the aged within appropriations from the Legislature.

(b) Designation as an area agency on aging may be withdrawn:

(i) upon request of the area agency on aging; or

(ii) upon noncompliance with the provisions of the:

(A) Older Americans Act of 1965, 42 U.S.C. 3001 et seq.;

(B) federal regulations enacted under the Older Americans Act of 1965, 42 U.S.C. 3001 et seq.;

(C) provisions of this chapter; or

(D) rules, policies, or procedures established by the division.

(3) (a) The division has the authority to designate:

(i) planning and service areas for the state; and

(ii) subject to Subsection (3)(b), an area agency on high risk adults within each planning and service area to design and implement a comprehensive and coordinated system of case management and programs for high risk adults within appropriations from the Legislature.

(b) For purposes of Subsection (3)(a)(ii), before October 1, 1998, the division shall designate as the area agency on high risk adults in a planning and service area:

(i) the area agency on aging that operates within the same geographic area if that agency requests, before July 1, 1998, to expand that agency's current contract with the division to include the responsibility of:

(A) being the area agency on high risk adults; or

(B) operating the area agency on high risk adults:

(I) through joint cooperation with one or more existing area agencies on aging; and

(II) without reducing geographical coverage in any service area; or

(ii) a public or private nonprofit agency or office if the area agency on aging that operates within the same geographic area has not made a request in accordance with Subsection

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(3)(b)(i).

(c) (i) Area agencies on high risk adults shall be in operation before July 1, 1999.

(ii) The division's efforts to establish area agencies on high risk adults shall start with counties with a population of more than 150,000 people.

(d) Designation as an area agency on high risk adults may be withdrawn:

(i) upon request by the area agency; or

(ii) upon noncompliance with:

(A) state law;

(B) federal law; or

(C) rules, policies, or procedures established by the division.

(4) (a) The division may, by following the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures:

(i) seek federal grants, loans, or participation in federal programs; and

(ii) receive and distribute state and federal funds for the division's programs and services to the aging and adult populations of the state.

(b) The division may not disburse public funds to a personal care attendant as payment for personal services rendered to an aged person or high risk adult, except as provided in Section 62A-3-104.3.

(5) The division has authority to establish, either directly or by contract, programs of advocacy, monitoring, evaluation, technical assistance, and public education to enhance the quality of life for aging and adult citizens of the state.

(6) In accordance with the rules of the division and Title 63G, Chapter [6] 6a, Utah Procurement Code, the division may contract with:

(a) the governing body of an area agency to provide a comprehensive program of services; or

(b) public and private entities for special services.

(7) The division has authority to provide for collection, compilation, and dissemination of information, statistics, and reports relating to issues facing aging and adult citizens.

(8) The division has authority to prepare and submit reports regarding the operation and administration of the division to the department, the Legislature, and the governor, as requested.

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(9) The division shall:

(a) implement and enforce policies established by the board governing all aspects of the division's programs for aging and adult persons in the state;

(b) in order to ensure compliance with all applicable state and federal statutes, policies, and procedures, monitor and evaluate programs provided by or under contract with:

(i) the division;

(ii) area agencies; and

(iii) an entity that receives funds from an area agency;

(c) examine expenditures of public funds;

(d) withhold funds from programs based on contract noncompliance;

(e) review and approve plans of area agencies in order to ensure:

(i) compliance with division policies; and

(ii) a statewide comprehensive program;

(f) in order to further programs for aging and adult persons and prevent duplication of services, promote and establish cooperative relationships with:

(i) state and federal agencies;

(ii) social and health agencies;

(iii) education and research organizations; and

(iv) other related groups;

(g) advocate for the aging and adult populations;

(h) promote and conduct research on the problems and needs of aging and adult persons;

(i) submit recommendations for changes in policies, programs, and funding to the:

(i) governor; and

(ii) Legislature; and

(j) (i) accept contributions to and administer the funds contained in the "Out and About" Homebound Transportation Assistance Fund created in Section 62A-3-110; and

(ii) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to facilitate the administration of the "Out and About" Homebound Transportation Assistance Fund in accordance with Section 62A-3-110.

Section 56. Section **62A-3-104.1** is amended to read:

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62A-3-104.1. Powers and duties of area agencies.

(1) An area agency that provides services to an aged person, or a high risk adult shall within the area agency's respective jurisdiction:

(a) advocate by monitoring, evaluating, and providing input on all policies, programs, hearings, and levies that affect a person described in this Subsection (1);

(b) design and implement a comprehensive and coordinated system of services within a designated planning and service area;

(c) conduct periodic reviews and evaluations of needs and services;

(d) prepare and submit to the division plans for funding and service delivery for services within the designated planning and service area;

(e) establish, either directly or by contract, programs licensed under Chapter 2, Licensure of Programs and Facilities;

(f) (i) appoint an area director;

(ii) prescribe the area director's duties; and

(iii) provide adequate and qualified staff to carry out the area plan described in Subsection (1)(d);

(g) establish rules not contrary to policies of the board and rules of the division, regulating local services and facilities;

(h) operate other services and programs funded by sources other than those administered by the division;

(i) establish mechanisms to provide direct citizen input, including an area agency advisory council with a majority of members who are eligible for services from the area agency;

(j) establish fee schedules; and

(k) comply with the requirements and procedures of:

(i) Title 11, Chapter 13, Interlocal Cooperation Act; and

(ii) Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act.

(2) Before disbursing any public funds, an area agency shall require that all entities receiving any public funds agree in writing that:

(a) the division may examine the entity's program and financial records; and

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(b) the auditor of the local area agency may examine and audit the entity's program and financial records, if requested by the local area agency.

(3) An area agency on aging may not disburse public funds to a personal care attendant as payment for personal services rendered to an aged person or high risk adult, except as provided in Section 62A-3-104.3.

(4) (a) For the purpose of providing services pursuant to this part, a local area agency may receive:

(i) property;

(ii) grants;

(iii) gifts;

(iv) supplies;

(v) materials;

(vi) any benefit derived from the items described in Subsections (4)(a)(i) through (v);

and

(vii) contributions.

(b) If a gift is conditioned upon the gift's use for a specified service or program, the gift shall be used for the specific service or program.

(5) (a) Area agencies shall award all public funds in compliance with:

(i) the requirements of Title 63G, Chapter [6] 6a, Utah Procurement Code; or

(ii) a county procurement ordinance that requires procurement procedures similar to those described in Subsection (5)(a)(i).

(b) (i) If all initial bids on a project are rejected, the area agency shall publish a new invitation to bid.

(ii) If no satisfactory bid is received by the area agency described in Subsection (5)(b)(i), when the bids received from the second invitation are opened the area agency may execute a contract without requiring competitive bidding.

(c) (i) An area agency need not comply with the procurement provisions of this section when it disburses public funds to another governmental entity.

(ii) For purposes of this Subsection (5)(c), "governmental entity" means any political subdivision or institution of higher education of the state.

(d) (i) Contracts awarded by an area agency shall be for a:

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(A) fixed amount; and

(B) limited period.

(ii) The contracts described in Subsection (5)(d)(i) may be modified due to changes in available funding for the same contract purpose without competition.

(6) Local area agencies shall comply with:

(a) applicable state and federal:

(i) statutes;

(ii) policies; and

(iii) audit requirements; and

(b) directives resulting from an audit described in Subsection (6)(a)(iii).

Section 57. Section **62A-14-109** is amended to read:

62A-14-109. Contract for services.

(1) In accordance with Title 63G, Chapter [6] 6a, Utah Procurement Code, the office may contract with one or more providers to perform guardian and conservator duties.

(2) The office shall review and monitor the services provided by a contract provider to a ward for whom the office has been appointed guardian or conservator.

Section 58. Section **63A-5-205** is amended to read:

63A-5-205. Contracting powers of director -- Retainage -- Health insurance coverage.

(1) As used in this section:

(a) "Capital developments" has the same meaning as provided in Section 63A-5-104.

(b) "Capital improvements" has the same meaning as provided in Section 63A-5-104.

(c) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who:

(i) works at least 30 hours per calendar week; and

(ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following 90 days from the date of hire.

(d) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

(e) "Qualified health insurance coverage" is as defined in Section 26-40-115.

(f) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

(2) In accordance with Title 63G, Chapter [6] 6a, Utah Procurement Code, the director

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may:

(a) subject to Subsection (3), enter into contracts for any work or professional services which the division or the State Building Board may do or have done; and

(b) as a condition of any contract for architectural or engineering services, prohibit the architect or engineer from retaining a sales or agent engineer for the necessary design work.

(3) (a) Except as provided in Subsection (3)(b), this Subsection (3) applies to all design or construction contracts entered into by the division or the State Building Board on or after July 1, 2009, and:

(i) applies to a prime contractor if the prime contract is in the amount of \$1,500,000 or greater; and

(ii) applies to a subcontractor if the subcontract is in the amount of \$750,000 or greater.

(b) This Subsection (3) does not apply:

(i) if the application of this Subsection (3) jeopardizes the receipt of federal funds;

(ii) if the contract is a sole source contract;

(iii) if the contract is an emergency procurement; or

(iv) to a change order as defined in Section [~~63G-6-103~~] 63G-6a-103, or a modification to a contract, when the contract does not meet the threshold required by Subsection (3)(a).

(c) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection (3)(a) is guilty of an infraction.

(d) (i) A contractor subject to Subsection (3)(a) shall demonstrate to the director that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employees' dependents.

(ii) If a subcontractor of the contractor is subject to Subsection (3)(a), the contractor shall demonstrate to the director that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents.

(e) (i) (A) A contractor who fails to meet the requirements of Subsection (3)(d)(i) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the division under Subsection (3)(f).

(B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (3)(d)(ii).

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(ii) (A) A subcontractor who fails to meet the requirements of Subsection (3)(d)(ii) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the division under Subsection (3)(f).

(B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (3)(d)(i).

(f) The division shall adopt administrative rules:

(i) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(ii) in coordination with:

(A) the Department of Environmental Quality in accordance with Section 19-1-206;

(B) the Department of Natural Resources in accordance with Section 79-2-404;

(C) a public transit district in accordance with Section 17B-2a-818.5;

(D) the State Capitol Preservation Board in accordance with Section 63C-9-403;

(E) the Department of Transportation in accordance with Section 72-6-107.5; and

(F) the Legislature's Administrative Rules Review Committee; and

(iii) which establish:

(A) the requirements and procedures a contractor must follow to demonstrate to the director compliance with this Subsection (3) which shall include:

(I) that a contractor will not have to demonstrate compliance with Subsection (3)(d)(i) or (ii) more than twice in any 12-month period; and

(II) that the actuarially equivalent determination required for the qualified health insurance coverage in Subsection (1) is met by the contractor if the contractor provides the department or division with a written statement of actuarial equivalency from either:

(Aa) the Utah Insurance Department;

(Bb) an actuary selected by the contractor or the contractor's insurer; or

(Cc) an underwriter who is responsible for developing the employer group's premium rates;

(B) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this Subsection (3), which may include:

(I) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation;

(II) a six-month suspension of the contractor or subcontractor from entering into future

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contracts with the state upon the second violation;

(III) an action for debarment of the contractor or subcontractor in accordance with Section [~~63G-6-804~~] 63G-6a-904 upon the third or subsequent violation; and

(IV) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for an employee and the dependents of an employee of the contractor or subcontractor who was not offered qualified health insurance coverage during the duration of the contract; and

(C) a website on which the department shall post the benchmark for the qualified health insurance coverage identified in Subsection (1)(e).

(g) (i) In addition to the penalties imposed under Subsection (3)(f)(iii), a contractor or subcontractor who intentionally violates the provisions of this section shall be liable to the employee for health care costs that would have been covered by qualified health insurance coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection (3)(g)(i) if:

(A) the employer relied in good faith on a written statement of actuarial equivalency provided by:

(I) an actuary; or

(II) an underwriter who is responsible for developing the employer group's premium rates; or

(B) the department determines that compliance with this section is not required under the provisions of Subsection (3)(b).

(iii) An employee has a private right of action only against the employee's employer to enforce the provisions of this Subsection (3)(g).

(h) Any penalties imposed and collected under this section shall be deposited into the Medicaid Restricted Account created by Section 26-18-402.

(i) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this section:

(i) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section [~~63G-6-801~~] 63G-6a-1603 or any other provision in Title 63G, Chapter [~~6, Part 8, Legal and Contractual Remedies~~] 6a, Utah Procurement Code; and

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(ii) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.

(4) The judgment of the director as to the responsibility and qualifications of a bidder is conclusive, except in case of fraud or bad faith.

(5) The division shall make all payments to the contractor for completed work in accordance with the contract and pay the interest specified in the contract on any payments that are late.

(6) If any payment on a contract with a private contractor to do work for the division or the State Building Board is retained or withheld, it shall be retained or withheld and released as provided in Section 13-8-5.

Section 59. Section **63A-5-208** is amended to read:

63A-5-208. Definitions -- Certain public construction bids to list subcontractors -- Changing subcontractors -- Bidders as subcontractors -- Dispute resolution process -- Penalties.

(1) As used in this section:

(a) "First-tier subcontractor" means a subcontractor who contracts directly with the prime contractor.

(b) "Subcontractor" means any person or entity under contract with a contractor or another subcontractor to provide services or labor for the construction, installation, or repair of an improvement to real property.

(c) "Subcontractor" includes a trade contractor or specialty contractor.

(d) "Subcontractor" does not include suppliers who provide only materials, equipment, or supplies to a contractor or subcontractor.

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

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

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

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Subsection (3).

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

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

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

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

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

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

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

(i) receiving permission from the director; and

(ii) establishing that:

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

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

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

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

(i) the bidder intends to perform the work of a subcontractor himself; or

(ii) the bidder intends to obtain a subcontractor to perform the work at a later date

because the bidder was unable to:

(A) obtain a bid from a qualified subcontractor; or

(B) obtain a bid from a qualified subcontractor at a cost that the bidder considers to be

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reasonable.

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

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

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

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

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

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

- (A) the bidder's efforts to obtain a bid of a qualified subcontractor at a reasonable cost; and
- (B) why the bidder was unable to obtain a qualified subcontractor bid.

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

(iii) The director may not adjust the amount of the contract awarded in order to reflect the actual amount of the subcontractor's bid.

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

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

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

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

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

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

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

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

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

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

(vii) requirements that decisions be issued in writing;

(viii) provisions for administrative appeals of the decision;

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

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

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

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

(xiii) the use of an independent hearing officer, panel, arbitration, or mediation; and

(xiv) the circumstances under which a subcontractor may file a claim directly with the division.

(d) Persons pursuing claims under the process required by this Subsection (6):

(i) are bound by the decision reached under this process unless the decision is properly appealed; and

(ii) may not pursue claims or disputes under the dispute resolution process established in Sections ~~[63G-6-805 through 63G-6-814]~~ 63G-6a-1602 through 63G-6a-1802.

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

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

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

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

Section 60. Section **63A-5-302** is amended to read:

63A-5-302. Leasing responsibilities of the director.

(1) The director shall:

(a) lease, in the name of the division, all real property space to be occupied by an agency;

(b) in leasing space, comply with:

(i) Title 63G, Chapter [6] 6a, Utah Procurement Code; and

(ii) any legislative mandates contained in the appropriations act or other specific legislation;

(c) apply the criteria contained in Subsection (1)(e) to prepare a report evaluating each high-cost lease at least 12 months before it expires;

(d) evaluate each lease under the division's control and apply the criteria contained in Subsection (1)(e), when appropriate, to evaluate those leases;

(e) in evaluating leases:

(i) determine whether or not the lease is cost-effective when the needs of the agency to be housed in the leased facilities are considered;

(ii) determine whether or not another option such as construction, use of other state-owned space, or a lease-purchase agreement is more cost-effective than leasing;

(iii) determine whether or not the significant lease terms are cost-effective and provide the state with sufficient flexibility and protection from liability;

(iv) compare the proposed lease payments to the current market rates, and evaluate whether or not the proposed lease payments are reasonable under current market conditions;

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(v) compare proposed significant lease terms to the current market, and recommend whether or not these proposed terms are reasonable under current market conditions; and

(vi) if applicable, recommend that the lease or modification to a lease be approved or disapproved;

(f) based upon the evaluation, include in the report recommendations that identify viable alternatives to:

(i) make the lease cost-effective; or

(ii) meet the agency's needs when the lease expires; and

(g) upon request, provide the information included in the report to:

(i) the agency benefitted by the lease; and

(ii) the Office of Legislative Fiscal Analyst.

(2) The director may:

(a) subject to legislative appropriation, enter into facility leases with terms of up to 10 years when the length of the lease's term is economically advantageous to the state; and

(b) with the approval of the State Building Board and subject to legislative appropriation, enter into facility leases with terms of more than 10 years when the length of the lease's term is economically advantageous to the state.

Section 61. Section **63B-2-102** is amended to read:

63B-2-102. Maximum amount -- Projects authorized.

(1) The total amount of bonds issued under this part may not exceed \$80,000,000.

(2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide funds to pay all or part of the cost of acquiring and constructing the projects listed in this Subsection (2).

(b) These costs may include the cost of acquiring land, interests in land, easements and rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or convenient to the facilities, interest estimated to accrue on these bonds during the period to be covered by construction of the projects plus a period of six months after the end of the construction period and all related engineering, architectural, and legal fees.

(c) For the division, proceeds shall be provided for the following:

SB0153S01 compared with SB0153

CAPITAL IMPROVEMENTS

1	Alterations, Repairs, and Improvements	\$8,413,900
TOTAL IMPROVEMENTS		\$8,413,900

CAPITAL FACILITIES CONSTRUCTION

PROJECT PRIORITY	PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATIONS AND MAINTENANCE COSTS
1	Corrections - Northern Utah Community Corrections Center Phase II	\$2,729,700	\$158,000
2	University of Utah Marriot Library Phase II	\$10,200,000	\$881,600
3	Ogden Courts Building Phase II	\$12,096,000	\$340,000
4	Utah National Guard - Southeast Utah Armory Phase II	\$397,800	\$70,500
5	Southern Utah University Library Phase II	\$7,004,400	\$427,000
6	Utah Valley Special Events Center Phase II	\$11,845,300	\$536,900
7	Salt Lake Community College - Land	\$1,300,000	\$0
8	Tax Commission Building	\$14,224,000	\$812,000
9	Dixie College Business Building	\$2,823,300	\$187,800
10	Salt Lake Community College South City 3rd Floor and Boiler	\$4,009,500	\$257,600
11	Public Education - Deaf and Blind Classrooms	\$3,456,100	\$124,800
TOTAL CONSTRUCTION		\$70,086,100	

SB0153S01 compared with SB0153

TOTAL IMPROVEMENTS AND \$78,500,000
CONSTRUCTION

(d) For purposes of this section, operations and maintenance costs:

(i) are estimates only;

(ii) may include any operations and maintenance costs already funded in existing agency budgets; and

(iii) are not commitments by this Legislature or future Legislatures to fund those operations and maintenance costs.

(3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not constitute a limitation on the amount that may be expended for any project.

(b) The board may revise these estimates and redistribute the amount estimated for a project among the projects authorized.

(c) The commission, by resolution and in consultation with the board, may delete one or more projects from this list if the inclusion of that project or those projects in the list could be construed to violate state law or federal law or regulation.

(4) (a) The division may enter into agreements related to these projects before the receipt of proceeds of bonds issued under this chapter.

(b) The division shall make those expenditures from unexpended and unencumbered building funds already appropriated to the Capital Projects Fund.

(c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds of bonds issued under this chapter.

(d) The commission may, by resolution, make any statement of intent relating to that reimbursement that is necessary or desirable to comply with federal tax law.

(5) (a) For those projects for which only partial funding is provided in Subsection (2), it is the intent of the Legislature that the balance necessary to complete the projects be addressed by future Legislatures, either through appropriations or through the issuance or sale of bonds.

(b) For those phased projects, the division may enter into contracts for amounts not to exceed the anticipated full project funding but may not allow work to be performed on those contracts in excess of the funding already authorized by the Legislature.

(c) Those contracts shall contain a provision for termination of the contract for the

SB0153S01 compared with SB0153

convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

(d) It is also the intent of the Legislature that this authorization to the division does not bind future Legislatures to fund projects initiated from this authorization.

Section 62. Section **63B-3-102** is amended to read:

63B-3-102. Maximum amount -- Projects authorized.

(1) The total amount of bonds issued under this part may not exceed \$64,600,000.

(2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide funds to pay all or part of the cost of acquiring and constructing the projects listed in this Subsection (2).

(b) These costs may include the cost of acquiring land, interests in land, easements and rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or convenient to the facilities, interest estimated to accrue on these bonds during the period to be covered by construction of the projects plus a period of six months after the end of the construction period and all related engineering, architectural, and legal fees.

(c) For the division, proceeds shall be provided for the following:

CAPITAL IMPROVEMENTS

1	Alterations, Repairs, and Improvements	\$5,000,000
TOTAL IMPROVEMENTS		\$5,000,000

CAPITAL AND ECONOMIC DEVELOPMENT

			ESTIMATED OPERATIONS AND MAINTENANCE COSTS
PRIORITY PROJECT	PROJECT DESCRIPTION	AMOUNT FUNDED	
1	University of Utah Marriott Library Phase III (Final)	\$13,811,500	\$881,600
2	Bridgerland Applied Technology Center Utah State University Space	\$2,400,000	\$0

SB0153S01 compared with SB0153

3	Weber State University - Heat Plant	\$2,332,100	\$9,600
4	Department of Human Services - Division of Youth Corrections renamed in 2003 to the Division of Juvenile Justice Services	\$4,180,000	\$400,000
5	Snow College - Administrative Services/Student Center	\$3,885,100	\$224,500
6	Ogden Weber Applied Technology Center - Metal Trades Building Design and Equipment Purchase	\$750,000	\$0
7	Department of Corrections B-Block Remodel	\$1,237,100	\$72,000
8	Utah State University - Old Main Phase III Design	\$550,000	\$0
9	Department of Corrections - 144 bed Uintah Expansion	\$6,700,000	\$168,800
10	Southern Utah University Administrative Services/Student Center	\$5,630,400	\$314,200
11	Anasazi Museum	\$760,200	\$8,500
12	Hill Air Force Base - Easements Purchase	\$9,500,000	\$0
13	Signetics Building Remodel	\$2,000,000	\$0
14	Antelope Island Visitors Center	\$750,000	\$30,000
15	State Fair Park - Master Study	\$150,000	\$0
16	Utah National Guard - Draper Land	\$380,800	\$0
17	Davis Applied Technology Center - Design	\$325,000	\$0

SB0153S01 compared with SB0153

18	Palisade State Park - Land and Park Development	\$800,000	\$0
19	Department of Human Services - Cedar City Land	\$80,000	\$0
20	Department of Human Services - Clearfield Land	\$163,400	\$0
21	Electronic technology, equipment, and hardware	\$2,500,000	\$0
TOTAL CAPITAL AND ECONOMIC DEVELOPMENT		\$58,885,600	
TOTAL IMPROVEMENTS AND CAPITAL AND ECONOMIC DEVELOPMENT		\$63,885,600	

(d) For purposes of this section, operations and maintenance costs:

(i) are estimates only;

(ii) may include any operations and maintenance costs already funded in existing agency budgets; and

(iii) are not commitments by this Legislature or future Legislatures to fund those operations and maintenance costs.

(3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not constitute a limitation on the amount that may be expended for any project.

(b) The board may revise these estimates and redistribute the amount estimated for a project among the projects authorized.

(c) The commission, by resolution and in consultation with the board, may delete one or more projects from this list if the inclusion of that project or those projects in the list could be construed to violate state law or federal law or regulation.

(4) (a) The division may enter into agreements related to these projects before the receipt of proceeds of bonds issued under this chapter.

(b) The division shall make those expenditures from unexpended and unencumbered building funds already appropriated to the Capital Projects Fund.

(c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds of bonds issued under this chapter.

SB0153S01 compared with SB0153

(d) The commission may, by resolution, make any statement of intent relating to that reimbursement that is necessary or desirable to comply with federal tax law.

(5) (a) For those projects for which only partial funding is provided in Subsection (2), it is the intent of the Legislature that the balance necessary to complete the projects be addressed by future Legislatures, either through appropriations or through the issuance or sale of bonds.

(b) For those phased projects, the division may enter into contracts for amounts not to exceed the anticipated full project funding but may not allow work to be performed on those contracts in excess of the funding already authorized by the Legislature.

(c) Those contracts shall contain a provision for termination of the contract for the convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

(d) It is also the intent of the Legislature that this authorization to the division does not bind future Legislatures to fund projects initiated from this authorization.

Section 63. Section **63B-4-102** is amended to read:

63B-4-102. Maximum amount -- Projects authorized.

(1) The total amount of bonds issued under this part may not exceed \$45,300,000.

(2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide funds to pay all or part of the cost of acquiring and constructing the projects listed in this Subsection (2).

(b) These costs may include the cost of acquiring land, interests in land, easements and rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or convenient to the facilities, interest estimated to accrue on these bonds during the period to be covered by construction of the projects plus a period of six months after the end of the construction period, and all related engineering, architectural, and legal fees.

(c) For the division, proceeds shall be provided for the following:

CAPITAL IMPROVEMENTS

Alterations, Repairs, and Improvements	\$7,200,000
TOTAL IMPROVEMENTS	\$7,200,000

SB0153S01 compared with SB0153

CAPITAL AND ECONOMIC DEVELOPMENT

PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATIONS AND MAINTENANCE COSTS
Corrections - Uinta IVA	\$11,300,000	\$212,800
Utah County Youth Correctional Facility	\$6,650,000	\$245,000
Ogden Weber Applied Technology Center - Metal Trades	\$5,161,000	\$176,000
Project Reserve Fund	\$3,500,000	None
Weber State University - Browning Center Remodel	\$3,300,000	None
Heber Wells Building Remodel	\$2,000,000	None
Higher Education Davis County - Land Purchase	\$1,600,000	None
National Guard -- Provo Armory	\$1,500,000	\$128,000
Department of Natural Resources - Pioneer Trails Visitor Center	\$900,000	\$65,000
Higher Education Design Projects	\$800,000	Varies depending upon projects selected
Salt Lake Community College - South Valley Planning	\$300,000	None
Division of Youth Corrections renamed in 2003 to the Division of Juvenile Justice Services - Logan Land Purchase	\$120,000	None
TOTAL CAPITAL AND ECONOMIC DEVELOPMENT		\$37,131,000
TOTAL IMPROVEMENTS AND CAPITAL AND ECONOMIC DEVELOPMENT		\$44,331,000

SB0153S01 compared with SB0153

(d) For purposes of this section, operations and maintenance costs:

(i) are estimates only;

(ii) may include any operations and maintenance costs already funded in existing agency budgets; and

(iii) are not commitments by this Legislature or future Legislatures to fund those operations and maintenance costs.

(3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not constitute a limitation on the amount that may be expended for any project.

(b) The board may revise these estimates and redistribute the amount estimated for a project among the projects authorized.

(c) The commission, by resolution and in consultation with the board, may delete one or more projects from this list if the inclusion of that project or those projects in the list could be construed to violate state law or federal law or regulation.

(4) (a) The division may enter into agreements related to these projects before the receipt of proceeds of bonds issued under this chapter.

(b) The division shall make those expenditures from unexpended and unencumbered building funds already appropriated to the Capital Projects Fund.

(c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds of bonds issued under this chapter.

(d) The commission may, by resolution, make any statement of intent relating to that reimbursement that is necessary or desirable to comply with federal tax law.

(5) (a) For those projects for which only partial funding is provided in Subsection (2), it is the intent of the Legislature that the balance necessary to complete the projects be addressed by future Legislatures, either through appropriations or through the issuance or sale of bonds.

(b) For those phased projects, the division may enter into contracts for amounts not to exceed the anticipated full project funding but may not allow work to be performed on those contracts in excess of the funding already authorized by the Legislature.

(c) Those contracts shall contain a provision for termination of the contract for the convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

(d) It is also the intent of the Legislature that this authorization to the division does not

SB0153S01 compared with SB0153

bind future Legislatures to fund projects initiated from this authorization.

Section 64. Section **63B-5-102** is amended to read:

63B-5-102. Maximum amount -- Projects authorized.

(1) The total amount of bonds issued under this part may not exceed \$32,000,000.

(2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide funds to pay all or part of the cost of acquiring and constructing the projects listed in this Subsection (2).

(b) These costs may include the cost of acquiring land, interests in land, easements and rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or convenient to the facilities, interest estimated to accrue on these bonds during the period to be covered by construction of the projects plus a period of six months after the end of the construction period, and all related engineering, architectural, and legal fees.

(c) For the division, proceeds shall be provided for the following:

CAPITAL IMPROVEMENTS

Alterations, Repairs, and Improvements	\$7,600,000
TOTAL IMPROVEMENTS	\$7,600,000

CAPITAL AND ECONOMIC DEVELOPMENT

PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATIONS AND MAINTENANCE COSTS
Corrections - Gunnison (192 Beds)	\$13,970,000	\$210,000
University of Utah -- Gardner Hall	\$7,361,000	\$203,900
Weber State University Davis Campus -- Land Purchase	\$771,000	None
Department of Workforce Services Cedar City -- Land Purchase	\$148,000	None

SB0153S01 compared with SB0153

College of Eastern Utah Durrant School -- Land Purchase	\$400,000	None
State Hospital - Forensic Design (200 beds)	\$750,000	\$575,000
TOTAL CAPITAL AND ECONOMIC DEVELOPMENT	\$23,400,000	
TOTAL IMPROVEMENTS AND CAPITAL AND ECONOMIC DEVELOPMENT	\$31,000,000	

(d) For purposes of this section, operations and maintenance costs:

(i) are estimates only;

(ii) may include any operations and maintenance costs already funded in existing agency budgets; and

(iii) are not commitments by this Legislature or future Legislatures to fund those operations and maintenance costs.

(3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not constitute a limitation on the amount that may be expended for any project.

(b) The board may revise these estimates and redistribute the amount estimated for a project among the projects authorized.

(c) The commission, by resolution and in consultation with the board, may delete one or more projects from this list if the inclusion of that project or those projects in the list could be construed to violate state law or federal law or regulation.

(4) (a) The division may enter into agreements related to these projects before the receipt of proceeds of bonds issued under this chapter.

(b) The division shall make those expenditures from unexpended and unencumbered building funds already appropriated to the Capital Projects Fund.

(c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds of bonds issued under this chapter.

(d) The commission may, by resolution, make any statement of intent relating to that reimbursement that is necessary or desirable to comply with federal tax law.

(5) (a) For those projects for which only partial funding is provided in Subsection (2), it is the intent of the Legislature that the balance necessary to complete the projects be

SB0153S01 compared with SB0153

addressed by future Legislatures, either through appropriations or through the issuance or sale of bonds.

(b) For those phased projects, the division may enter into contracts for amounts not to exceed the anticipated full project funding but may not allow work to be performed on those contracts in excess of the funding already authorized by the Legislature.

(c) Those contracts shall contain a provision for termination of the contract for the convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

(d) It is also the intent of the Legislature that this authorization to the division does not bind future Legislatures to fund projects initiated from this authorization.

Section 65. Section **63B-6-102** is amended to read:

63B-6-102. Maximum amount -- Projects authorized.

(1) The total amount of bonds issued under this part may not exceed \$57,000,000.

(2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide funds to pay all or part of the cost of acquiring and constructing the projects listed in this Subsection (2).

(b) These costs may include the cost of acquiring land, interests in land, easements and rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or convenient to the facilities, interest estimated to accrue on these bonds during the period to be covered by construction of the projects plus a period of six months after the end of the construction period, and all related engineering, architectural, and legal fees.

(c) For the division, proceeds shall be provided for the following:

CAPITAL AND ECONOMIC DEVELOPMENT

PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATIONS AND MAINTENANCE
Youth Corrections - Carbon / Emery (18 beds)	\$2,298,100	\$70,000
State Hospital - 100 bed Forensic Facility	\$13,800,700	\$320,600
Utah State University - Widtsoe Hall	\$23,986,700	\$750,200

SB0153S01 compared with SB0153

Davis Applied Technology Center - Medical/Health Tech Addition	\$6,344,900	\$144,000
Southern Utah University -- Physical Education Building (Design)	\$1,100,000	\$456,100
Salt Lake Community College -- High Technology Building, 90th So. Campus (Design)	\$1,165,000	\$718,500
Department of Natural Resources - Antelope Island Road	\$3,600,000	None
Youth Corrections - Region 1 72 Secured Bed Facility	\$1,500,000	None
Department of Natural Resources - Dead Horse Point Visitors Center	\$1,350,000	\$5,700
TOTAL CAPITAL AND ECONOMIC DEVELOPMENT	\$55,145,400	

(d) For purposes of this section, operations and maintenance costs:

(i) are estimates only;

(ii) may include any operations and maintenance costs already funded in existing agency budgets; and

(iii) are not commitments by this Legislature or future Legislatures to fund those operations and maintenance costs.

(3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not constitute a limitation on the amount that may be expended for any project.

(b) The board may revise these estimates and redistribute the amount estimated for a project among the projects authorized.

(c) The commission, by resolution and in consultation with the board, may delete one or more projects from this list if the inclusion of that project or those projects in the list could be construed to violate state law or federal law or regulation.

(4) (a) The division may enter into agreements related to these projects before the receipt of proceeds of bonds issued under this chapter.

(b) The division shall make those expenditures from unexpended and unencumbered

SB0153S01 compared with SB0153

building funds already appropriated to the Capital Projects Fund.

(c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds of bonds issued under this chapter.

(d) The commission may, by resolution, make any statement of intent relating to that reimbursement that is necessary or desirable to comply with federal tax law.

(5) (a) For those projects for which only partial funding is provided in Subsection (2), it is the intent of the Legislature that the balance necessary to complete the projects be addressed by future Legislatures, either through appropriations or through the issuance or sale of bonds.

(b) For those phased projects, the division may enter into contracts for amounts not to exceed the anticipated full project funding but may not allow work to be performed on those contracts in excess of the funding already authorized by the Legislature.

(c) Those contracts shall contain a provision for termination of the contract for the convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

(d) It is also the intent of the Legislature that this authorization to the division does not bind future Legislatures to fund projects initiated from this authorization.

Section 66. Section **63B-6-402** is amended to read:

63B-6-402. Maximum amount -- Projects authorized.

(1) The total amount of bonds issued under this part may not exceed \$9,000,000.

(2) (a) Proceeds from the issuance of bonds shall be provided to the State Tax Commission to provide funds to pay all or part of the cost of the project described in this Subsection (2).

(b) These costs may include:

(i) the cost of acquisition, development, and conversion of computer hardware and software for motor vehicle fee systems and tax collection and accounting systems of the state;

(ii) interest estimated to accrue on these bonds during the period to be covered by that development and conversion, plus a period of six months following the completion of the development and conversion; and

(iii) all related engineering, consulting, and legal fees.

(c) For the State Tax Commission, proceeds shall be provided for the following:

SB0153S01 compared with SB0153

PROJECT DESCRIPTION	AMOUNT FUNDED
UTAX SYSTEMS ACQUISITION AND DEVELOPMENT	\$8,500,000

(3) The commission, by resolution may decline to issue bonds if the project could be construed to violate state law or federal law or regulation.

(4) (a) For this project, for which only partial funding is provided in Subsection (2), it is the intent of the Legislature that the balance necessary to complete the project be addressed by future Legislatures, either through appropriations or through the issuance or sale of bonds.

(b) The State Tax Commission may enter into contracts for amounts not to exceed the anticipated full project funding but may not allow work to be performed on those contracts in excess of the funding already authorized by the Legislature.

(c) Those contracts shall contain a provision for termination of the contract for the convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

(d) It is also the intent of the Legislature that this authorization to the State Tax Commission does not bind future Legislatures to fund projects initiated from this authorization.

Section 67. Section **63B-7-102** is amended to read:

63B-7-102. Maximum amount -- Projects authorized.

(1) The total amount of bonds issued under this part may not exceed \$33,600,000.

(2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide funds to pay all or part of the cost of acquiring and constructing the projects listed in this Subsection (2).

(b) These costs may include the cost of acquiring land, interests in land, easements and rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or convenient to the facilities, interest estimated to accrue on these bonds during the period to be covered by construction of the projects plus a period of six months after the end of the construction period, and all related engineering, architectural, and legal fees.

(c) For the division, proceeds shall be provided for the following:

SB0153S01 compared with SB0153

PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATIONS AND MAINTENANCE
Southern Utah University Land Purchase	\$4,600,000	\$0
Salt Lake Community College High Tech Center - Jordan Campus	\$3,980,700	\$507,900
Children's Special Health Care Needs Clinic	\$755,400	\$247,600
Youth Corrections - 2 @ 32 beds (Vernal / Logan)	\$419,500	\$276,000
Corrections - Gunnison 288 bed and Lagoon Expansion	\$8,425,600	\$0
University of Utah - Cowles Building	\$445,500	\$101,700
Utah Valley State College - Technical Building	\$1,166,300	\$391,000
Sevier Valley Applied Technology Center - Shop Expansion	\$3,014,300	\$443,300
Division of Parks and Recreation Statewide Restrooms	\$1,000,000	\$22,700
Murray Highway Patrol Office	\$2,300,000	\$81,000
Department of Workforce Services - Davis County Employment Center	\$2,780,000	\$128,100
State Hospital - Rampton II	\$1,600,000	\$462,000
Courts - 4th District Land - Provo	\$1,368,000	\$0
Dixie College - Land	\$1,000,000	\$0
TOTAL CAPITAL AND ECONOMIC DEVELOPMENT	\$32,855,300	

(d) For purposes of this section, operations and maintenance costs:

(i) are estimates only;

(ii) may include any operations and maintenance costs already funded in existing

SB0153S01 compared with SB0153

agency budgets; and

(iii) are not commitments by this Legislature or future Legislatures to fund those operations and maintenance costs.

(3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not constitute a limitation on the amount that may be expended for any project.

(b) The board may revise these estimates and redistribute the amount estimated for a project among the projects authorized.

(c) The commission, by resolution and in consultation with the board, may delete one or more projects from this list if the inclusion of that project or those projects in the list could be construed to violate state law or federal law or regulation.

(4) (a) The division may enter into agreements related to these projects before the receipt of proceeds of bonds issued under this chapter.

(b) The division shall make those expenditures from unexpended and unencumbered building funds already appropriated to the Capital Projects Fund.

(c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds of bonds issued under this chapter.

(d) The commission may, by resolution, make any statement of intent relating to that reimbursement that is necessary or desirable to comply with federal tax law.

(5) (a) For those projects for which only partial funding is provided in Subsection (2), it is the intent of the Legislature that the balance necessary to complete the projects be addressed by future Legislatures, either through appropriations or through the issuance or sale of bonds.

(b) For those phased projects, the division may enter into contracts for amounts not to exceed the anticipated full project funding but may not allow work to be performed on those contracts in excess of the funding already authorized by the Legislature.

(c) Those contracts shall contain a provision for termination of the contract for the convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

(d) It is also the intent of the Legislature that this authorization to the division does not bind future Legislatures to fund projects initiated from this authorization.

Section 68. Section **63B-7-402** is amended to read:

63B-7-402. Maximum amount -- Projects authorized.

SB0153S01 compared with SB0153

(1) The total amount of bonds issued under this part may not exceed \$16,500,000.

(2) (a) Proceeds from the issuance of bonds shall be provided to the State Tax Commission to provide funds to pay all or part of the cost of the project described in this Subsection (2).

(b) These costs may include:

(i) the cost of acquisition, development, and conversion of computer hardware and software for motor vehicle fee systems and tax collection and accounting systems of the state;

(ii) interest estimated to accrue on these bonds during the period to be covered by that development and conversion, plus a period of six months following the completion of the development and conversion; and

(iii) all related engineering, consulting, and legal fees.

(c) For the State Tax Commission, proceeds shall be provided for the following:

PROJECT DESCRIPTION	AMOUNT FUNDED
UTAX SYSTEMS ACQUISITION AND DEVELOPMENT	\$15,650,000

(3) The commission, by resolution may decline to issue bonds if the project could be construed to violate state law or federal law or regulation.

(4) (a) For this project, for which only partial funding is provided in Subsection (2), it is the intent of the Legislature that the balance necessary to complete the project be addressed by future Legislatures, either through appropriations or through the issuance or sale of bonds.

(b) The State Tax Commission may enter into contracts for amounts not to exceed the anticipated full project funding but may not allow work to be performed on those contracts in excess of the funding already authorized by the Legislature.

(c) Those contracts shall contain a provision for termination of the contract for the convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

(d) It is also the intent of the Legislature that this authorization to the State Tax Commission does not bind future Legislatures to fund projects initiated from this authorization.

Section 69. Section **63B-8-102** is amended to read:

63B-8-102. Maximum amount -- Projects authorized.

(1) The total amount of bonds issued under this part may not exceed \$48,500,000.

SB0153S01 compared with SB0153

(2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide funds to pay all or part of the cost of acquiring and constructing the projects listed in this Subsection (2).

(b) These costs may include the cost of acquiring land, interests in land, easements and rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or convenient to the facilities, interest estimated to accrue on these bonds during the period to be covered by construction of the projects plus a period of six months after the end of the construction period, and all related engineering, architectural, and legal fees.

(c) For the division, proceeds shall be provided for the following:

PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATIONS AND MAINTENANCE
Southern Utah University - Physical Education Building	\$2,493,200	\$447,744
Utah Valley State College - Information Sciences Building	\$29,000,000	\$721,875
University of Utah - Cowles Building Renovation	\$7,268,500	\$140,217
Vernal District Court	\$4,539,500	\$149,989
Salt Lake Community College - Applied Education Center	\$4,200,000	\$281,784
TOTAL CAPITAL AND ECONOMIC DEVELOPMENT	\$47,501,200	

(d) For purposes of this section, operations and maintenance costs:

(i) are estimates only;

(ii) may include any operations and maintenance costs already funded in existing agency budgets; and

(iii) are not commitments by this Legislature or future Legislatures to fund those operations and maintenance costs.

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(3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not constitute a limitation on the amount that may be expended for any project.

(b) The board may revise these estimates and redistribute the amount estimated for a project among the projects authorized.

(c) The commission, by resolution and in consultation with the board, may delete one or more projects from this list if the inclusion of that project or those projects in the list could be construed to violate state law or federal law or regulation.

(4) (a) The division may enter into agreements related to these projects before the receipt of proceeds of bonds issued under this chapter.

(b) The division shall make those expenditures from unexpended and unencumbered building funds already appropriated to the Capital Projects Fund.

(c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds of bonds issued under this chapter.

(d) The commission may, by resolution, make any statement of intent relating to that reimbursement that is necessary or desirable to comply with federal tax law.

(5) (a) For those projects for which only partial funding is provided in Subsection (2), it is the intent of the Legislature that the balance necessary to complete the projects be addressed by future Legislatures, either through appropriations or through the issuance or sale of bonds.

(b) For those phased projects, the division may enter into contracts for amounts not to exceed the anticipated full project funding but may not allow work to be performed on those contracts in excess of the funding already authorized by the Legislature.

(c) Those contracts shall contain a provision for termination of the contract for the convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

(d) It is also the intent of the Legislature that this authorization to the division does not bind future Legislatures to fund projects initiated from this authorization.

Section 70. Section **63B-8-402** is amended to read:

63B-8-402. Maximum amount -- Projects authorized.

(1) The total amount of bonds issued under this part may not exceed \$7,400,000.

(2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide funds to pay all or part of the cost of acquiring and constructing the project listed in this

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Subsection (2).

(b) These costs may include the cost of acquiring land, interests in land, easements and rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or convenient to the facilities, interest estimated to accrue on these bonds during the period to be covered by construction of the projects plus a period of six months after the end of the construction period, and all related engineering, architectural, and legal fees.

(c) For the division, proceeds shall be provided for the following:

PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATIONS AND MAINTENANCE
State Hospital - Rampton II	\$7,000,000	\$462,000

(d) For purposes of this section, operations and maintenance costs:

(i) are estimates only;

(ii) may include any operations and maintenance costs already funded in existing agency budgets; and

(iii) are not commitments by this Legislature or future Legislatures to fund those operations and maintenance costs.

(3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not constitute a limitation on the amount that may be expended for any project.

(b) The board may revise these estimates and redistribute the amount estimated for a project among the projects authorized.

(c) The commission, by resolution and in consultation with the board, may delete one or more projects from this list if the inclusion of that project or those projects in the list could be construed to violate state law or federal law or regulation.

(4) (a) The division may enter into agreements related to these projects before the receipt of proceeds of bonds issued under this chapter.

(b) The division shall make those expenditures from unexpended and unencumbered building funds already appropriated to the Capital Projects Fund.

(c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds

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of bonds issued under this chapter.

(d) The commission may, by resolution, make any statement of intent relating to that reimbursement that is necessary or desirable to comply with federal tax law.

(5) (a) For those projects for which only partial funding is provided in Subsection (2), it is the intent of the Legislature that the balance necessary to complete the projects be addressed by future Legislatures, either through appropriations or through the issuance or sale of bonds.

(b) For those phased projects, the division may enter into contracts for amounts not to exceed the anticipated full project funding but may not allow work to be performed on those contracts in excess of the funding already authorized by the Legislature.

(c) Those contracts shall contain a provision for termination of the contract for the convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

(d) It is also the intent of the Legislature that this authorization to the division does not bind future Legislatures to fund projects initiated from this authorization.

Section 71. Section **63B-9-103** is amended to read:

63B-9-103. Other capital facility authorizations and intent language.

(1) It is the intent of the Legislature that:

(a) Utah State University use institutional funds to plan, design, and construct a renovation and expansion of the Edith Bowen School under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated;

(b) no state funds be used for any portion of this project; and

(c) the university may request state funds for operations and maintenance to the extent that the university is able to demonstrate to the Board of Regents that the facility meets approved academic and training purposes under Board of Regents policy R710.

(2) It is the intent of the Legislature that:

(a) the University of Utah use institutional funds to plan, design, and construct a College of Science Math Center under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated;

(b) no state funds be used for any portion of this project; and

(c) the university may request state funds for operations and maintenance to the extent

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that the university is able to demonstrate to the Board of Regents that the facility meets approved academic and training purposes under Board of Regents policy R710.

(3) It is the intent of the Legislature that:

(a) the University of Utah use institutional funds to plan, design, and construct a Burbidge Athletics and Academics Building under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated;

(b) no state funds be used for any portion of this project; and

(c) the university may not request state funds for operations and maintenance.

(4) It is the intent of the Legislature that:

(a) the University of Utah use institutional funds to plan, design, and construct an expansion to the bookstore under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated;

(b) no state funds be used for any portion of this project; and

(c) the university may not request state funds for operations and maintenance.

(5) It is the intent of the Legislature that:

(a) the University of Utah use institutional funds to plan, design, and construct a Health Sciences/Basic Sciences Building under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated;

(b) no state funds be used for any portion of this project; and

(c) the university may request state funds for operations and maintenance to the extent that the university is able to demonstrate to the Board of Regents that the facility meets approved academic and training purposes under Board of Regents policy R710.

(6) It is the intent of the Legislature that:

(a) Weber State University use institutional funds to plan, design, and construct an expansion to the stadium under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated;

(b) no state funds be used for any portion of this project; and

(c) the university may not request state funds for operations and maintenance.

(7) It is the intent of the Legislature that:

(a) Utah Valley State College use institutional funds to plan, design, and construct a baseball stadium under the direction of the director of the Division of Facilities Construction

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and Management unless supervisory authority has been delegated;

- (b) no state funds be used for any portion of this project; and
- (c) the college may not request state funds for operations and maintenance.

(8) It is the intent of the Legislature that:

(a) Southern Utah University use institutional funds to plan, design, and construct a weight training room under the direction of the director of the Division of Facilities

Construction and Management unless supervisory authority has been delegated;

- (b) no state funds be used for any portion of this project; and
- (c) the university may not request state funds for operations and maintenance.

(9) It is the intent of the Legislature that:

(a) Snow College may lease land at the Snow College Richfield campus to a private developer for the construction and operation of student housing;

- (b) the oversight and inspection of the construction comply with Section 63A-5-206;
- (c) no state funds be used for any portion of this project; and
- (d) the college may not request state funds for operations and maintenance.

(10) It is the intent of the Legislature that:

(a) Salt Lake Community College may lease land at the Jordan campus to Jordan School District for the construction and operation of an Applied Technology Education Center;

- (b) the oversight and inspection of the construction comply with Section 63A-5-206;
- (c) no state funds be used for any portion of this project; and
- (d) the college may not request state funds for operations and maintenance.

(11) It is the intent of the Legislature that:

(a) the Department of Transportation exchange its maintenance station at Kimball Junction for property located near Highway 40 in Summit County; and

(b) the Department of Transportation use federal funds, rent paid by the Salt Lake Organizing Committee for the use of the maintenance station, and any net proceeds resulting from the exchange of property to construct a replacement facility under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated.

(12) It is the intent of the Legislature that:

- (a) the Department of Transportation sell surplus property in Utah County;

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(b) the Department of Transportation use funds from that sale to remodel existing space and add an addition to the Region 3 Complex; and

(c) the project cost not exceed the funds received through sale of property.

(13) It is the intent of the Legislature that the Department of Workforce Services use proceeds from property sales to purchase additional property adjacent to its state-owned facility in Logan.

(14) (a) It is the intent of the Legislature that, because only partial funding is provided for the Heat Plant/Infrastructure Project at Utah State University, the balance necessary to complete this project be addressed by future Legislatures, either through appropriations or through the issuance of bonds.

(b) (i) In compliance with Section 63A-5-207, the division may enter into contracts for amounts not to exceed the anticipated full project funding but may not allow work to be performed on those contracts in excess of the funding already authorized by the Legislature.

(ii) Those contracts shall contain a provision for termination of the contract for the convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

(c) It is also the intent of the Legislature that this authorization to the division does not bind future Legislatures to fund the Heat Plant/Infrastructure Project at Utah State University.

Section 72. Section **63B-11-202** is amended to read:

63B-11-202. Maximum amount -- Projects authorized.

(1) (a) The total amount of bonds issued under this part may not exceed \$21,250,000.

(b) When Utah State University certifies to the commission that the university has obtained reliable commitments, convertible to cash, of \$5,000,000 or more in nonstate funds to construct an addition to the new engineering building and demolish the existing engineering classroom building, the commission may issue and sell general obligation bonds in a total amount not to exceed \$6,100,000.

(c) When the University of Utah certifies to the commission that the university has obtained reliable commitments, convertible to cash, of \$13,000,000 or more in nonstate funds to construct a new engineering building, the commission may issue and sell general obligation bonds in a total amount not to exceed \$15,150,000.

(2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide funds to pay all or part of the cost of acquiring and constructing the projects listed in this

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Subsection (2).

(b) These costs may include the cost of acquiring land, interests in land, easements and rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or convenient to the facilities, interest estimated to accrue on these bonds during the period to be covered by construction of the projects plus a period of six months after the end of the construction period, and all related engineering, architectural, and legal fees.

(c) For the division, proceeds shall be provided for the following:

PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATING AND MAINTENANCE COSTS
1. Utah State University Engineering Building Renovation	\$5,943,500	\$425,000
2. University of Utah New Engineering Building	\$15,000,000	\$489,000
COSTS OF ISSUANCE	\$306,500	
TOTAL CAPITAL AND ECONOMIC DEVELOPMENT		\$21,250,000

(d) For purposes of this section, operations and maintenance costs:

(i) are estimates only;

(ii) may include any operations and maintenance costs already funded in existing agency budgets; and

(iii) are not commitments by this Legislature or future Legislatures to fund those operations and maintenance costs.

(3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not constitute a limitation on the amount that may be expended for any project.

(b) The board may revise these estimates and redistribute the amount estimated for a project among the projects authorized.

(c) The commission, by resolution and in consultation with the board, may delete one or more projects from this list if the inclusion of that project or those projects in the list could

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be construed to violate state law or federal law or regulation.

(4) (a) The division may enter into agreements related to these projects before the receipt of proceeds of bonds issued under this chapter.

(b) The division shall make those expenditures from unexpended and unencumbered building funds already appropriated to the Capital Projects Fund.

(c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds of bonds issued under this chapter.

(d) The commission may, by resolution, make any statement of intent relating to that reimbursement that is necessary or desirable to comply with federal tax law.

(5) (a) For those projects for which only partial funding is provided in Subsection (2), it is the intent of the Legislature that the balance necessary to complete the projects be addressed by future Legislatures, either through appropriations or through the issuance or sale of bonds.

(b) For those phased projects, the division may enter into contracts for amounts not to exceed the anticipated full project funding but may not allow work to be performed on those contracts in excess of the funding already authorized by the Legislature.

(c) Those contracts shall contain a provision for termination of the contract for the convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

(d) It is also the intent of the Legislature that this authorization to the division does not bind future Legislatures to fund projects initiated from this authorization.

Section 73. Section **63C-7-210** is amended to read:

63C-7-210. Exemption from certain acts.

(1) The Utah Communications Agency Network is exempt from:

(a) Title 63J, Chapter 1, Budgetary Procedures Act;

(b) Title 63A, Utah Administrative Services Code, except as provided in Section 63A-4-205.5;

(c) Title 63G, Chapter [~~6~~] 6a, Utah Procurement Code;

(d) Title 63G, Chapter 4, Administrative Procedures Act; and

(e) Title 67, Chapter 19, Utah State Personnel Management Act.

(2) The board shall adopt budgetary procedures, accounting, procurement, and personnel policies substantially similar to those from which they have been exempted in

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Subsection (1).

Section 74. Section **63C-9-301** is amended to read:

63C-9-301. Board powers -- Subcommittees.

(1) The board shall:

(a) except as provided in Subsection (2), exercise complete jurisdiction and stewardship over capitol hill facilities, capitol hill grounds, and the capitol hill complex;

(b) preserve, maintain, and restore the capitol hill complex, capitol hill facilities, capitol hill grounds, and their contents;

(c) before October 1 of each year, review and approve the executive director's annual budget request for submittal to the governor and Legislature;

(d) by October 1 of each year, prepare and submit a recommended budget request for the upcoming fiscal year for the capitol hill complex to:

(i) the governor, through the Governor's Office of Planning and Budget; and

(ii) the Legislature's appropriations subcommittee responsible for capitol hill facilities, through the Office of Legislative Fiscal Analyst;

(e) review and approve the executive director's:

(i) annual work plan;

(ii) long-range master plan for the capitol hill complex, capitol hill facilities, and capitol hill grounds; and

(iii) furnishings plan for placement and care of objects under the care of the board;

(f) approve all changes to the buildings and their grounds, including:

(i) restoration, remodeling, and rehabilitation projects;

(ii) usual maintenance program; and

(iii) any transfers or loans of objects under the board's care;

(g) define and identify all significant aspects of the capitol hill complex, capitol hill facilities, and capitol hill grounds, after consultation with the:

(i) Division of Facilities Construction and Management;

(ii) State Library Division;

(iii) Division of Archives and Records Service;

(iv) Division of State History;

(v) Office of Museum Services; and

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(vi) Arts Council;

(h) inventory, define, and identify all significant contents of the buildings and all state-owned items of historical significance that were at one time in the buildings, after consultation with the:

(i) Division of Facilities Construction and Management;

(ii) State Library Division;

(iii) Division of Archives and Records Service;

(iv) Division of State History;

(v) Office of Museum Services; and

(vi) Arts Council;

(i) maintain archives relating to the construction and development of the buildings, the contents of the buildings and their grounds, including documents such as plans, specifications, photographs, purchase orders, and other related documents, the original copies of which shall be maintained by the Division of Archives and Records Service;

(j) comply with federal and state laws related to program and facility accessibility; and

(k) establish procedures for receiving, hearing, and deciding complaints or other issues raised about the capitol hill complex, capitol hill facilities, and capitol hill grounds, or their use.

(2) (a) Notwithstanding Subsection (1)(a), the supervision and control of the legislative area, as defined in Section 36-5-1, is reserved to the Legislature; and

(b) the supervision and control of the governor's area, as defined in Section 67-1-16, is reserved to the governor.

(3) (a) The board shall make rules to govern, administer, and regulate the capitol hill complex, capitol hill facilities, and capitol hill grounds by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) A person who violates a rule adopted by the board under the authority of this Subsection (3) is subject to a civil penalty not to exceed \$2,500 for each violation, plus the amount of any actual damages, expenses, and costs related to the violation of the rule that are incurred by the state.

(c) The board may take any other legal action allowed by law.

(d) If any violation of a rule adopted by the board is also an offense under Title 76,

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Utah Criminal Code, the violation is subject to the civil penalty, damages, expenses, and costs allowed under this Subsection (3) in addition to any criminal prosecution.

(e) The board may not apply this section or rules adopted under the authority of this section in a manner that violates a person's rights under the Utah Constitution or the First Amendment to the United States Constitution, including the right of persons to peaceably assemble.

(f) The board shall send proposed rules under this section to the legislative general counsel and the governor's general counsel for review and comment before the board adopts the rules.

(4) The board is exempt from the requirements of Title 63G, Chapter [6] 6a, Utah Procurement Code, but shall adopt procurement rules substantially similar to the requirements of that chapter.

(5) (a) The board may:

(i) establish subcommittees made up of board members and members of the public to assist and support the executive director in accomplishing the executive director's duties;

(ii) establish fees for the use of capitol hill facilities and capitol hill grounds;

(iii) assign and allocate specific duties and responsibilities to any other state agency, if the other agency agrees to perform the duty or accept the responsibility;

(iv) contract with another state agency to provide services;

(v) delegate by specific motion of the board any authority granted to it by this section to the executive director;

(vi) in conjunction with Salt Lake City, expend money to improve or maintain public property contiguous to East Capitol Boulevard and capitol hill;

(vii) provide wireless Internet service to the public without a fee in any capitol hill facility; and

(viii) when necessary, consult with the:

(A) Division of Facilities Construction and Management;

(B) State Library Division;

(C) Division of Archives and Records Service;

(D) Division of State History;

(E) Office of Museum Services; and

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(F) Arts Council.

(b) The board's provision of wireless Internet service under Subsection (5)(a)(vii) shall be discontinued in the legislative area if the president of the Senate and the speaker of the House of Representatives each submit a signed letter to the board indicating that the service is disruptive to the legislative process and is to be discontinued.

(c) If a budget subcommittee is established by the board, the following shall serve as ex officio, nonvoting members of the budget subcommittee:

(i) the legislative fiscal analyst, or the analyst's designee, who shall be from the Office of Legislative Fiscal Analyst; and

(ii) the director of the Governor's Office of Planning and Budget, or the director's designee, who shall be from the Governor's Office of Planning and Budget.

(d) If a preservation and maintenance subcommittee is established by the board, the board may, by majority vote, appoint one or each of the following to serve on the subcommittee as voting members of the subcommittee:

(i) an architect, who shall be selected from a list of three architects submitted by the American Institute of Architects; or

(ii) an engineer, who shall be selected from a list of three engineers submitted by the American Civil Engineers Council.

(e) If the board establishes any subcommittees, the board may, by majority vote, appoint up to two people who are not members of the board to serve, at the will of the board, as nonvoting members of a subcommittee.

(f) Members of each subcommittee shall, at the first meeting of each calendar year, select one individual to act as chair of the subcommittee for a one-year term.

(6) (a) The board, and the employees of the board, may not move the office of the governor, lieutenant governor, president of the Senate, speaker of the House of Representatives, or a member of the Legislature from the State Capitol unless the removal is approved by:

(i) the governor, in the case of the governor's office;

(ii) the lieutenant governor, in the case of the lieutenant governor's office;

(iii) the president of the Senate, in the case of the president's office or the office of a member of the Senate; or

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(iv) the speaker of the House of Representatives, in the case of the speaker's office or the office of a member of the House.

(b) The board and the employees of the board have no control over the furniture, furnishings, and decorative objects in the offices of the governor, lieutenant governor, or the members of the Legislature except as necessary to inventory or conserve items of historical significance owned by the state.

(c) The board and the employees of the board have no control over records and documents produced by or in the custody of a state agency, official, or employee having an office in a building on the capitol hill complex.

(d) Except for items identified by the board as having historical significance, and except as provided in Subsection (6)(b), the board and the employees of the board have no control over moveable furnishings and equipment in the custody of a state agency, official, or employee having an office in a building on the capitol hill complex.

Section 75. Section **63C-9-403** is amended to read:

63C-9-403. Contracting power of executive director -- Health insurance coverage.

(1) For purposes of this section:

(a) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who:

(i) works at least 30 hours per calendar week; and

(ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first of the calendar month following 90 days from the date of hire.

(b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

(c) "Qualified health insurance coverage" is as defined in Section 26-40-115.

(d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

(2) (a) Except as provided in Subsection (3), this section applies to a design or construction contract entered into by the board or on behalf of the board on or after July 1, 2009, and to a prime contractor or a subcontractor in accordance with Subsection (2)(b).

(b) (i) A prime contractor is subject to this section if the prime contract is in the amount of \$1,500,000 or greater.

(ii) A subcontractor is subject to this section if a subcontract is in the amount of \$750,000 or greater.

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(3) This section does not apply if:

- (a) the application of this section jeopardizes the receipt of federal funds;
- (b) the contract is a sole source contract; or
- (c) the contract is an emergency procurement.

(4) (a) This section does not apply to a change order as defined in Section [~~63G-6-103~~] 63G-6a-103, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection (2).

(b) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection (2) is guilty of an infraction.

(5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive director that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employees' dependents during the duration of the contract.

(b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor shall demonstrate to the executive director that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the contract.

(c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the division under Subsection (6).

(B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (5)(b).

(ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (5)(a).

(6) The department shall adopt administrative rules:

- (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- (b) in coordination with:
 - (i) the Department of Environmental Quality in accordance with Section 19-1-206;

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- (ii) the Department of Natural Resources in accordance with Section 79-2-404;
- (iii) the State Building Board in accordance with Section 63A-5-205;
- (iv) a public transit district in accordance with Section 17B-2a-818.5;
- (v) the Department of Transportation in accordance with Section 72-6-107.5; and
- (vi) the Legislature's Administrative Rules Review Committee; and
- (c) which establish:

(i) the requirements and procedures a contractor must follow to demonstrate to the executive director compliance with this section which shall include:

(A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or (b) more than twice in any 12-month period; and

(B) that the actuarially equivalent determination required for the qualified health insurance coverage in Subsection (1) is met by the contractor if the contractor provides the department or division with a written statement of actuarial equivalency from either:

- (I) the Utah Insurance Department;
- (II) an actuary selected by the contractor or the contractor's insurer; or
- (III) an underwriter who is responsible for developing the employer group's premium rates;

(ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:

(A) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation;

(B) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation;

(C) an action for debarment of the contractor or subcontractor in accordance with Section [~~63G-6-804~~] 63G-6a-904 upon the third or subsequent violation; and

(D) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for employees and dependents of employees of the contractor or subcontractor who were not offered qualified health insurance coverage during the duration of the contract; and

(iii) a website on which the department shall post the benchmark for the qualified health insurance coverage identified in Subsection (1)(c).

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(7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or subcontractor who intentionally violates the provisions of this section shall be liable to the employee for health care costs that would have been covered by qualified health insurance coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection (7)(a)(i) if:

(A) the employer relied in good faith on a written statement of actuarial equivalency provided by:

(I) an actuary; or

(II) an underwriter who is responsible for developing the employer group's premium rates; or

(B) the department determines that compliance with this section is not required under the provisions of Subsection (3) or (4).

(b) An employee has a private right of action only against the employee's employer to enforce the provisions of this Subsection (7).

(8) Any penalties imposed and collected under this section shall be deposited into the Medicaid Restricted Account created in Section 26-18-402.

(9) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this section:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section [~~63G-6-801~~] 63G-6a-1603 or any other provision in Title 63G, Chapter [~~6, Part 8, Legal and Contractual Remedies~~] 6a, Utah Procurement Code; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.

Section 76. Section **63E-2-109** is amended to read:

63E-2-109. State statutes.

(1) Except as specifically modified in its authorizing statute, each independent corporation shall be exempt from the statutes governing state agencies, including:

(a) Title 51, Chapter 5, Funds Consolidation Act;

(b) Title 51, Chapter 7, State Money Management Act;

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- (c) Title 63A, Utah Administrative Services Code;
- (d) Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- (e) Title 63G, Chapter 4, Administrative Procedures Act;
- (f) Title 63G, Chapter [6] 6a, Utah Procurement Code;
- (g) Title 63J, Chapter 1, Budgetary Procedures Act;
- (h) Title 63J, Chapter 2, Revenue Procedures and Control Act; and
- (i) Title 67, Chapter 19, Utah Personnel Management Act.

(2) Except as specifically modified in its authorizing statute, each independent corporation shall be subject to:

- (a) Title 52, Chapter 4, Open and Public Meetings Act; and
- (b) Title 63G, Chapter 2, Government Records Access and Management Act.

(3) Each independent corporation board may adopt its own policies and procedures governing its:

- (a) funds management;
- (b) audits; and
- (c) personnel.

Section 77. 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

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resources.

(d) Notwithstanding another provision of this section, an acquisition authorized by this section shall comply with rules made by the [~~State Procurement Policy Board~~] applicable rulemaking authority under Title 63G, Chapter [6] 6a, 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] 6a, 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.

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

(b) Beginning July 1, 2006 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)~~] 63G-6a-303(5).

Section 78. Section **63G-6a-101**, which is renumbered from Section 63G-6-101 is renumbered and amended to read:

CHAPTER 6a. UTAH PROCUREMENT CODE

Part 1. General Procurement Provisions

~~[63G-6-101]~~. 63G-6a-101. Title.

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(1) This chapter is known as the "Utah Procurement Code."

(2) This part is known as "General Procurement Provisions."

Section 79. Section **63G-6a-102**, which is renumbered from Section 63G-6-102 is renumbered and amended to read:

~~63G-6-102~~. **63G-6a-102**. **Purpose of chapter.**

The underlying purposes and policies of this chapter are:

(1) to simplify, clarify, and modernize the law governing procurement by this state;

(2) to ensure the fair and equitable treatment of all persons who deal with the

procurement system of this state;

(3) to provide increased economy in state procurement activities; and

(4) to foster effective broad-based competition within the free enterprise system.

Section 80. Section **63G-6a-103**, which is renumbered from Section 63G-6-103 is renumbered and amended to read:

~~63G-6-103~~. **63G-6a-103**. **Definitions.**

As used in this chapter:

(1) "Appeals board" means:

(a) the Procurement Appeals Board created under Subsection 63G-6a-1702(1); or

(b) a board created under Subsection 63G-6a-1702(5).

(2) "Applicable rulemaking authority" means:

(a) as it relates to the state legislative branch, the Legislative Management Committee, except to the extent that the Legislature passes a rule that supercedes or conflicts with a rule made by the Legislative Management Committee;

(b) as it relates to the state judicial branch, the Judicial Council;

(c) as it relates to a local public procurement unit, other than a local public procurement unit described in Subsections (2)(d) through (ffg), the board; or

(d) as it relates to a municipality or county that adopts this chapter, the legislative body of the municipality or county, not as a delegation of authority from the Legislature, but under the municipality's or county's own legislative authority;

(e) as it relates to a school district or a public school, the Procurement Policy Board, except to the extent that a school district makes its own non-administrative rules, with respect to a particular subject, that do not conflict with the provisions of this chapter;

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(f) as it relates to a state institution of higher education, the State Board of Regents;

(g) as it relates to a public transit district organized under Title 17B, Chapter 2a, Part 8, Public Transit District Act, the governing board of the public transit district;

(fgh) as it relates to the following entities, but only to the extent that the rules relate to procurement authority expressly granted to the entity by statute:

(i) the State Building Board, created in Section 63A-5-101;

(ii) the Division of Facilities Construction and Management created in Section 63A-5-201;

(iii) the attorney general's office; or

(iv) the Department of Transportation, created in Section 72-1-201;

(fhi) as it relates to the state executive branch and all public procurement units other than those described in Subsections (2)(a) through (ffg), the board; or

(fij) as it relates to an entity described in Subsection (2)(fgh), except to the extent that the rules relate to procurement authority expressly granted to the entity by statute, the board.

~~(1)~~ (3) "Architect-engineer services" ~~[are those]~~ means:

(a) professional services within the scope of the practice of architecture as defined in Section 58-3a-102[;] or

(b) professional engineering as defined 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.]~~

(4) "Bidder" means a person who responds to an invitation for bids.

(5) "Board" means the Utah State Procurement Policy Board, created in Section 63G-6a-202.

(6) "Building Board" means the State Building Board created in Section 63A-5-101.

~~(3)~~ (7) "Change order" means:

(a) a written order signed by the procurement officer[; directing] that directs the contractor to suspend work or make changes, ~~[which the appropriate clauses of the contract authorize the procurement officer to order]~~ as authorized by contract, without the consent of the contractor; or ~~[any]~~

(b) a written alteration in specifications, delivery point, rate of delivery, period of

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performance, price, quantity, or other provisions of [~~any contract accomplished by mutual action~~] a contract, upon mutual agreement of the parties to the contract.

(8) "Chief procurement officer" means the chief procurement officer appointed under Subsection 63G-6a-302(1).

~~[(4)]~~ (9) (a) "Construction" means the process of building, [~~renovation, alteration, improvement, or repair of any~~] renovating, altering, improving, or repairing a public building or public work.

(b) "Construction" does not [~~mean~~] include the routine operation, routine repair, or routine maintenance of an existing [~~structures, buildings~~] structure, building, or real property.

~~[(5)]~~ (10) (a) "Construction manager/general contractor" means [~~any~~] a contractor who enters into a contract for the management of a construction project when [~~that~~] the contract allows the contractor to subcontract for additional labor and materials that [~~were~~] are 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~~] include a contractor whose only subcontract work not included in the contractor's cost proposal submitted as part of the procurement of [~~construction~~] the contractor's services is to meet subcontracted portions of change orders approved within the scope of the project.

~~[(6)]~~ (11) "Contract" means [~~any state~~] an agreement for the procurement or disposal of [~~supplies, services, or construction~~] a procurement item.

(12) "Contractor" means a person who is awarded a contract with a public procurement unit.

~~[(7)]~~ (13) "Cooperative purchasing" means procurement conducted by, or on behalf of, more than one public procurement unit, or by a public procurement unit [~~with~~] and an external procurement unit.

~~[(8)]~~ (14) "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.

(15) "Days" means calendar days, unless expressly provided otherwise.

~~[(9)]~~ (a) (16) "Design-build" means the procurement of architect-engineer services and construction by the use of a single contract with the design-build provider.

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~~[(b) This method of design and construction can include the design-build provider supplying the site as part of the contract.]~~

(17) "Director" means the director of the division.

(18) "Division" means the Division of Purchasing and General Services.

~~[(10)]~~ (19) "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)]~~ (20) (a) "Grant" means [the] furnishing, by [the state] a public entity or by any other public or private source [assistance, whether financial or otherwise, to any], financial or other assistance to a person to support a program authorized by law. [It]

(b) "Grant" does not include:

(i) 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.] or procurement item; or

(ii) a contract that is awarded as a result of a procurement or a procurement process.

~~[(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~~

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~~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.]~~

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

(21) "Head of a public procurement unit" means:

(a) as it relates to the state legislative branch, any person designated by legislative rule;

(b) as it relates to the state executive branch:

(i) the director of a division; or

(ii) any other person designated by the board, by rule;

(c) as it relates to the state judicial branch:

(i) the Judicial Council; or

(ii) any other person designated by the Judicial Council, by rule;

(d) as it relates to a local public procurement unit, other than a local public procurement unit described in Subsections (21)(e) through (h):

(i) the appointed or elected head of the local public procurement unit; or

(ii) any other person designated by the board, by rule;

(e) as it relates to a local public procurement unit that is a municipality or a county:

(i) the legislative body of the municipality or county; or

(ii) any other person designated by the municipality or county;

(f) as it relates to a school district or any school or entity within a school district, the board of the school district, or the board's designee;

(g) as it relates to a charter school, the individual or body with executive authority over the charter school, or the individual's or body's designee; or

(h) as it relates to an institution of higher education of the state, the president of the institution of higher education, or the president's designee.

(22) "Head of an authorized purchasing entity" means:

(a) as it relates to the division, the chief procurement officer;

(b) to the extent that the entities have express statutory authority to engage in a procurement without the involvement of the division;

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(i) as it relates to the State Building Board, created in Section 63A-5-101, the State Building Board;

(ii) as it relates to the Division of Facilities Construction and Management created in Section 63A-5-201, the director of the Division of Facilities Construction and Management;

(iii) as it relates to the attorney general's office, the attorney general;

(iv) as it relates to the Department of Transportation, created in Section 72-1-201, the executive director of the Department of Transportation; or

(v) as it relates to a district court, a person designated by the Judicial Council, by rule;

(c) as it relates to an institution of higher education of the state, the president of the institution of higher education of the state;

(d) as it relates to a school district, the board of the school district;

(e) as it relates to a public school, including a local school board, the board of the school district;

(f) as it relates to a charter school, a person designated by the charter school; or

(g) as it relates to a non-executive state procurement unit, a person designated by the applicable rulemaking authority.

(23) "Invitation for bids" includes all documents, including documents that are attached or incorporated by reference, used for soliciting bids to provide a procurement item to a public procurement unit.

(24) "Multiple award contracts" means the award of a contract for an indefinite quantity of a procurement item to more than one bidder or offeror.

(25) "Multiyear contract" means a contract that extends beyond a one-year period, including a contract that permits renewal of the contract, without competition, beyond the first year of the contract.

(26) "Municipality" means a city or a town.

(27) "Offeror" means a person who responds to a request for proposals.

~~[(17)]~~ (28) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference under the requirements of this chapter.

~~[(18)]~~ (29) (a) "Procure" or "procurement" means buying, purchasing, renting, leasing, leasing with an option to purchase, or otherwise acquiring [any supplies, services, or construction. It also] a procurement item.

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(b) "Procure" or "procurement" includes all functions that pertain to the obtaining of ~~[any supply, service, or construction]~~ a procurement item, including:

- (i) the description of requirements~~[;]~~;
- (ii) the selection~~[, and]~~ process;
- (iii) solicitation of sources~~[;]~~;
- (iv) the preparation~~[, and]~~ for soliciting a procurement item;
- (v) the award of a contract~~[;]~~; and
- (vi) 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.]~~

(30) "Procurement item" means a supply, a service, construction, or technology.

(31) "Procurement officer" means:

(a) as it relates to the state legislative branch, the head of a public procurement unit in the legislative branch;

(b) as it relates to the state judicial branch, the head of a public procurement unit in the

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state judicial branch;

(c) as it relates to the state executive branch, the chief procurement officer;

(d) as it relates to a local public procurement unit other than a local public procurement unit described in Subsection (31)(e) or (f), the chief procurement officer;

(e) as it relates to a municipality or county that adopts this chapter, the legislative body of the municipality or county; or

(f) as it relates to a state purchasing unit, the head of the state purchasing unit, or a designee of the head of the state purchasing unit.

(32) "Professional service" means a service that requires a high degree of specialized knowledge and discretion in the performance of the service, including:

(a) legal services;

(b) consultation services;

(c) architectural services;

(d) engineering;

(e) design;

(f) underwriting;

(g) bond counsel;

(h) financial advice; or

(i) construction management.

(33) "Request for information" means a nonbinding process where a public procurement unit requests information relating to a procurement item.

(34) "Request for proposals" includes all documents, including documents that are attached or incorporated by reference, used for soliciting proposals to provide a procurement item to a public procurement unit.

(35) "Responsible" means that a bidder or offeror:

(i) is capable, in all respects, to fully perform the contract requirements solicited in an invitation for bids or a request for proposals; and

(ii) has the integrity and reliability to ensure good faith performance.

(36) "Responsive" means that a bidder or offeror submits a response to an invitation for bids or a request for proposals that conforms in all material respects to the invitation for bids or request for proposals.

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~~[(26)]~~ (37) "Sealed" ~~[does not preclude acceptance of]~~ means manually or electronically sealed and submitted bids or proposals [in addition to bids or proposals manually sealed and submitted].

~~[(27)]~~ (38) (a) "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]~~ a report that is incidental to the required performance. ~~[It]~~

(b) "Services" does not include an employment [agreements] agreement or a collective bargaining [agreements] agreement.

~~[(28)]~~ (39) "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]~~ procurement item included in an invitation for bids or a request for proposals, or otherwise specified or agreed to by a public procurement unit, including a description of [any]:

(a) a requirement for inspecting[; testing;] or testing a procurement item; or

(b) preparing a [supply, service, technology, or construction] procurement 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.]~~

(40) "Standard procurement process" means one of the following methods of obtaining a procurement item:

(a) bidding, as described in Part 6, Bidding;

(b) request for proposals, as described in Part 7, Request for Proposals; or

(c) small purchases, in accordance with the requirements established under Section 63G-6a-408.

(41) (a) "Subcontractor" means a person under contract with a contractor or another subcontractor to provide services or labor for design or construction.

(b) "Subcontractor" includes a trade contractor or specialty contractor.

(c) "Subcontractor" does not include a supplier who provides only materials, equipment, or supplies to a contractor or subcontractor.

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~~[(31)]~~ (42) "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.]~~

(43) "Tie bid" means that the lowest responsive and responsible bids are identical in price.

Section 81. Section **63G-6a-104** is enacted to read:

63G-6a-104. Definitions of government entities.

As used in this chapter:

(1) "Authorized purchasing entity" means:

(a) a non-executive state procurement unit; or

(b) a state purchasing unit.

(2) "External procurement unit" means:

(a) a buying organization not located in this state which, if located in this state, would qualify as a public procurement unit; or

(b) an agency of the United States.

(3) "Local government unit" means:

(a) a county;

(b) a municipality;

(c) a political subdivision created by counties or municipalities under Title 11, Chapter 13, Interlocal Cooperation Act; or

(d) the Utah Housing Corporation.

(4) "Local public procurement unit" means:

(a) a local district, as defined in Section 17B-1-102;

(b) a special service district, as defined in Section 17D-1-102;

(c) a local building authority, as defined in Section 17D-2-102;

(d) a conservation district, as described in Title 17D, Chapter 3, Conservation District Act;

(e) a public corporation, other than the Utah Housing Corporation;

(f) a community development and renewal agency;

(g) a school district;

(h) a public school, including a local school board or a charter school;

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(i) Utah Schools for the Deaf and Blind;

(j) the Utah Education Network;

(k) an institution of higher education of the state;

(l) a county or municipality, and each office or agency of the county or municipality, unless the county or municipality adopts its own procurement code by ordinance;

(m) a county or municipality, and each office or agency of the county or municipality, that has adopted this entire chapter by ordinance;

(n) a county or municipality, and each office or agency of the county or municipality, that has adopted a portion of this chapter by ordinance, to the extent that the term is used in the adopted portion of this chapter; or

(o) two or more of the entities described in this Subsection (4), acting under legislation that authorizes intergovernmental cooperation.

(5) "Non-executive state procurement unit" means:

(a) the state legislative branch;

(b) a public procurement unit in the state legislative branch;

(c) the state judicial branch;~~f or~~

(d) a public procurement unit in the state judicial branch~~f,t~~; or

(e) a public transit district, organized under Title 17B, Chapter 2a, Part 8, Public Transit District Act.

(6) "Public entity" means any state or local government entity, located in Utah, including:

(a) the state legislative branch, including the Legislature and each house, staff office, committee, subcommittee, or other part of the state legislative branch;

(b) the state executive branch, including the governor's office and each department, division, agency, office, and bureau in the state executive branch;

(c) the state judicial branch, including the Utah Supreme Court, the Utah Court of Appeals, the Judicial Council, and each court, office, and other part of the state judicial branch;

(d) a municipality or county, regardless of whether the municipality or county has adopted this chapter or any part of this chapter;

(e) a public procurement unit; and

(f) any other entity that expends public funds.

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(7) "Public procurement unit" means:

(a) the Senate;

(b) the House of Representatives;

(c) a staff office of the state legislative branch;

(d) a state executive branch department, division, office, bureau, or agency;

(e) the Utah State Supreme Court;

(f) the Judicial Council;

(g) a state judicial district; or

(h) a local public procurement unit.

(8) "State purchasing unit" means:

(a) the division;

(b) the following entities, to the extent that the entities have express statutory authority

to engage in a procurement without the involvement of the division:

(i) the State Building Board, created in Section 63A-5-101;

(ii) the Division of Facilities Construction and Management, created in Section 63A-5-201;

(iii) the attorney general's office;

(iv) the Department of Transportation, created in Section 72-1-201; or

(v) a district court;

(c) an institution of higher education of the state;

(d) a school district; or

(e) a public school, including a local school board or a charter school.

Section 82. Section **63G-6a-105**, which is renumbered from Section 63G-6-104 is renumbered and amended to read:

~~[63G-6-104].~~ **63G-6a-105. Application of chapter.**

~~[(1) This chapter applies only to contracts solicited or entered into after the effective date of this chapter unless the parties agree to its application to a contract solicited or entered into prior to the effective date.]~~

(1) The provisions of this chapter that are enacted on July 1, 2012, apply only to a procurement advertised, or begun on or after July 1, 2012, unless the parties agree to have the provisions apply with respect to a procurement that was advertised or begun before July 1,

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2012, but is not completed before July 1, 2012.

(2) Except as provided in Section ~~[63G-6-105]~~ 63G-6a-109, this chapter shall apply to every expenditure of public funds irrespective of ~~[their source]~~ the source of the funds, including federal assistance, by any ~~[state agency]~~ public procurement unit, under any contract.

~~[(3)(a) Only the following sections shall apply to local public procurement units: Sections 63G-6-103, 63G-6-105, 63G-6-301, 63G-6-303 through 63G-6-420, 63G-6-422, 63G-6-501 through 63G-6-602, 63G-6-801 through 63G-6-806, and 63G-6-815 through 63G-6-819; provided, however, that, except as provided in Sections 63G-6-906 and 63G-6-907, the jurisdiction of the procurement appeals board is limited to matters involving state agencies.]~~

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

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

~~[(d) In addition to the sections and subsections listed above and except]~~

(3) Except as provided in Subsection 17B-1-108(3) relating to local districts, each local public procurement unit shall adopt ordinances relating to the procurement of architect-engineer services not inconsistent with the provisions of Part [7] 15, Architect-Engineer Services.

~~[(e)]~~ (4) Any ~~[other]~~ section of this chapter, or its implementing regulations, may be adopted by any local ~~[public procurement]~~ government unit.

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

(5) Rules adopted under this chapter shall be consistent with the provisions of this chapter.

(6) A state purchasing unit or a public procurement unit may not adopt rules, policies, or regulations that are inconsistent with this chapter.

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~~[(4)] (7)~~ Unless otherwise provided by statute, this chapter does not apply to procurement of real property.

Section 83. Section **63G-6a-106**, which is renumbered from Section 63G-6-207 is renumbered and amended to read:

~~[63G-6-207].~~ **63G-6a-106. Specific statutory authority -- Limitations on authority of chief procurement officer and division.**

(1) The ~~[authority to procure certain supplies, services, and construction given the public procurement units governed by]~~ procurement authority given to a public entity under the following provisions shall be retained, and shall be applied only to the extent described in those provisions:

- (a) Title 53B, State System of Higher Education;
- (b) Title 63A, Chapter 5, State Building Board - Division of Facilities Construction and Management;
- (c) Title 67, Chapter 5, Attorney General;
- (d) Title 72, Transportation Code; and
- (e) Title 78A, Chapter 5, District Courts.

(2) ~~[This authority extends only to supplies, services, and construction to the extent provided in the cited chapters.]~~ Except as otherwise provided in Sections ~~[63G-6-104 and 63G-6-105, the respective purchasing agencies shall procure supplies, services, and construction]~~ 63G-6a-105 and 63G-6a-109, a public procurement unit shall conduct a procurement in accordance with this chapter.

(3) (a) The Department of Transportation may make rules governing the procurement of highway construction or improvement.

(b) This Subsection (3) supersedes Subsections (1) and (2).

~~[(4) The Legislature may procure supplies and services for its own needs.]~~

(4) Except to the extent otherwise agreed to in a memorandum of understanding between the division and the following entities, the authority of the chief procurement officer and of the division does not extend to:

- (a) a non-executive state procurement unit;
- (b) a local government unit; or
- (c) a state purchasing unit, other than the division.

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(5) An entity described in Subsection (4) or a state purchasing unit, other than the division, may, without supervision, interference, or involvement by the chief procurement officer or the division, but consistent with the requirements of this chapter:

(a) engage in a procurement process;

(b) procure an item under an exception, as provided in this chapter, to the requirement to use a procurement process; or

(c) otherwise engage in an act authorized or required by this chapter.

(6) The attorney general may, in accordance with the provisions of this chapter, but without involvement by the division or the chief procurement officer:

(a) retain outside counsel; or

(b) procure litigation support services, including retaining an expert witness.

(7) A public procurement unit, or a state purchasing unit, that is not represented by the attorney general's office may, in accordance with the provisions of this chapter, but without involvement by the division or the chief procurement officer:

(a) retain outside counsel; or

(b) procure litigation support services, including retaining an expert witness.

(8) The state auditor's office may, in accordance with the provisions of this chapter, but without involvement by the division or the chief procurement officer, procure audit services.

Section 84. Section **63G-6a-109**, which is renumbered from Section 63G-6-105 is renumbered and amended to read:

~~[63G-6-105].~~ **63G-6a-109. Exemptions from chapter -- Compliance with federal law.**

(1) ~~[This chapter is]~~ Except for Part 23, Unlawful Conduct and Penalties, the provisions of this chapter are not applicable to:

(a) funds administered under the Percent-for-Art Program of the Utah Percent-for-Art Act[-];

~~[(2) This chapter is not applicable to]~~

(b) grants awarded by the state or contracts between the state and a local public procurement [units] unit, except as provided in Part [9] 21, Intergovernmental Relations[-]; or

(c) any action taken by a majority of both houses of the Legislature.

~~[(3)]~~ (2) This chapter ~~[shall]~~ does not prevent the state or a local public procurement

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unit from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

~~[(4)]~~ (3) ~~[When]~~ Notwithstanding any conflicting provision of this chapter, when a procurement involves the expenditure of federal assistance ~~[or]~~ federal contract funds, or federal financial participation funds, the ~~[chief {}] procurement officer or head of {} a purchasing agency]~~ {an authorized} public procurement unit or state purchasing {entity} unit shall comply with mandatory applicable federal law and regulations not reflected in this chapter.

~~[(5)]~~ (4) This chapter ~~[may]~~ does not supersede the requirements for retention or withholding of construction proceeds and release of construction proceeds as provided in Section 13-8-5.

Section 85. Section **63G-6a-110** is enacted to read:

63G-6a-110. Procurements under direction and control of division -- Exception.

(1) Except as provided in Subsection (2), a public procurement unit may not engage in a procurement unless:

(a) the procurement is made under the direction and control of the division; or

(b) the division, pursuant to rules made by the board, permits the public procurement unit to make the procurement on its own.

(2) Subsection (1) does not apply to a public procurement unit that is:

(a) a non-executive state procurement unit;

(b) a local government unit; or

(c) a state purchasing unit, other than the division.

Section 86. Section **63G-6a-201** is enacted to read:

Part 2. Procurement Policy Board

63G-6a-201. Title.

This part is known as "Procurement Policy Board."

Section 87. Section **63G-6a-202**, which is renumbered from Section 63G-6-201 is renumbered and amended to read:

~~[63G-6-201].~~ **63G-6a-202. Creation of procurement policy board.**

(1) ~~[(a)]~~ There is created ~~[a state procurement policy board]~~ the Utah State Procurement Policy Board.

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~~[(b)]~~ (2) The ~~[policy board shall consist of]~~ board consists of up to 10 members as follows:

~~[(+)]~~ (a) an employee of a state institution of higher education, appointed by the board of regents;

~~[(+)]~~ (b) an employee of the Department of Human Services, appointed by the executive director of that department;

~~[(+)]~~ (c) an employee of the Department of Transportation, appointed by the executive director of that department;

~~[(+)]~~ (d) an employee of a school district appointed by a cooperative purchasing entity for school districts;

~~[(+)]~~ (e) an employee of the Division of Facilities Construction and Management appointed by the director of that division;

~~[(+)]~~ (f) an employee of a county, appointed by the Utah Association of Counties;

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

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

~~[(+)]~~ (i) the executive director of the Department of Technology Services or the executive director's designee; and

~~[(+)]~~ (j) the chief procurement officer or the chief procurement officer's designee.

~~[(+)]~~ (3) Members of the ~~[policy]~~ board shall be knowledgeable and experienced in, and have supervisory responsibility for, procurement in their official positions.

~~[(2)]~~ (4) A board member ~~[staff]~~ may serve as long as the member meets the description in Subsection ~~[(+)]~~ (2) unless removed by the person or entity ~~[who appointed]~~ with the authority to appoint the board member.

~~[(3)]~~ (5) (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 of the board shall be selected by a majority of the members of the board and may be elected to succeeding terms.

(c) The chief procurement officer shall designate an employee of the ~~[Division of Purchasing and General Services]~~ division to serve as the nonvoting secretary to the policy

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board.

~~[(4)]~~ (6) A member of the board 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 88. Section **63G-6a-203**, which is renumbered from Section 63G-6-202 is renumbered and amended to read:

~~[63G-6-202].~~ **63G-6a-203. 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 state; and]~~

~~[(b)]~~ (1) In addition to making rules in accordance with Section 63G-6a-402 and the other provisions of this chapter, the board shall 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 local public procurement unit's proposed rules to ensure that they are not inconsistent with the provisions of this chapter or rules made by the board; and
 - (iii) approve the use of innovative procurement ~~[methods]~~ processes proposed by local public procurement units.

(b) The ~~[policy]~~ board may not exercise authority over the award or administration of:

- (i) any particular ~~[contract]~~ contract; or
- (ii) ~~[over]~~ any dispute, claim, or litigation pertaining to any particular contract.

(3) The board does not have authority over a matter involving:

- (a) a non-executive state procurement unit; or

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(b) a local government unit.

Section 89. Section **63G-6a-204**, which is renumbered from Section 63G-6-208 is renumbered and amended to read:

~~[63G-6-208].~~ **63G-6a-204.** **Applicability of rules and regulations of Utah State Procurement Policy Board and State Building Board -- Report to interim committee.**

~~[(1)(a) Except as provided in Subsection (2), the policy board shall make rules governing state procurement by complying with the procedures and requirements of Title 63G, Chapter 3, the Utah Administrative Rulemaking Act.]~~

~~[(b) Except for rules made under Subsection (1)(c), the procurement rules adopted by the policy board under this section apply to all local public procurement units unless the local public procurement unit's legislative body has adopted separate rules governing procurement.]~~

~~[(c) The rules shall include provisions consistent with federal contract prohibition provisions of the Sudan Accountability and Divestment Act of 2007 (Pub. L. No. 110-174) that prohibit a state agency from contracting with a person doing business in Sudan.]~~

(1) Except as provided in Subsection (2), rules made by the board under this chapter shall govern all public procurement units for which the board is the applicable rulemaking authority.

(2) The ~~[State Building Board]~~ building board rules governing procurement of construction, architect-engineer services, and leases apply to the procurement of construction, architect-engineer services, and leases of real property by the Division of Facilities Construction and Management.

(3) The Legislature may enact its own rules, consistent with this chapter, governing procurement by the legislative branch.

(4) The Judicial Council may enact its own rules, consistent with this chapter, governing procurement by the judicial branch.

~~[(3)]~~ (5) The board shall make a report [by] on or before July 1 of each year to [an appropriate] a legislative interim committee, designated by the Legislative Management Committee created under Section 36-12-6, on the establishment, implementation, and enforcement of the rules made under [Subsection (1)(c)] Section 63G-6a-203.

Section 90. Section **63G-6a-205**, which is renumbered from Section 63G-6-209 is

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renumbered and amended to read:

~~[63G-6-209].~~ **63G-6a-205. Procurement advisory councils.**

~~[(1) The policy board may establish a Procurement Advisory Council, which shall meet at least once a year for the discussion of problems and recommendations for improvement of the procurement process. When requested by the policy board, the Procurement Advisory Council may conduct studies, research, analyses, and make reports and recommendations with respect to subjects or matters within the jurisdiction of the policy board. The Procurement Advisory Council shall consist of representatives of state and local government and any other persons the policy board considers desirable.]~~

~~[(2)]~~ The chief procurement officer may appoint advisory [~~groups~~] councils to provide advice regarding any matters within the authority of the chief procurement officer.

~~[(3) Members of the Procurement Advisory Council and other advisory groups may be reimbursed for expenses incurred in the performance of their duties, as provided by the policy board.]~~

Section 91. Section **63G-6a-301** is enacted to read:

Part 3. Chief Procurement Officer

63G-6a-301. Title.

This part is known as "Chief Procurement Officer."

Section 92. Section **63G-6a-302**, which is renumbered from Section 63G-6-203 is renumbered and amended to read:

~~[63G-6-203].~~ **63G-6a-302. Chief procurement officer -- Appointment -- Qualifications -- Authority.**

(1) The executive director of the Department of Administrative Services, with the consent of the governor, shall appoint the chief procurement officer after considering recommendations from the [~~policy~~] board.

(2) The chief procurement officer shall:

(a) have a minimum of eight years' experience in the large-scale procurement of supplies and services or services and construction, at least five years of which shall have been in public or comparable private procurement within 12 years preceding the date of appointment; and

(b) be a person with demonstrated executive and organizational ability.

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(3) The chief procurement officer appointed under Subsection (1) is also the director of the Division of Purchasing and General Services.

(4) Except as otherwise expressly provided in this chapter, the chief procurement officer has authority over procurements by a public procurement unit, other than:

- (a) a non-executive procurement unit;
- (b) a local government unit; or
- (c) a state purchasing unit, other than the division.

Section 93. Section **63G-6a-303**, which is renumbered from Section 63G-6-204 is renumbered and amended to read:

[63G-6-204]. 63G-6a-303. 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~~] division;

(2) procure or supervise [~~the~~] each procurement [~~of all supplies, services, and construction needed by the state~~] over which the chief procurement officer has authority;

~~[(3) exercise general supervision and control over all inventories or supplies belonging to the state;]~~

~~[(4)]~~ (3) establish and maintain programs for the inspection, testing, and acceptance of [~~supplies, services, and construction~~] each procurement item over which the chief procurement officer has authority;

~~[(5)]~~ (4) prepare statistical data concerning [~~the procurement and usage of all supplies, services, and construction~~] each procurement and procurement usage of a state procurement unit;

~~[(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 paper;]~~

~~[(7) before July 1, 1992:]~~

~~[(a) establish standards and specifications for determining which supplies are~~

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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)] (5) ensure that:~~

~~(a) before approving a [purchase, lease, or rental] procurement not covered by an existing statewide contract for information technology or telecommunications supplies or services, the chief information officer and the agency have [provided] stated in writing to the division[;] that the needs analysis required in Section 63F-1-205 was completed, unless the [purchase, lease, or rental] procurement is approved in accordance with Title 63M, Chapter 1, Part 26, Government Procurement Private Proposal Program; and~~

~~(b) the oversight authority required by Subsection [(8)](5)(a) is not delegated outside the [Division of Purchasing and General Services.] division; and~~

~~(6) provide training to public procurement units and to persons who do business with public procurement units.~~

Section 94. Section **63G-6a-304**, which is renumbered from Section 63G-6-205 is renumbered and amended to read:

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~~[63G-6-205].~~ **63G-6a-304. Delegation of authority.**

[Subject to rules and regulations]

(1) In accordance with rules made by the board, the chief procurement officer may delegate authority to designees or to any department, agency, or official.

(2) 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 95. Section **63G-6a-305**, which is renumbered from Section 63G-6-302 is renumbered and amended to read:

~~[63G-6-302].~~ **63G-6a-305. Duty of chief procurement officer in maintaining specifications.**

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

(2) The chief procurement officer shall obtain expert advice and assistance from personnel of ~~[using agencies]~~ public procurement units in the development of specifications and may delegate in writing to a ~~[using agency]~~ public procurement unit 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 96. Section **63G-6a-401** is enacted to read:

Part 4. General Procurement Provisions

63G-6a-401. Title.

This part is known as "General Procurement Provisions."

Section 97. Section **63G-6a-402** is enacted to read:

63G-6a-402. Public procurement unit required to comply with Utah Procurement Code and applicable rules -- Rulemaking authority -- Reporting.

(1) Except as otherwise provided in Section 63G-6a-109, Section 63G-6a-403, Part 8, Exceptions to Procurement Requirements, or elsewhere in this chapter, a public procurement unit may not obtain a procurement item, unless:

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(a) if the public procurement unit is an authorized purchasing entity, the public procurement unit:

(i) uses a procurement process; and

(ii) complies with:

(A) the requirements of this chapter; and

(B) the rules made pursuant to this chapter by the applicable rulemaking authority;

(b) if the public procurement unit is a local government unit, the public procurement unit complies with:

(i) the requirements of this chapter that are adopted by the local government unit; and

(ii) all other procurement requirements that the local government unit is required to comply with; or

(c) if the public procurement unit is not a public procurement unit described in Subsections (1)(a) or (b), the public procurement unit:

(i) obtains the procurement item under the direction and approval of the division, unless otherwise provided by a rule made by the board;

(ii) uses a procurement process; and

(iii) complies with:

(A) the requirements of this chapter; and

(B) the rules made pursuant to this chapter by the applicable rulemaking authority.

(2) Subject to Subsection (3), the applicable rulemaking authority shall make rules relating to the management and control of procurements and procurement procedures by a public procurement unit.

(3) (a) Rules made under Subsection (2) shall ensure compliance with the federal contract prohibition provisions of the Sudan Accountability and Divestment Act of 2007 (Pub. L. No. 110-174) that prohibit contracting with a person doing business in Sudan.

(b) The State Building Board rules governing procurement of construction, architect-engineer services, and leases apply to the procurement of construction, architect-engineer services, and leases of real property by the Division of Facilities Construction and Management.

(4) An applicable rulemaking authority that is subject to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall make the rules described in this chapter in accordance

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with the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(5) The State Building Board shall make a report on or before July 1 of each year to a legislative interim committee, designated by the Legislative Management Committee created under Section 36-12-6, on the establishment, implementation, and enforcement of the rules made by the State Building Board under this chapter.

Section 98. Section **63G-6a-403** is enacted to read:

63G-6a-403. Prequalification of potential bidders or offerers.

(1) A public procurement unit may, in accordance with this section:

(a) prequalify potential bidders or offerers to provide any type of procurement item specified by the public procurement unit; and

(b) limit participation in an invitation for bids or a request for proposals to the prequalified potential bidders or offerers for the specified type of procurement item.

(2) To prequalify potential bidders or offerers to provide a specified type of procurement item, a public procurement unit shall issue a request for qualifications.

(3) A public procurement unit that issues a request for qualifications shall:

(a) publish the request for qualifications in accordance with the requirements of Section 63G-6a-402;

(b) state in the request for qualifications:

(i) the type of procurement item to which the request for qualifications relates;

(ii) the scope of work to be performed;

(iii) the instructions and the deadline for providing information in response to the request for qualifications;

(iv) the minimum criteria for prequalification;

(v) the period of time during which the list of prequalified potential bidders or offerers will remain in effect, which may not be longer than 18 months after the list of prequalified potential bidders or offerers is made available to the public under Subsection (8)(b); and

(vi) that a public procurement unit may limit participation in an invitation for bids or a request for proposals, during the time period described in Subsection (3)(b)(v), to the potential bidders or offerers that are prequalified to provide the specified type of procurement item.

(4) The minimum criteria described in Subsection (3)(b)(iv):

(a) shall include the prequalification requirements unique to the procurement;

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(b) may include performance rating criteria; and

(c) may not be so restrictive that the criteria unreasonably limit competition.

(5) A public procurement unit may, before making a final list of prequalified bidders or offerors, request additional information to clarify responses made to the request for prequalifications.

(6) A potential bidder or offeror shall be included on the list of prequalified potential bidders or offerors if the bidder or offeror:

(a) submits a timely, responsive response to the request for prequalifications; and

(b) meets the minimum criteria for qualification described in Subsection (3)(b)(iv).

(7) If a request for qualifications will result in only one potential bidder or offeror being placed on the list of prequalified potential bidders or offerors:

(a) the public procurement unit shall cancel the request for qualifications; and

(b) the list may not be used by the public procurement unit.

(8) The public procurement unit shall:

(a) before making the list of prequalified potential bidders or offerors available to the public, provide each potential bidder or offeror who provided information in response to the request, but who did not meet the minimum qualifications for placement on the list, a written justification statement describing why the potential bidder or offeror did not meet the criteria for inclusion on the list; and

(b) within 30 days after the day of the deadline described in Subsection (3)(b)(iii), make the list of prequalified potential bidders or offerors available to the public.

Section 99. Section **63G-6a-404** is enacted to read:

63G-6a-404. Approved contractor list.

(1) An authorized purchasing entity may compile a list of approved contractors from which procurement items may be obtained.

(2) An approved contractor list may only be compiled from:

(a) timely, responsive bids or responses received in response to:

(i) an invitation for bids; or

(ii) a request for proposals; or

(b) timely, responsive responses to:

(i) the prequalification process described in Section 63G-6a-403; or

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(ii) the process described in Part 15, Architect-Engineer Services.

(3) In order to ensure equal treatment of all contractors on a contractor list, an authorized purchasing entity shall use one of the following methods in an unbiased manner:

(a) a rotation system, organized alphabetically, numerically, or randomly;

(b) assigning contractors to a specified geographical area; or

(c) classifying each contractor based on each contractor's particular expertise or field.

Section 100. Section **63G-6a-405** is enacted to read:

63G-6a-405. Multiple award contracts.

(1) An authorized purchasing entity may enter into multiple award contracts with bidders or offerors.

(2) Multiple award contracts may be in an authorized purchasing entity's best interest if award to two or more bidders or offerors for similar procurement items is needed or desired for adequate delivery, service, availability, or product compatibility.

(3) An authorized purchasing entity shall:

(a) exercise care to protect and promote competition among bidders or offerors when seeking to enter into multiple award contracts;

(b) name all eligible users of the multiple award contracts in the invitation for bids or request for proposals; and

(c) if the authorized purchasing entity anticipates entering into multiple award contracts before issuing the invitation for bids or request for proposals, state in the invitation for bids or request for proposals that the authorized purchasing entity may enter into multiple award contracts at the end of the procurement process.

(4) An authorized purchasing entity that enters into multiple award contracts shall:

(a) obtain all of its normal, recurring requirements for the procurement items that are the subject of the contracts until the contracts terminate; and

(b) reserve the right to obtain the procurement items described in Subsection (4)(a) separately from the contracts if:

(i) there is a need to obtain a quantity of the procurement items that exceeds the amount specified in the contracts; or

(ii) the procurement officer makes a written finding that the procurement items available under the contract will not effectively or efficiently meet a nonrecurring special need

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of a public procurement unit.

(5) Notwithstanding Subsection (3)(b), if an authorized purchasing entity enters into a multiple award contract under this section, another authorized purchasing entity that is not a signatory to the contract may, but is not required to, obtain a procurement item under the contract.

(6) An applicable rulemaking authority may make rules to further regulate a procurement under this section.

Section 101. Section **63G-6a-406** is enacted to read:

63G-6a-406. Public notice of procurement process.

(1) An authorized purchasing entity that issues an invitation for bids ~~{ or }~~ , a request for proposals, ~~or another document required by this chapter to be published in accordance with this section,~~ shall provide public notice that includes:

(a) the name of the authorized purchasing entity and the public procurement unit acquiring the procurement item;

(b) information on how to contact the authorized purchasing entity in relation to the invitation for bids ~~{ or }~~ , request for proposals, ~~or other document~~;

(c) ~~for an invitation for bids or a request for proposals,~~ the date of the opening and closing of the invitation for bids or request for proposals;

(d) information on how to obtain a copy of the invitation for bids ~~{ or }~~ , request for proposals, ~~or other document~~; and

(e) a general description of the procurement items that will be obtained through the procurement process.

(2) Except as provided in Subsection (3), the authorized purchasing entity shall publish the notice described in Subsection (1), using at least one of the following methods:

(a) at least 10 days before the day of the deadline for submission of a bid or other response, publish the notice:

(i) in a newspaper of general circulation in the state; or

(ii) in a newspaper of local circulation in the area:

(A) directly impacted by the procurement; or

(B) over which the public procurement unit has jurisdiction; or

(b) at least 10 consecutive days before the day of the deadline for submission of a bid

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or other response, publish the notice:

(i) on the main website for the authorized purchasing entity or public procurement unit;

or

(ii) on a state website that is owned, managed by, or provided under contract with, the division for posting a public procurement notice.

(3) An authorized purchasing entity may reduce the 10-day period described in Subsection (2), if the procurement officer or the procurement officer's designee signs a written statement that:

(a) states that a shorter time is needed; and

(b) as it relates to an invitation for bids or a request for proposals, determines that competition from multiple sources may be obtained within the shorter period of time.

(4) An authorized purchasing entity shall make a copy of an invitation for bids ~~for~~, a request for proposals, or any other document described in Subsection (1), available for public inspection at the main office of the authorized purchasing entity or on the website described in Subsection (2)(b).

Section 102. Section **63G-6a-407**, which is renumbered from Section 63G-6-303 is renumbered and amended to read:

~~[63G-6-303].~~ **63G-6a-407. Purpose of specifications.**

(1) All specifications shall seek to promote the overall economy and best use for the purposes intended and encourage competition in satisfying the [state's] needs of the public procurement unit, and [shall] may not be unduly restrictive.

(2) The requirements of this part regarding the purposes and nonrestrictiveness of specifications shall apply to all specifications, including ~~[, but not limited to,]~~ those prepared by architects, engineers, designers, and draftsmen for public contracts.

Section 103. Section **63G-6a-408** is enacted to read:

63G-6a-408. Small purchases.

(1) The applicable rulemaking authority may make rules governing small purchases, including:

(a) establishing the maximum expenditure that may qualify as a small purchase, unless otherwise provided by statute;

(b) establishing expenditure thresholds and procurement requirements related to those

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thresholds; and

(c) the use of electronic, telephone, or written quotes.

(2) (a) Except as provided in Subsection (2)(b), a public procurement unit may not obtain a procurement item through a small purchase procurement process if the procurement item may be obtained through a state contract.

(b) Subsection (2)(a) does not apply:

(i) to a non-executive state procurement unit;

(ii) if the procurement officer or the head of the state purchasing unit authorizes an exception to the requirement;

(iii) to an institution of higher education of the state; or

(iv) to a school district or a public school.

(c) An entity that is exempt from the requirements of Subsection (2)(a) is encouraged, but not required, to comply with Subsection (2)(a).

(3) A public procurement unit:

(a) may not use the small purchase procurement process described in this section for ongoing, continuous, ~~for~~and regularly scheduled procurements; and

(b) shall make its ongoing, continuous, ~~for~~and regularly scheduled procurements ~~through~~

~~(i) a state contract; or~~

~~(ii) if there is not an existing state contract for the procurement item,~~ through a contract awarded through a procurement process described in this chapter or an applicable exception to a procurement process.

(4) It is unlawful for a person to intentionally or knowingly divide a procurement into one or more smaller procurements with the intent to make a procurement:

(a) qualify as a small purchase, if, before dividing the procurement, it would not have qualified as a small purchase; or

(b) meet a threshold established by rule made by the applicable rulemaking authority, if, before dividing the procurement, it would not have met the threshold.

(5) A division of a procurement that is prohibited under Subsection (4) includes doing any of the following with the intent or knowledge described in Subsection (4):

(a) making two or more separate purchases;

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(b) dividing an invoice or purchase order into two or more invoices or purchase orders;

or

(c) making smaller purchases over a period of time.

(6) A person who violates Subsection (4) is subject to the criminal penalties described in Section 63G-6a-2305.

(7) The Division of Finance within the Department of Administrative Services may conduct an audit of a public procurement unit in the state executive branch to verify compliance with the requirements of this section.

(8) A public procurement unit in the state executive branch may not make a small purchase after January 1, 2013, unless the chief procurement officer certifies that the person responsible for procurements in the public procurement unit has satisfactorily completed training on this section and the rules made under this section.

Section 104. Section **63G-6a-501** is enacted to read:

Part 5. Request for Information

63G-6a-501. Title.

This part is known as "Request for Information."

Section 105. Section **63G-6a-502** is enacted to read:

63G-6a-502. Purpose of request for information.

(1) The purpose of a request for information is to:

(a) obtain information, comments, or suggestions from potential bidders or offerors before issuing an invitation for bids or request for proposals;

(b) determine whether to issue an invitation for bids or a request for proposals; and

(c) generate interest in a potential invitation for bids or a request for proposals.

(2) A request for information may be useful in order to:

(a) prepare to issue an invitation for bids or request for proposals for an unfamiliar or complex procurement;

(b) determine the market availability of a procurement item; or

(c) determine best practices, industry standards, performance standards, product specifications, and innovations relating to a procurement item.

Section 106. Section **63G-6a-503** is enacted to read:

63G-6a-503. Request for information and response nonbinding.

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(1) A request for information is not a procurement process and may not be used to make a purchase or enter into a contract. A public procurement unit is required to use a procurement process, or comply with an exception to the requirement to use a procurement process, in order to make a purchase or enter into a contract.

(2) A response to a request for information is not an offer and may not be accepted to form a binding contract.

Section 107. Section **63G-6a-504** is enacted to read:

63G-6a-504. Contents of request for information -- Public notice.

A request for information may seek a wide range of information, including:

- (1) availability of a procurement item;
- (2) delivery schedules;
- (3) industry standards and practices;
- (4) product specifications;
- (5) training;
- (6) new technologies;
- (7) capabilities of potential providers of a procurement item; and
- (8) alternate solutions.

Section 108. Section **63G-6a-601** is enacted to read:

Part 6. Bidding

63G-6a-601. Title.

This part is known as "Bidding."

Section 109. Section **63G-6a-602** is enacted to read:

63G-6a-602. Contracts awarded by bidding.

(1) Except as otherwise provided in this chapter, an authorized purchasing entity shall award a contract for a procurement by bidding, in accordance with the rules of the applicable rulemaking authority.

(2) The bidding procurement process is appropriate to use when cost is the major factor in determining the award of a procurement.

Section 110. Section **63G-6a-603** is enacted to read:

63G-6a-603. Invitation for bids -- Contents -- Notice.

(1) The bidding procurement process begins when the authorized purchasing entity

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issues an invitation for bids.

(2) An invitation for bids shall:

(a) state the period of time during which bids will be accepted;

(b) describe the manner in which a bid shall be submitted;

(c) state the place where a bid shall be submitted; and

(d) include, or incorporate by reference:

(i) a description of the procurement items sought;

(ii) the objective criteria that will be used to evaluate the bids; and

(iii) the required contractual terms and conditions.

(3) An authorized purchasing entity shall publish an invitation for bids in accordance with the requirements of Section 63G-6a-406.

Section 111. Section **63G-6a-604** is enacted to read:

63G-6a-604. Bid opening and acceptance.

(1) Bids shall be opened:

(a) publicly, except as provided in Section 63G-6a-611;

(b) in the presence of one or more witnesses, unless an electronic bid opening process is used where bidders may see the opening of the bid electronically; and

(c) at the time and place indicated in the invitation for bids.

(2) Bids shall be accepted unconditionally, without alteration or correction, except as otherwise authorized by this chapter.

(3) (a) The procurement officer shall reject a bid that is not responsive or responsible.

(b) A bid that is not responsive includes a bid that:

(i) is conditional;

(ii) attempts to modify the bid requirements;

(iii) contains additional terms or conditions; or

(iv) fails to conform with the requirements or specifications of the invitation for bids.

(c) A bid that is not responsible includes a bid where the procurement officer reasonably concludes that the bidder or an employee, agent, or subcontractor of the bidder, at any tier, is unable to satisfactorily fulfill the bid requirements.

(4) An authorized purchasing entity may not accept a bid after the time for submission of a bid has expired.

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(5) The procurement officer shall:

(a) record the name of each bidder and the amount of each bid; and

(b) after the bid is awarded, make the information described in Subsection (5)(a)

available for public disclosure.

Section 112. Section **63G-6a-605** is enacted to read:

63G-6a-605. Correction or withdrawal of bids -- Cancellation of award.

(1) Correction or withdrawal of inadvertently erroneous bids, or the cancellation of an award or a contract that is based on an unintentionally erroneous bid, may be made in accordance with the rules of the applicable rulemaking authority.

(2) Notwithstanding Subsection (1), the following changes may not be made to a bid after the bid opening:

(a) changes in bid pricing;

(b) changes in the cost evaluation formula; or

(c) changes in other provisions that are prejudicial to fair competition or to the interest of the public procurement unit.

(3) A decision to permit the correction or withdrawal of a bid or the cancellation of an award or a contract under Subsection (1) shall be supported in a written document, signed by the procurement officer or the head of the authorized purchasing entity.

Section 113. Section **63G-6a-606** is enacted to read:

63G-6a-606. Evaluation of bids -- Award -- Cancellation -- Disqualification.

(1) An authorized purchasing entity shall evaluate each bid using the objective criteria described in the invitation for bids, which may include:

(a) experience;

(b) performance ratings;

(c) inspection;

(d) testing;

(e) quality;

(f) workmanship;

(g) time and manner of delivery;

(h) references;

(i) financial stability;

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(j) cost;

(k) suitability for a particular purpose; or

(l) other objective criteria specified in the invitation for bids.

(2) Criteria not described in the invitation for bids may not be used to evaluate a bid.

(3) The authorized purchasing entity shall:

(a) award the contract as soon as practicable to:

(i) the lowest responsive and responsible bidder who meets the objective criteria described in the invitation for bids; or

(ii) if, in accordance with Subsection (4), the procurement officer or the head of the authorized purchasing entity disqualifies the bidder described in Subsection (3)(a)(i), the next lowest responsive and responsible bidder who meets the objective criteria described in the invitation for bids; or

(b) cancel the invitation for bids without awarding a contract.

(4) In accordance with Subsection (5), the procurement officer or the head of the authorized purchasing entity may disqualify a bidder for:

(a) a violation of this chapter;

(b) a violation of a requirement of the invitation for bids;

(c) unlawful or unethical conduct; or

(d) a change in circumstance that, had the change been known at the time the bid was submitted, would have caused the bidder to not be the lowest responsive and responsible bidder who meets the objective criteria described in the invitation for bids.

(5) A procurement officer or head of an authorized purchasing entity who disqualifies a bidder under Subsection (4) shall:

(a) make a written finding, stating the reasons for disqualification; and

(b) provide a copy of the written finding to the disqualified bidder.

(6) If an authorized purchasing entity cancels an invitation for bids without awarding a contract, the authorized purchasing entity shall make available for public inspection a written justification for the cancellation.

Section 114. Section **63G-6a-607** is enacted to read:

63G-6a-607. Action when all bids are over budget.

(1) Except as provided in Subsection (2) or (3), if the fiscal officer for the public

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procurement unit certifies that all accepted bids exceed available funds and that the lowest responsive and responsible bidder does not exceed the available funds by more than 5%, the procurement officer may negotiate an adjustment of the bid price and bid requirements with the lowest responsive and responsible bidder in order to bring the bid within the amount of available funds.

(2) A procurement officer may not adjust the bid requirements under Subsection (1) if there is a substantial likelihood that, had the adjustment been included in the invitation for bids, a person that did not submit a bid would have submitted a responsive, responsible, and competitive bid.

(3) The Division of Facilities Construction and Management is exempt from the requirements of this section if:

(a) the building board adopts rules governing procedures when all accepted bids exceed available funds; and

(b) the Division of Facilities Construction and Management complies with the rules described in Subsection (3)(a).

Section 115. Section **63G-6a-608** is enacted to read:

63G-6a-608. Tie bids -- Resolution -- Copies provided to attorney general.

(1) A procurement officer shall resolve a tie bid in accordance with a method established by rule made by the applicable rulemaking authority. The method may include awarding the tie bid:

(a) to the tie bidder who:

(i) is provider of state products, if no other tie bidder is a responsive provider of state products;

(ii) is closest to the point of delivery;

(iii) received the previous award; or

(iv) will provide the earliest delivery date;

(b) by drawing lots; or

(c) by any other reasonable method of resolving a tie bid.

(2) The method chosen by the procurement officer to resolve a tie bid shall be at the sole discretion of the procurement officer, subject to the rules established under Subsection (1).

(3) A public procurement unit in the state executive branch shall provide a copy of the

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procurement to the attorney general if an award of a contract to a tie bidder exceeds \$100,000 in expenditures.

Section 116. Section **63G-6a-609** is enacted to read:

63G-6a-609. Multiple stage bidding process.

(1) An authorized purchasing entity may conduct a bid in multiple stages, to:

- (a) narrow the number of bidders who will progress to a subsequent stage;
- (b) prequalify bidders for subsequent stages, in accordance with Section 63G-6a-403;
- (c) enter into a contract for a single procurement; or
- (d) award multiple contracts for a series of upcoming procurements.

(2) The invitation for bids for a multiple stage bidding process shall:

- (a) describe the requirements for, and purpose of, each stage of the process;
- (b) indicate whether the authorized purchasing entity intends to award:
 - (i) a single contract; or
 - (ii) multiple contracts for a series of upcoming procurements; and
- (c) state that:
 - (i) the first stage is for prequalification only;
 - (ii) a bidder may not submit any pricing information in the first stage of the process;

and

(iii) bids in the second stage will only be accepted from a person who prequalifies in the first stage.

(3) During the first stage, the authorized purchasing entity:

(a) shall prequalify bidders to participate in subsequent stages, in accordance with Section 63G-6a-403;

(b) shall prohibit the submission of pricing information until the final stage; and

(c) may, before beginning the second stage, request additional information to clarify the qualifications of the bidders who submit timely responses.

(4) Contracts may only be awarded for a procurement item described in stage one of the invitation for bids.

(5) An authorized purchasing entity may conduct a bid in as many stages as it determines to be appropriate.

(6) Except as otherwise expressly provided in this section, an authorized purchasing

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entity shall conduct a multiple stage process in accordance with this part.

(7) The applicable rulemaking authority may make rules governing the use of a multiple stage process described in this section.

Section 117. Section **63G-6a-610** is enacted to read:

63G-6a-610. Contracts awarded by reverse auction.

(1) Reverse auction bidding may be used if the procurement officer determines, in writing, that reverse auction bidding will provide the best value to the public procurement unit.

(2) Reverse auction bidding is appropriate to use when there are multiple prequalified providers of a procurement item.

Section 118. Section **63G-6a-611** is enacted to read:

63G-6a-611. Invitation for bids for reverse auction -- Notice contents -- Agreement to terms and conditions.

(1) The reverse auction bidding process begins when an authorized purchasing entity issues an invitation for bids to prequalify bidders to participate in the reverse auction.

(2) The invitation for bids shall:

(a) state the period of time during which bids will be accepted;

(b) state that the bid will be conducted by reverse auction;

(c) describe the procurement items sought;

(d) describe the minimum requirements to become prequalified;

(e) state the required contractual terms and conditions; and

(f) describe the procedure that the authorized purchasing entity will follow in conducting the reverse auction.

(3) In order to participate in a reverse auction, a bidder shall agree to:

(a) the specifications, and contractual terms and conditions, of the procurement; and

(b) be trained in, and abide by, the procedure that the authorized purchasing entity will follow in conducting the reverse auction.

(4) An authorized purchasing entity shall publish an invitation for bids for a reverse auction in accordance with the requirements of Section 63G-6a-406.

Section 119. Section **63G-6a-612** is enacted to read:

63G-6a-612. Conduct of reverse auction.

(1) When conducting a reverse auction, an authorized purchasing entity:

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- (a) may conduct the reverse auction at a physical location or by electronic means;
- (b) shall permit all prequalified bidders to participate in the reverse auction;
- (c) may not permit a bidder to participate in the reverse auction if the bidder did not prequalify to participate in the reverse auction;
- (d) may not accept a bid after the time for submission of a bid has expired;
- (e) shall update the bids on a real time basis; and
- (f) shall conduct the reverse auction in a manner that permits each bidder to:
 - (i) bid against each other; and
 - (ii) lower the bidder's price below the lowest bid before the reverse auction closes.
- (2) At the end of the reverse auction, the authorized purchasing entity shall:
 - (a) award the contract as soon as practicable to the lowest responsive and responsible bidder who meets the objective criteria described in the invitation for bids; or
 - (b) cancel the reverse auction without awarding a contract.
- (3) After the reverse auction is finished, the procurement officer shall make publicly available:
 - (a) (i) the amount of the final bid submitted by each bidder during the reverse auction;
and
 - (ii) the identity of the bidder that submitted each final bid; and
 - (b) if practicable:
 - (i) the amount of each bid submitted during the reverse auction; and
 - (ii) the identity of the bidder that submitted each bid.

Section 120. Section **63G-6a-701** is enacted to read:

Part 7. Request for Proposals

63G-6a-701. Title.

This part is known as "Request for Proposals."

Section 121. Section **63G-6a-702** is enacted to read:

63G-6a-702. Contracts awarded by request for proposals.

- (1) A request for proposals procurement process may be used instead of bidding if the procurement officer determines, in writing, that the request for proposals procurement process will provide the best value to the public procurement unit.
- (2) The request for proposals procurement process is appropriate to use for:

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- (a) the procurement of professional services;
- (b) a design-build procurement;
- (c) when cost is not the most important factor to be considered in making the selection that is most advantageous to the public procurement unit; or
- (d) when factors, in addition to cost, are highly significant in making the selection that is most advantageous to the public procurement unit.

Section 122. Section **63G-6a-703** is enacted to read:

63G-6a-703. Request for proposals -- Notice -- Contents.

- (1) The request for proposals procurement process begins when the authorized purchasing entity issues a request for proposals.
- (2) A request for proposals shall:
 - (a) state the period of time during which a proposal will be accepted;
 - (b) describe the manner in which a proposal shall be submitted;
 - (c) state the place where a proposal shall be submitted;
 - (d) include, or incorporate by reference:
 - (i) a description of the procurement items sought;
 - (ii) a description of the subjective and objective criteria that will be used to evaluate the proposal; and
 - (iii) the ~~required~~ **standard** contractual terms and conditions **required by the authorized purchasing entity**;
 - (e) state the relative weight that will be given to each score awarded for the criteria described in Subsection (2)(d)(ii), including cost;
 - (f) state the formula that will be used to determine the score awarded for the cost of each proposal;
 - (g) if the request for proposals will be conducted in multiple stages, as described in Section 63G-6a-710, include a description of the stages and the criteria and scoring that will be used to screen offerors at each stage; and
 - (h) state that discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award, followed by an opportunity to make best and final offers, but that proposals may be accepted without discussions.

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(3) An authorized purchasing entity shall publish a request for proposals in accordance with the requirements of Section 63G-6a-406.

Section 123. Section **63G-6a-704** is enacted to read:

63G-6a-704. Opening of proposals and acceptance.

(1) An authorized purchasing entity shall ensure that proposals are opened in a manner that avoids disclosing the contents to competing offerors during the evaluation process.

(2) An authorized purchasing entity may not accept a proposal:

(a) after the time for submission of a proposal has expired; or

(b) that is not responsive to the request for proposals.

Section 124. Section **63G-6a-705** is enacted to read:

63G-6a-705. Discussions -- Best and final offers.

(1) After proposals are received and opened, the authorized purchasing entity may conduct discussions with the offerors and allow the offerors to make best and final offers after the discussions.

(2) The authorized purchasing entity shall:

(a) ensure that each offeror receives fair and equal treatment with respect to the other offerors;

(b) establish a schedule and procedures for conducting discussions;

(c) ensure that information in each proposal and information gathered during discussions is not shared with other offerors until the contract is awarded;

(d) ensure that auction tactics are not used in the discussion process, including discussing and comparing the costs and features of other proposals; and

(e) set a common date and time for the submission of best and final offers.

(3) If an offeror chooses not to participate in a discussion or does not make a timely best and final offer, the offer submitted by the offerors before the conduct of discussions shall be treated as the offeror's best and final offer.

Section 125. Section **63G-6a-706** is enacted to read:

63G-6a-706. Correction or withdrawal of proposal -- Cancellation of award.

(1) Correction or withdrawal of an unintentionally erroneous proposal, or the cancellation of an award or contract that is based on an unintentionally erroneous proposal, may be made in accordance with the rules of the applicable rulemaking authority.

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(2) A decision to permit the correction or withdrawal of a proposal or the cancellation of an award or a contract under Subsection (1) shall be supported in a written document, signed by the procurement officer.

Section 126. Section **63G-6a-707** is enacted to read:

63G-6a-707. Evaluation of proposals -- Evaluation committee.

(1) Each proposal shall be evaluated using the criteria described in the request for proposals, which may include:

- (a) experience;
- (b) performance ratings;
- (c) inspection;
- (d) testing;
- (e) quality;
- (f) workmanship;
- (g) time, manner, or schedule of delivery;
- (h) references;
- (i) financial stability;
- (j) suitability for a particular purpose;
- (k) management plans;
- (l) cost; or
- (m) other subjective or objective criteria specified in the request for proposals.

(2) Criteria not described in the request for proposals may not be used to evaluate a proposal.

(3) The authorized purchasing entity shall:

- (a) appoint an evaluation committee consisting of at least three individuals; and
- (b) ensure that the evaluation committee and each member of the evaluation

committee:

- (i) does not have a conflict of interest with any of the offerors;
- (ii) can fairly evaluate each proposal;
- (iii) does not contact or communicate with an offeror for any reason other than conducting the procurement process; and
- (iv) conducts the evaluation in a manner that ensures a fair and competitive process

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and avoids the appearance of impropriety.

(4) The evaluation committee may conduct interviews with, or participate in presentations by, the offerors.

(5) Except as provided in Subsection (6) or (7), each member of the evaluation committee is prohibited from knowing, or having access to, any information relating to the cost, or the scoring of the cost, of a proposal until after the evaluation committee submits its final recommended scores on all other criteria to the authorized purchasing entity.

(6) (a) As used in this Subsection (6), "management fee" includes only the following fees of the construction manager/general contractor:

(i) preconstruction phase services;

(ii) monthly supervision fees for the construction phase; and

(iii) overhead and profit for the construction phase.

(~~f~~6)~~b~~) When selecting a construction manager/general contractor for a construction project, the evaluation committee:

(~~f~~a)~~i~~) may, at any time after the opening of the responses to the request for proposals, have access to, and consider, the management fee proposed by the offerors; and

(~~f~~b)~~ii~~) except as provided in Subsection (7), may not know or have access to any other information relating to the cost of construction submitted by the offerors, until after the evaluation committee submits its final recommended scores on all other criteria to the authorized purchasing entity.

(7) An authorized purchasing entity is not required to comply with Subsection (5) if, before opening the responses to the request for proposals, the head of the authorized purchasing entity or a person designated by rule made by the applicable rulemaking authority:

(a) signs a written statement:

(i) indicating that, due to the nature of the proposal or other circumstances, it is in the best interest of the state to waive compliance with Subsection (5); and

(ii) describing the nature of the proposal and the other circumstances relied upon to waive compliance with Subsection (5); and

(b) makes the written statement available to the public, upon request.

Section 127. Section **63G-6a-708** is enacted to read:

63G-6a-708. Publication of award and scores -- Cost-benefit analysis.

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(1) The authorized purchasing entity shall, on the day on which the selection is announced, make available to each offeror and to the public a written statement that includes:

(a) the name of the offeror found by the authorized purchasing entity to provide the greatest overall value to the public procurement unit, taking into account the cost and the other evaluation criteria described in the request for proposals; and

(b) the scores awarded to each offeror by the evaluation committee for each evaluation criteria category described in the request for proposals.

(2) If the contract is awarded to an offeror other than the lowest cost offeror, and the difference between the cost of the accepted proposal and the lowest proposal exceeds the greater of \$10,000 or 5% of the lowest cost offer, an authorized purchasing entity shall include, with the statement described in Subsection (1), an informal written cost-benefit analysis that:

(a) explains, in general terms, the advantage to the public procurement unit of awarding the contract to the higher cost offeror;

(b) includes, except as provided in Subsection (2)(c), the estimated added financial value to the public procurement unit of each criteria that justifies awarding the contract to the higher cost offeror;

(c) includes, to the extent that assigning a financial value to a particular criteria is not practicable, a statement describing:

(i) why it is not practicable to assign a financial value to the criteria; and

(ii) in nonfinancial terms, the advantage to the public procurement unit, based on the particular criteria, of awarding the contract to the higher cost offeror;

(d) demonstrates that the value of the advantage to the public procurement unit of awarding the contract to the higher cost offeror exceeds the value of the difference between the cost of the higher cost offeror and the cost of the lower cost offerors; and

(e) includes any other information required by rule made by the applicable rulemaking authority.

Section 128. Section **63G-6a-709** is enacted to read:

63G-6a-709. Award of contract -- Cancellation -- Disqualification.

(1) After the evaluation and scoring of proposals is completed, the authorized purchasing entity shall:

(a) award the contract as soon as practicable to:

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(i) the responsive and responsible offeror with the highest total score; or

(ii) if, in accordance with Subsection (2), the procurement officer or the head of the authorized purchasing entity disqualifies the offeror described in Subsection (1)(a)(i), the responsive and responsible offeror with the next highest total score; or

(b) cancel the request for proposals without awarding a contract.

(2) In accordance with Subsection (3), the procurement officer or the head of the authorized purchasing entity may disqualify an offeror for:

(a) a violation of this chapter;

(b) a violation of a requirement of the request for proposals;

(c) unlawful or unethical conduct; or

(d) a change in circumstance that, had the change been known at the time the proposal was submitted, would have caused the proposal to not have the highest score.

(3) A procurement officer or head of an authorized purchasing entity who disqualifies an offeror under Subsection (2) shall:

(a) make a written finding, stating the reasons for disqualification; and

(b) provide a copy of the written finding to the disqualified offeror.

(4) If an authorized purchasing entity cancels a request for proposals without awarding a contract, the authorized purchasing entity shall make available for public inspection a written justification for the cancellation.

Section 129. Section **63G-6a-710** is enacted to read:

63G-6a-710. Multiple stage process.

(1) An authorized purchasing entity may conduct a request for proposals in stages, where an earlier stage is used to qualify offerors for subsequent stages or to narrow the number of offerors that will move on to subsequent stages.

(2) Except as otherwise expressly provided in this section, an authorized purchasing entity shall conduct a multiple stage process in accordance with this part.

Section 130. Section **63G-6a-711**, which is renumbered from Section 63G-6-408.5 is renumbered and amended to read:

[63G-6-408.5]. 63G-6a-711. Procurement for submitted proposal.

(1) As used in this section:

(a) "Committee" is as defined in Section 63M-1-2602.

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(b) "Initial proposal" is a proposal submitted by a private entity under Section 63M-1-2605.

(2) After receipt by the chief procurement officer of a copy of an initial proposal from the committee in accordance with Subsection 63M-1-2606(5), including any comment, suggestion, or modification to the initial proposal, the chief procurement officer shall initiate a procurement process in compliance with [~~Title 63G, Chapter 6, Utah Procurement Code~~] this chapter.

(3) The chief procurement officer or designee shall:

(a) review each detailed proposal received in accordance with Title 63M, Chapter 1, Part 26, Government Procurement Private Proposal Program; and

(b) submit all detailed proposals that meet the guidelines established under Subsection 63M-1-2608(1) to the committee for review under Section 63M-1-2609.

(4) For purposes of this chapter, the Governor's Office of Economic Development is considered the state purchasing [agency] unit for a procurement process under Title 63M, Chapter 1, Part 26, Government Procurement Private Proposal Program.

Section 131. Section **63G-6a-801** is enacted to read:

Part 8. Exceptions to Procurement Requirements

63G-6a-801. Title.

This part is known as "Exceptions to Procurement Requirements."

Section 132. Section **63G-6a-802**, which is renumbered from Section 63G-6-410 is renumbered and amended to read:

~~[63G-6-410].~~ **63G-6a-802. Sole source -- Award of contract without competition -- Notice.**

(1) As used in this section:

(a) "Transitional costs" mean the costs of changing from an existing provider of, or type of, a procurement item to another provider of, or type of, procurement item.

(b) "Transitional costs" include:

(i) training costs;

(ii) conversion costs;

(iii) compatibility costs;

(iv) system downtime;

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(v) disruption of service;

(vi) staff time necessary to put the transition into effect;

(vii) installation costs; and

(viii) ancillary software, hardware, equipment, or construction costs.

(c) "Transitional costs" do not include:

(i) the costs of preparing for or engaging in a procurement process; or

(ii) contract negotiation or contract drafting costs.

~~(1)~~² A contract may be awarded for a [supply, service, or construction] procurement item without competition [~~when, under rules and regulations, the chief~~] if the procurement officer, the head of [a purchasing agency, or a designee of either officer above the level of procurement officer] an authorized purchasing entity, or a designee of either who is senior to the procurement officer or the head of the authorized purchasing entity, determines in writing that:

~~(1)~~ (a) there is only one source for the [required supply, service, or construction] procurement item; or

~~(2)~~ (b) the award to a specific supplier, service provider, or contractor is a condition of a donation that will fund the full cost of the supply, service, or construction item.

~~(2)~~³ Circumstances under which there is only one source for a procurement item may include:

(a) where the most important consideration in obtaining a procurement item is the compatibility of equipment, technology, software, accessories, replacement parts, or service;

(b) where a procurement item is needed for trial use or testing;

(c) where ~~an item is procured for resale~~ transitional costs are unreasonable or cost prohibitive; or

(d) procurement of public utility services.

~~(3)~~⁴ The applicable rulemaking authority ~~may~~ shall make rules regarding the publication of notice for a sole source procurement that, at a minimum, require publication of notice of a sole source procurement, in accordance with Section 63G-6a-406, if the cost of the procurement exceeds \$50,000.

~~(4)~~⁵ An authorized purchasing entity who awards a sole source contract on behalf of a public procurement unit shall negotiate with the contractor to ensure that the terms of the

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contract, including price and delivery, are in the best interest of the state.

(6) A public procurement unit may extend a contract for a reasonable period of time without engaging in a procurement process, if:

(a) the award of a new contract for the procurement item is delayed due to a protest or appeal;

(b) the procurement process is delayed due to unintentional error;

(c) changes in industry standards require significant changes to specifications for the procurement item;

(d) the extension is necessary to prevent the loss of federal funds;

(e) the extension is necessary to address a circumstance where the appropriation of state or federal funds has been delayed; or

(f) the extension covers the period of time during which contract negotiations with a new provider are being conducted.

Section 133. Section **63G-6a-803** is enacted to read:

63G-6a-803. Emergency procurement.

(1) Notwithstanding any other provision of this chapter, a procurement officer or the procurement officer's designee may authorize an emergency procurement without using a standard procurement process when an emergency condition exists.

(2) A procurement officer who authorizes an emergency procurement under Subsection (1) shall:

(a) make the authorization in writing, stating the emergency condition upon which the emergency procurement is made; and

(b) ensure that the procurement is made with as much competition as reasonably practicable while avoiding harm, or a risk of harm, to the public health, safety, welfare, or property.

Section 134. Section **63G-6a-804**, which is renumbered from Section 63G-6-423 is renumbered and amended to read:

~~[63G-6-423].~~ **63G-6a-804. Purchase of prison industry goods.**

(1) ~~[AH] (a) A public procurement [units] unit that is not a political subdivision shall purchase goods and services produced by the Utah Correctional Industries Division as provided [by] in this section[; which is an exemption from this chapter. All political subdivisions].~~

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(b) A political subdivision of the state may, and is encouraged to, purchase ~~[these]~~ goods and services ~~[and are encouraged to do so when feasible]~~ under this section.

(c) A public procurement unit is not required to use a procurement process to purchase goods or services under this section.

(2) ~~[By]~~ On or before July 1 of each year, the director of the Utah Correctional Industries shall:

(a) publish and distribute to all ~~[state agencies and interested political subdivisions]~~ public procurement units and other interested public entities a catalog of goods and services provided by the Correctional Industries Division~~[- The catalog shall include],~~ including a description and price of each item offered for sale~~[- The catalog shall be updated and revised];~~ and

(b) update and revise the catalog described in Subsection (2)(a) during the year as the director considers necessary.

(3) (a) ~~[State departments, agencies, and institutions]~~ A procurement unit that is not a political subdivision of the state may not purchase any goods or services provided by the Correctional Industries Division from any other source unless it has been determined in writing by the director of Correctional Industries and by the ~~[state]~~ procurement officer ~~}}~~ or in the case of institutions of higher education, the institutional procurement officer, ~~}}~~ that purchase from the Correctional Industries Division is not feasible due to one of the following circumstances:

(i) the good or service offered by the division does not meet the reasonable requirements of the ~~[purchasing agency]~~ public procurement unit;

(ii) the good or service cannot be supplied within a reasonable time by the division; or

(iii) the cost of the good or service, including basic price, transportation costs, and other expenses of acquisition, is not competitive with the cost of procuring the item from another source.

(b) In cases of disagreement~~[;]~~ under Subsection (3)(a):

(i) the decision may be appealed to a board consisting of:

(A) the director of the Department of Corrections~~[;]~~;

(B) the director of Administrative Services~~[;]~~; and

(C) a neutral third party agreed upon by the other two members ~~[or;]~~ of the board;

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(ii) in the case of [~~institutions~~] an institution of higher education of the state, the president of the [~~involved~~] institution, or the president's designee, shall make the final decision[-]; or

(iii) in the case of a non-executive state procurement unit, a person designated by the applicable rulemaking authority shall make the final decision.

Section 135. Section **63G-6a-805**, which is renumbered from Section 63G-6-425 is renumbered and amended to read:

~~[63G-6-425].~~ **63G-6a-805. Purchase from community rehabilitation programs.**

(1) As used in this section:

(a) [~~"Board"~~] "Advisory board" means the Purchasing from Persons with Disabilities Advisory Board created under this section.

(b) "Central not-for-profit association" means a group of experts designated by the advisory board to do the following, under guidelines established by the advisory board:

(i) assist the advisory board with its functions; and

(ii) facilitate the implementation of advisory board policies.

(c) (i) "Community rehabilitation program" means a program that is operated primarily for the purpose of the employment and training of persons with a disability by a government agency or qualified nonprofit organization which is an income tax exempt organization under 26 U.S.C. Sec. 501(c)(3) of the Internal Revenue Code.

(ii) A community rehabilitation program:

(A) maintains an employment ratio of at least 75% of the program employees under the procurement contract in question have severe disabilities;

(B) (I) complies with any applicable occupational health and safety standards prescribed by the United States Department of Labor; or

(II) is a supported employment program approved by the Utah State Office of Rehabilitation;

(C) has its principal place of business in Utah;

(D) produces any good provided under this section in Utah; and

(E) provides any service that is provided by individuals with a majority of whom domiciled in Utah.

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(d) "Person with a disability" means a person with any disability as defined by and covered under the Americans with Disabilities Act of 1990, 42 U.S.C. 12102.

(2) ~~[(a)]~~ There is created within the division the Purchasing from Persons with Disabilities Advisory Board ~~[within the Division of Purchasing and General Services of the Department of Administrative Services. The board shall be composed of the following three members:]~~.

(3) The advisory board shall consist of three members, as follows:

~~[(i)]~~ (a) the director of the ~~[Division of Purchasing and General Services created under Section 63A-2-101 or a]~~ division or the director's designee;

~~[(ii)]~~ (b) the executive director of the Utah State Office of Rehabilitation, created under Section 53A-24-103, or ~~[a]~~ the executive director's designee; and

~~[(iii)]~~ (c) a representative of the private business community who shall be appointed to a three-year term by the governor with the advice and consent of the Senate.

~~[(b)]~~ (4) The advisory board shall meet, as needed, to facilitate the procurement of goods and services from community rehabilitation programs by a public procurement unit under this chapter by:

~~[(i)]~~ (a) identifying goods and services that are available from community rehabilitation programs ~~[according to the requirements under Subsection (4)]~~ in accordance with the requirements of Subsection (7);

~~[(ii)]~~ (b) approving prices in accordance with Subsection ~~[(4)]~~ (7)(c) for goods and services that are identified under Subsection ~~[(2)(b)(i)]~~ (4)(a);

~~[(iii)]~~ (c) developing, maintaining, and approving a preferred procurement contract list of goods and services identified and priced under Subsections ~~[(2)(b)(i) and (ii)]~~ (4)(a) and (b);

~~[(iv)]~~ (d) reviewing bids received by a community rehabilitation program; and

~~[(v)]~~ (e) awarding and renewing specified contracts for set contract times, without competitive bidding, for the purchase of goods and services under Subsection ~~[(4)]~~ (7).

~~[(c)]~~ (5) The provisions of Subsections ~~[(2)(b)]~~ (4) and ~~[(4)]~~ (7)(a) are an exception to the procurement provisions under this chapter.

~~[(3)]~~ (6) (a) The advisory board may designate a central not-for-profit association, appoint its members, and establish guidelines for its duties.

(b) The designated central not-for-profit association serves at the pleasure of the

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advisory board ~~and the~~. The central not-for-profit association or its individual members may be removed by the advisory board at any time by a majority vote of the advisory board.

(c) Subject to the board guidelines and discretion, a designated central not-for-profit association may be assigned to perform the following duties:

(i) identify qualified community rehabilitation programs and the goods and services that they provide or have the potential to provide;

(ii) help ensure that goods and services are provided at reasonable quality and delivery levels;

(iii) recommend pricing for goods and services;

(iv) ~~reviewing~~ review bids and ~~recommending~~ recommend the award of contracts under the board's direction;

(v) ~~collecting and reporting~~ collect and report program data to the advisory board and to the division; and

(vi) other duties specified by the advisory board.

~~[(4)]~~ (7) Except as provided under Subsection ~~[(6)]~~ (9), notwithstanding any provision ~~[in]~~ of this chapter to the contrary, each public procurement unit shall purchase goods and services produced by a community rehabilitation program using the preferred procurement contract list approved under Subsection ~~[(2)(b)(iii)]~~ (4)(c) if:

(a) the good or service offered for sale by a community rehabilitation program reasonably conforms to the needs and specifications of the public procurement unit;

(b) the community rehabilitation program can supply the good or service within a reasonable time; and

(c) the price of the good or service is reasonably competitive with the cost of procuring the good or service from another source.

~~[(5)]~~ (8) Each community rehabilitation program:

(a) may submit a bid to the advisory board at any time and not necessarily in response to ~~[a request]~~ an invitation for bids; and

(b) shall certify on any bid it submits to the advisory board or to a public procurement unit under this section that it is claiming a preference under this section.

~~[(6)]~~ (9) During a fiscal year, the requirement for a public procurement unit to purchase goods and services produced by a community rehabilitation program under the preferred

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procurement list under Subsection ~~[(4)]~~ (7) does not apply if the ~~[Division of Purchasing and General Services]~~ division determines that the total amount of procurement contracts with community rehabilitation programs has reached \$5 million for that fiscal year.

~~[(7)]~~ (10) In the case of conflict between a purchase under this section and a purchase under Section ~~[63G-6-423]~~ 63G-6a-804, this section prevails.

Section 136. Section **63G-6a-901** is enacted to read:

Part 9. Cancellations, Rejections, and Debarment

63G-6a-901. Title.

This part is known as "Cancellations, Rejections, and Debarment."

Section 137. Section **63G-6a-902**, which is renumbered from Section 63G-6-412 is renumbered and amended to read:

~~[63G-6-412].~~ **63G-6a-902. Cancellation and rejection of bids and proposals.**

~~[An]~~ (1) An authorized purchasing entity may cancel an invitation for bids, a request for proposals, or other solicitation [may be cancelled, or any or all bids or proposals may be rejected] or reject any or all bids or proposal responses, in whole or in part, as may be specified in the solicitation, when it is in the best interests of the [state] public procurement unit in accordance with [rules and regulations] the rules of the applicable rulemaking authority.

(2) The reasons for a cancellation or rejection described in Subsection (1) shall be made part of the contract file.

Section 138. Section **63G-6a-903**, which is renumbered from Section 63G-6-413 is renumbered and amended to read:

~~[63G-6-413].~~ **63G-6a-903. Determination of nonresponsibility of bidder or offeror.**

(1) A ~~[written]~~ determination of nonresponsibility of a bidder or offeror made by an authorized purchasing entity shall be made in writing, in accordance with ~~[rules and regulations]~~ the rules of the applicable rulemaking authority.

(2) The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to the bidder or offeror. ~~[Information]~~

(3) Subject to Title 63G, Chapter 2, Government Records Access and Management

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Act, information furnished by a bidder or offeror pursuant to this section [~~shall~~] may not be disclosed outside of the [~~purchasing division or the purchasing agency~~] public procurement unit or authorized purchasing entity without prior written consent by the bidder or offeror.

Section 139. Section **63G-6a-904**, which is renumbered from Section 63G-6-804 is renumbered and amended to read:

~~[63G-6-804].~~ **63G-6a-904. Debarment from consideration for award of contracts -- Causes for debarment.**

(1) After reasonable notice to the person involved and reasonable opportunity for that person to be heard, [~~the chief procurement officer or the head of a purchasing agency;~~] a procurement officer or the head of an authorized purchasing entity may, after consultation with the [~~using agency and~~] public procurement unit and, if the public procurement unit is in the state executive branch, the attorney general [~~, shall have authority to~~]:

(a) debar a person for cause from consideration for award of contracts [~~The debarment shall not be for a period exceeding three years. The same officer, after consultation with the using agency and the attorney general, shall have authority to~~] for a period not to exceed three years; or

(b) suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity [~~which~~] that might lead to debarment. [~~The suspension shall~~]

(2) A suspension described in Subsection (1)(b) may not be for a period exceeding three months, unless an indictment has been issued for an offense which would be a cause for debarment under Subsection [~~(2)~~] (3), in which case the suspension shall, at the request of the attorney general, remain in effect until after the trial of the suspended person.

[~~(2)~~] (3) The causes for debarment include the following:

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

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

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(c) conviction under state or federal antitrust statutes;

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

[or]

(e) a violation of this chapter, including Part 22, Ethical Requirements; or

~~(e)~~ (f) any other cause the ~~chief~~ procurement officer, or the head of ~~a purchasing agency~~ an authorized purchasing entity determines to be so serious and compelling as to affect responsibility as a state contractor, including debarment by another governmental entity ~~for any cause listed in rules and regulations~~.

Section 140. Section **63G-6a-1001** is enacted to read:

Part 10. Preferences

63G-6a-1001. Title.

This part is known as "Preferences."

Section 141. Section **63G-6a-1002**, which is renumbered from Section 63G-6-404 is renumbered and amended to read:

~~[63G-6-404].~~ **63G-6a-1002. Reciprocal preference for providers of state products.**

(1) (a) ~~[All public procurement units shall, in all purchases of goods, supplies, equipment, materials, and printing]~~ An authorized purchasing entity shall, for all procurements, give a reciprocal preference to those bidders offering [goods, supplies, equipment, materials, or printing] procurement items that are produced, manufactured, mined, grown, or performed in Utah [as against] over those bidders offering [goods, supplies, equipment, materials, or printing] procurement items that are produced, manufactured, mined, grown, or performed in any state that gives or requires a preference to [goods, supplies, equipment, materials, or printing] procurement items that are produced, manufactured, mined, grown, or performed in that state.

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

(c) ~~[(i) The]~~ In order to receive a reciprocal preference under this section, the bidder shall certify on the bid that the [goods, supplies, equipment, materials, or printing] procurement items offered are produced, manufactured, mined, grown, or performed in Utah.

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~~[(ii)]~~ (d) The reciprocal preference is waived if ~~[that]~~ the certification described in Subsection (1)(c) does not appear on the bid.

(2) (a) If the bidder submitting the lowest responsive and responsible bid offers ~~[goods, supplies, equipment, materials, or printing]~~ procurement items that are produced, manufactured, mined, grown, or performed in a state that gives or requires a preference, and if another bidder has submitted a responsive and responsible bid offering ~~[goods, supplies, equipment, materials, or printing]~~ procurement items that are produced, manufactured, mined, grown, or performed in Utah, and with the benefit of the reciprocal preference, ~~[his]~~ the bid of the other bidder is equal to or less than the original lowest bid, the ~~[procurement officer]~~ authorized purchasing entity shall:

(i) give notice to the bidder offering ~~[goods, supplies, equipment, materials, or printing]~~ procurement items that are produced, manufactured, mined, grown, or performed in Utah that the bidder qualifies as a preferred bidder; and

(ii) make the purchase from the preferred bidder if~~;~~ the bidder agrees, in writing, to meet the low bid within 72 hours after notification that the bidder is a preferred bidder.

(b) The ~~[procurement officer]~~ authorized purchasing entity shall include the exact price submitted by the lowest bidder in the notice the ~~[procurement officer]~~ authorized purchasing entity submits to the preferred bidder.

(c) The ~~[procurement officer]~~ authorized purchasing entity may not enter into a contract with any other bidder for the purchase until 72 hours have elapsed after notification to the preferred bidder.

(3) (a) If there is more than one preferred bidder, the ~~[procurement officer]~~ authorized purchasing entity shall award the contract to the willing preferred bidder who was the lowest preferred bidder originally.

(b) If there were two or more equally low preferred bidders, the ~~[procurement officer]~~ authorized purchasing entity shall comply with the rules ~~[adopted by the Procurement Policy Board]~~ of the applicable rulemaking authority to determine which bidder should be awarded the contract.

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

Section 142. Section **63G-6a-1003**, which is renumbered from Section 63G-6-405 is

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renumbered and amended to read:

~~[63G-6-405].~~ **63G-6a-1003. Preference for resident contractors.**

(1) As used in this section, "resident contractor" means a person, partnership, corporation, or other business entity that:

(a) either has its principal place of business in Utah or that employs workers who are residents of this state when available; and

(b) was transacting business on the date when bids for the public contract were first solicited.

(2) (a) When awarding contracts for construction, ~~[a public procurement unit]~~ an authorized purchasing entity shall grant a resident contractor a reciprocal preference ~~[as against]~~ over a nonresident contractor from any state that gives or requires a preference to contractors from that state.

(b) The amount of the reciprocal preference shall be equal to the amount of the preference applied by the state of the nonresident contractor.

(3) (a) ~~[The]~~ In order to receive the reciprocal preference under this section, the bidder shall certify on the bid that the bidder qualifies as a resident contractor.

(b) The reciprocal preference is waived if ~~[that]~~ the certification described in Subsection (2)(a) does not appear on the bid.

(4) (a) If the contractor submitting the lowest responsive and responsible bid is not a resident contractor ~~[and has his]~~ whose principal place of business ~~[in any]~~ is in a state that gives or requires a preference to contractors from that state, and if a resident contractor has also submitted a responsive and responsible bid, and, with the benefit of the reciprocal preference, the resident contractor's bid is equal to or less than the original lowest bid, the ~~[procurement officer]~~ authorized purchasing entity shall:

(i) give notice to the resident contractor that the resident contractor qualifies as a preferred resident contractor; and

(ii) issue the contract to the resident contractor if the resident contractor agrees, in writing, to meet the low bid within 72 hours after notification that the resident contractor is a preferred resident contractor.

(b) The ~~[procurement officer]~~ authorized purchasing entity shall include the exact price submitted by the lowest bidder in the notice ~~[the procurement officer]~~ that the authorized

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purchasing entity submits to the preferred resident contractor.

(c) The [~~procurement officer~~] authorized purchasing entity may not enter into a contract with any other bidder for the construction until 72 hours have elapsed after notification to the preferred resident contractor.

(5) (a) If there is more than one preferred resident contractor, the [~~procurement officer~~] authorized purchasing entity shall award the contract to the willing preferred resident contractor who was the lowest preferred resident contractor originally.

(b) If there were two or more equally low preferred resident contractors, the [~~procurement officer~~] authorized purchasing entity shall comply with the rules [~~adopted by the Procurement Policy Board~~] of the applicable rulemaking authority to determine which bidder should be awarded the contract.

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

Section 143. Section ~~{63G-6a-1101}~~ 63G-6a-1004 is enacted to read:

63G-6a-1004. Exception for federally funded contracts.

This part does not apply to the extent it conflicts with federal requirements relating to a procurement that involves the expenditure of federal assistance, federal contract funds, or federal financial participation funds.

Section 144. Section 63G-6a-1101 is enacted to read:

Part 11. Bonds

63G-6a-1101. Title.

This part is known as "Bonds."

Section ~~{144}~~ 145. Section **63G-6a-1102**, which is renumbered from Section 63G-6-504 is renumbered and amended to read:

~~[63G-6-504]~~. **63G-6a-1102. Bid security requirements -- Directed suretyship prohibited -- Penalty.**

(1) Bid security in an amount equal to at least 5% of the amount of the bid shall be required for all competitive [~~sealed~~] bidding for construction contracts. Bid security shall be a bond provided by a surety company authorized to do business in this state, the equivalent in cash, or any other form satisfactory to the state.

(2) When a bidder fails to comply with the requirement for bid security [~~set forth~~]

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described in the invitation for bids, the bid shall be rejected unless, pursuant to rules~~[, it is determined]~~ of the applicable rulemaking authority, the authorized purchasing entity determines that the failure to comply with the security requirements is nonsubstantial.

(3) After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids, except as provided in [~~Subsection 63G-6-401(6)~~] Section 63G-6a-605. If a bidder is permitted to withdraw a bid before award, no action shall be taken against the bidder or the bid security.

(4) (a) When issuing an invitation for a bid under this chapter, the [~~chief~~] procurement officer or the head of [~~the purchasing agency~~] an authorized purchasing entity responsible for carrying out a construction project may not require a person or entity who is bidding for a contract to obtain a bond of the type [~~referred to~~] described in Subsection (1) from a specific insurance or surety company, producer, agent, or broker.

(b) A person who violates Subsection (4)(a) is guilty of an infraction.

Section ~~{145}~~ 146. Section **63G-6a-1103**, which is renumbered from Section 63G-6-505 is renumbered and amended to read:

~~[63G-6-505]~~. **63G-6a-1103. Bonds necessary when contract is awarded -- Waiver -- Action -- Attorney fees.**

(1) When a construction contract is awarded under this chapter, the contractor to whom the contract is awarded shall deliver the following bonds or security to the state, which shall become binding on the parties upon the execution of the contract:

(a) a performance bond satisfactory to the state that is in an amount equal to 100% of the price specified in the contract and is executed by a surety company authorized to do business in this state or any other form satisfactory to the state; and

(b) a payment bond satisfactory to the state that is in an amount equal to 100% of the price specified in the contract and is executed by a surety company authorized to do business in this state or any other form satisfactory to the state, which is for the protection of each person supplying labor, service, equipment, or material for the performance of the work provided for in the contract.

(2) (a) When a construction contract is awarded under this chapter, the [~~chief~~] procurement officer or the head of the [~~purchasing agency~~] authorized purchasing entity responsible for carrying out [~~a~~] the construction project may not require a contractor to whom a

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contract is awarded to obtain a bond of the types referred to in Subsection (1) from a specific insurance or surety company, producer, agent, or broker.

(b) A person who violates Subsection (2)(a) is guilty of an infraction.

(3) Rules of the applicable rulemaking authority may provide for waiver of the requirement of a bid, performance, or payment bond for circumstances in which the [state] procurement officer considers any or all of the bonds to be unnecessary to protect the [state] public procurement unit.

(4) A person shall have a right of action on a payment bond under this section for any unpaid amount due [him] to the person if:

(a) the person has furnished labor, service, equipment, or material for the work provided for in the contract for which the payment bond is furnished under this section; and

(b) the person has not been paid in full within 90 days after the last [date] day on which the person performed the labor or service or supplied the equipment or material for which the claim is made.

(5) An action upon a payment bond [shall] may only be brought in a court of competent jurisdiction in [any] a county where the construction contract was to be performed [~~and not elsewhere~~]. The action is barred if not commenced within one year after the last day on which the claimant performed the labor or service or supplied the equipment or material on which the claim is based. The obligee named in the bond need not be joined as a party to the action.

(6) In any suit upon a payment bond, the court shall award reasonable attorney fees to the prevailing party, which fees shall be taxed as costs in the action.

Section ~~{146}~~ 147. Section **63G-6a-1104**, which is renumbered from Section 63G-6-506 is renumbered and amended to read:

~~[63G-6-506]~~. **63G-6a-1104. Preliminary notice requirement.**

(1) Any person furnishing labor, service, equipment, or material for which a payment bond claim may be made under this chapter shall provide preliminary notice to the designated agent as prescribed by Section 38-1-32.5, except that this section does not apply:

(a) to a person performing labor for wages; or

(b) if a notice of commencement is not filed as prescribed in Section 38-1-31.5 for the project or improvement for which labor, service, equipment, or material is furnished.

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(2) Any person who fails to provide the preliminary notice required by Subsection (1) may not make a payment bond claim under this chapter.

(3) The preliminary notice required by Subsection (1) must be provided before commencement of any action on the payment bond.

Section ~~{147}~~148. Section **63G-6a-1105**, which is renumbered from Section 63G-6-507 is renumbered and amended to read:

~~[63G-6-507].~~ **63G-6a-1105. Form of bonds -- Effect of certified copy.**

The form of the bonds required by this part shall be established by ~~[rules and regulations]~~ rule made by the applicable rulemaking authority. Any person may obtain from the state a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

Section ~~{148}~~149. Section **63G-6a-1201** is enacted to read:

Part 12. Contracts and Change Orders

63G-6a-1201. Title.

This part is known as "Contracts and Change Orders."

Section ~~{149}~~150. Section **63G-6a-1202**, which is renumbered from Section 63G-6-601 is renumbered and amended to read:

~~[63G-6-601].~~ **63G-6a-1202. Required contract clauses -- Computation of price adjustments -- Use of rules and regulations.**

(1) ~~[Rules and regulations]~~ The rules of the applicable rulemaking authority shall require for state construction contracts, and may permit or require for ~~[state]~~ contracts for supplies and services, the inclusion of clauses providing for adjustments in prices, time of performance, or other appropriate contract provisions, and covering the following subjects:

(a) the unilateral right of the ~~[state]~~ procurement officer to order in writing changes in the work within the scope of the contract and changes in the time of performance of the contract that do not alter the scope of the contract work;

(b) variations occurring between estimated quantities of work in a contract and actual quantities;

(c) suspension of work ordered by the ~~[state]~~ procurement officer; and

(d) site conditions differing from those indicated in the construction contract, or

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ordinarily encountered, except that differing site conditions clauses required by the rules [~~and regulations~~] need not be included in a construction contract when:

- (i) the contract is negotiated [~~, when~~];
- (ii) the contractor provides the site or design [~~, or when~~]; or
- (iii) the parties have otherwise agreed with respect to the risk of differing site

conditions.

(2) Adjustments in price pursuant to clauses [~~promulgated under~~] described in Subsection (1) shall be computed in one or more of the following ways:

- (a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- (b) by unit prices specified in the contract or subsequently agreed upon;
- (c) by the costs attributable to the events or situations under the clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;
- (d) in any other manner as the contracting parties may mutually agree; or
- (e) in the absence of agreement by the parties, by a unilateral determination by the [~~state~~] procurement officer of the costs attributable to the events or situations under the clauses with adjustment of profit or fee, all as computed by the [~~state~~] procurement officer in accordance with applicable [~~sections of the~~] rules and [~~regulations issued under Subsection 63G-6-415(1) and~~] subject to the provisions of Part [~~8, Legal and Contractual Remedies~~] 17, Procurement Appeals Board, and Part 18, Appeals to Court and Court Proceedings.

(3) A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of Section [~~63G-6-415~~] 63G-6a-1206.

(4) [~~Rules and regulations~~] The rules of the applicable rulemaking authority shall require for [~~state~~] construction contracts, and may permit or require for [~~state~~] contracts for supplies and services, the inclusion of clauses providing for appropriate remedies and covering at least the following subjects:

- (a) liquidated damages as appropriate;
- (b) specified excuses for delay or nonperformance;
- (c) termination of the contract for default; and
- (d) termination of the contract in whole or in part for the convenience of the [~~state~~]

public procurement unit.

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(5) The contract clauses [~~promulgated under~~] described in this section shall be [~~set forth in rules and regulations~~] established by rule. However, the [~~chief~~] procurement officer or the head of [~~a purchasing agency~~] an authorized purchasing entity may modify the clauses for inclusion in any particular contract. [~~Any~~] The applicable rulemaking authority may, by rule, require that:

(a) variations [~~shall~~] be supported by a written determination that describes the circumstances justifying the variations[~~;~~]; and

(b) notice of any material variation shall be included in the invitation for bids or request for proposals.

Section ~~{150}~~ 151. Section **63G-6a-1203**, which is renumbered from Section 63G-6-603 is renumbered and amended to read:

~~[63G-6-603].~~ **63G-6a-1203. Contracts -- Certain indemnification provisions forbidden.**

(1) As used in this section, "design professional" means:

(a) an architect, licensed under Title 58, Chapter 3a, Architects Licensing Act;

(b) a landscape architect, licensed under Title 58, Chapter 53, Landscape Architects Licensing Act; and

(c) a professional engineer or professional land surveyor, licensed under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

(2) (a) [~~Beginning May 12, 2009, a~~] A contract, including an amendment to an existing contract, entered into under [~~authority of~~] this chapter may not require that a design professional indemnify another from liability claims that arise out of the design professional's services, unless the liability claim arises from the design professional's negligent act, wrongful act, error or omission, or other liability imposed by law.

(b) Subsection (2)(a) may not be waived by contract.

(c) Notwithstanding Subsections (2)(a) and (b), a design professional may be required to indemnify a person for whom the design professional has direct or indirect control or responsibility.

Section ~~{151}~~ 152. Section **63G-6a-1204** is enacted to read:

63G-6a-1204. Multiyear contracts.

(1) Except as provided in Subsection (7), a public procurement unit may enter into a

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multiyear contract resulting from an invitation for bids or a request for proposals, if:

(a) the procurement officer determines, in the discretion of the procurement officer, that entering into a multiyear contract is in the best interest of the public procurement unit; and

(b) the invitation for bids or request for proposals:

(i) states the term of the contract, including all possible renewals of the contract;

(ii) states the conditions for renewal of the contract; and

(iii) includes the provisions of Subsections (3) through (5) that are applicable to the contract.

(2) In making the determination described in Subsection (1)(a), the procurement officer shall consider whether entering into a multiyear contract will:

(a) result in significant savings to the public procurement unit, including:

(i) reduction of the administrative burden in procuring, negotiating, or administering contracts;

(ii) continuity in operations of the public procurement unit; or

(iii) the ability to obtain a volume or term discount;

(b) encourage participation by a person who might not otherwise be willing or able to compete for a shorter term contract; or

(c) provide an incentive for a bidder or offeror to improve productivity through capital investment or better technology.

(3) (a) The determination described in Subsection (1)(a) is discretionary and is not required to be in writing or otherwise recorded.

(b) Except as provided in Subsections (4) and (5), notwithstanding any provision of an invitation for bids, a request for proposals, or a contract to the contrary, a multiyear contract, including a contract that was awarded outside of an invitation for bids or request for proposals process, may not continue or be renewed for any year after the first year of the multiyear contract if adequate funds are not appropriated to continue or renew the contract.

(4) A multiyear contract that is funded solely by federal funds may be continued or renewed for any year after the first year of the multiyear contract if:

(a) adequate funds to continue or renew the contract have not been, but are expected to be appropriated by, and received from, the federal government;

(b) continuation or renewal of the contract before the money is appropriated or

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received is permitted by the federal government; and

(c) the contract states that it may be cancelled, without penalty, if the anticipated federal funds are not appropriated or received.

(5) A multiyear contract that is funded in part by federal funds may be continued or renewed for any year after the first year of the multiyear contract if:

(a) the portion of the contract that is to be funded by funds of a public entity are appropriated;

(b) adequate federal funds to continue or renew the contract have not been, but are expected to be, appropriated by, and received from, the federal government;

(c) continuation or renewal of the contract before the federal money is appropriated or received is permitted by the federal government; and

(d) the contract states that it may be cancelled, without penalty, if the anticipated federal funds are not appropriated or received.

(6) A public procurement unit may not continue or renew a multiyear contract after the end of the multiyear contract term or the renewal periods described in the contract, unless the public procurement unit engages in a new procurement process or complies with an exception, described in this chapter, to using a standard procurement process.

(7) A multiyear contract, including any renewal periods, may not exceed a period of five years, unless:

(a) the procurement officer determines, in writing, that:

(i) a longer period is necessary in order to obtain the procurement item;

(ii) a longer period is customary for industry standards; or

(iii) a longer period is in the best interest of the public procurement unit; and

(b) the written determination described in subsection (7)(a) is included in the file relating to the procurement.

(8) This section does not apply to a contract for the design or construction of a facility ~~or~~, a road, **or a public transit project.**

Section ~~{152}~~**153**. Section **63G-6a-1205**, which is renumbered from Section 63G-6-416 is renumbered and amended to read:

~~[63G-6-416].~~ **63G-6a-1205. Cost-plus-a-percentage-of-cost contract prohibited.**

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(1) ~~[Subject to the limitations of]~~ Except as otherwise provided in this section, a public procurement unit may use any type of contract [which] that will promote the best interests of the state [may be used; provided that the use of].

(2) A public procurement unit may not use a cost-plus-a-percentage-of-cost contract [is prohibited. A].

(3) A public procurement unit may not use a cost-reimbursement contract [may be used only when a determination is made in writing that such] unless the procurement officer makes a written determination that:

(a) the contract is likely to be less costly to the [state] public procurement unit than any other type of contract; or [that]

(b) it is impracticable to obtain the [supplies, services, or construction required except under such a] procurement item under another type of contract.

~~[(2) Except with respect to firm fixed-price contracts, no contract type shall be used unless it has been determined in writing by the chief procurement officer, the head of a purchasing agency, or a designee of either officer that:]~~

(4) A procurement officer, the head of an authorized procurement entity, or a designee of either, may not use a type of contract, other than a firm fixed-price contract, unless the procurement officer makes a written determination that:

(a) the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and

(b) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

Section ~~{153}~~ 154. Section **63G-6a-1206**, which is renumbered from Section 63G-6-415 is renumbered and amended to read:

~~[63G-6-415].~~ **63G-6a-1206. Rules and regulations to determine allowable incurred costs -- Required information -- Auditing of books.**

~~[(1) Rules and regulations may be promulgated to set forth cost principles to be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions which provide for the reimbursement of costs; provided that if a written determination is approved at a level above the procurement officer, the cost principles may be modified by contract.]~~

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~~[(2) A person shall, except as provided in Subsection (4), submit cost or pricing data and shall certify that, to the best of the person's knowledge and belief, the cost or pricing data submitted were accurate, complete, and current as of a mutually determined specified date prior to the date of:]~~

(1) (a) The applicable rulemaking authority may, by rule, establish the cost principles to be included in a cost-reimbursement contract to determine incurred costs for the purpose of calculating a reimbursement.

(b) The cost principles established by rule under Subsection (1)(a) may be modified, by contract, if the procurement officer or head of the authorized procurement entity approves the modification.

(2) Except as provided in Subsection (5), a person who seeks to be, or is, a party in a cost-based contract with a public procurement unit shall:

(a) submit cost or pricing data relating to determining the cost or pricing amount; and

(b) certify that, to the best of the contractor's knowledge and belief, the cost or pricing data submitted is accurate and complete as of the date specified by the public procurement unit.

(3) The procurement officer shall ensure that the date specified under Subsection (2)(b) is before:

(a) the pricing of any contract awarded by ~~[competitive sealed proposals]~~ a procurement process or pursuant to ~~[the]~~ a sole source procurement ~~[authority, where]~~, if the total contract price is expected to exceed an amount established by ~~[rules and regulations]~~ rule made by the applicable rulemaking authority; or

(b) the pricing of any change order ~~[which]~~ that is expected to exceed an amount established by ~~[rules and regulations]~~ rule made by the applicable rulemaking authority.

~~[(3) Any]~~ (4) A contract or change order ~~[under which a certificate is required shall contain]~~ that requires a certification described in Subsection (2) shall include a provision that the price to the ~~[state]~~ public procurement unit, including profit or fee, shall be adjusted to exclude any significant sums by which the ~~[state]~~ public procurement unit finds that the price was increased because the ~~[contractor-furnished]~~ contractor provided cost or pricing data ~~[were]~~ that was inaccurate, incomplete, or not current as of the date ~~[agreed upon between the parties]~~ specified by the procurement officer.

~~[(4) The requirements of Subsections (2) and (3) need not be applied to contracts:]~~

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(5) A public procurement unit is not required to comply with Subsection (2) if:

- (a) ~~[where]~~ the contract price is based on adequate price competition;
- (b) ~~[where]~~ the contract price is based on established catalogue prices or market prices;
- (c) ~~[where contract prices are]~~ the contract price is set by law or [regulation] rule; or
- (d) ~~[where it is determined]~~ the procurement states, in writing:

(i) that, in accordance with rules [and regulations that] made by the applicable rulemaking authority, the requirements of [this section] Subsection (2) may be waived[;]; and

(ii) the reasons for [such] the waiver [are stated in writing].

~~(5)~~ (6) The [state] procurement officer may, at reasonable times and places, only to the extent that the books and records relate to the applicable cost or pricing data, audit the books and records of [any]:

(a) a person who has submitted cost or pricing data pursuant to this section; or [any]

(b) a contractor or subcontractor under [any negotiated] a contract or subcontract other than a firm fixed-price contract [to the extent that the books and records relate to the cost or pricing data, contract, or subcontract. The].

(7) Unless a shorter time is provided for by contract:

(a) a person described in Subsection (6)(a) shall maintain the books and records [shall be maintained by the contractor] described in Subsection (6) for three years [following the end of] after the day on which the fiscal year in which final payment is made under the [prime contract and by the subcontractor for three years following the end of the] contract ends;

(b) a contractor shall maintain the books and records described in Subsection (6) for three years after the day on which the fiscal year in which final payment under the prime contract ends; and

(c) a subcontractor shall maintain the books and records described in Subsection (6) for three years after the day on which the fiscal year in which final payment is made under the subcontract[; unless a shorter period is otherwise authorized in writing] ends.

Section ~~{154}~~ 155. Section **63G-6a-1207**, which is renumbered from Section 63G-6-602 is renumbered and amended to read:

~~[63G-6-602].~~ **63G-6a-1207. Certification of change order.**

(1) Under a construction contract, [any] a change order [which] that increases the contract amount [shall be subject to] may not be made without prior written certification that

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the change order is within the determined project or contract budget~~[-The certification shall be made]~~ by:

(a) the fiscal officer of the entity responsible for funding the project or ~~[the]~~ contract; or ~~[other]~~

(b) the official responsible for monitoring and reporting upon the status of the costs of the total project or contract budget. ~~[If the certification discloses a resulting]~~

(2) If a change order will result in an increase in the total project or contract budget, ~~[the procurement officer shall not execute or make]~~ the change order may not be made, unless:

(a) sufficient funds are ~~[available]~~ added to the project contract or budget; or

(b) the scope of the project or contract is adjusted to permit the degree of completion feasible within the total project or contract budget as it existed ~~[prior to]~~ before the change order under consideration. ~~[However, with respect to the validity, as to the contractor, of any executed change order upon which the contractor has reasonably relied, it shall be presumed that there has been compliance with the provisions of this section.]~~

(3) Notwithstanding any other provision of this section, it shall be presumed that this section has been complied with if the contractor reasonably relies on an executed change order.

Section ~~{155}~~156. Section **63G-6a-1301** is enacted to read:

Part 13. General Construction Provisions

63G-6a-1301. Title.

This part is known as "General Construction Provisions."

Section ~~{156}~~157. Section **63G-6a-1302**, which is renumbered from Section 63G-6-501 is renumbered and amended to read:

~~[63G-6-501].~~ **63G-6a-1302. Alternative methods of construction contracting management.**

(1) ~~[(a) Rules shall]~~ The applicable rulemaking authority shall, by rule provide as many alternative methods of construction contracting management as determined to be feasible.

~~[(b) These rules shall:]~~

(2) The rules described in Subsection (1) shall:

~~[(i)]~~ (a) grant to the ~~[chief]~~ procurement officer or the head of the state purchasing ~~[agency]~~ unit responsible for carrying out the construction project the discretion to select the appropriate method of construction contracting management for a particular project; and

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~~[(ii)]~~ (b) require the procurement officer to execute and include in the contract file a written statement ~~[setting forth]~~ describing the facts ~~[which]~~ that led to the selection of a particular method of construction contracting management for each project.

~~[(e)]~~ (3) Before choosing a construction contracting management method, the ~~[chief]~~ procurement officer or the head of the state purchasing ~~[agency]~~ unit responsible for carrying out the construction project shall consider the following factors:

~~[(i)]~~ (a) when the project must be ready to be occupied;

~~[(ii)]~~ (b) the type of project;

~~[(iii)]~~ (c) the extent to which the requirements of the ~~[procuring agencies]~~ public procurement unit, and the ~~[ways in which]~~ way they are to be met are known;

~~[(iv)]~~ (d) the location of the project;

~~[(v)]~~ (e) the size, scope, complexity, and economics of the project;

~~[(vi)]~~ (f) the source of funding and any resulting constraints necessitated by the funding source;

~~[(vii)]~~ (g) the availability, qualification, and experience of ~~[state]~~ public personnel to be assigned to the project and ~~[how much time the state]~~ the amount of time that the public personnel can devote to the project; and

~~[(viii)]~~ (h) the availability, qualifications, and experience of outside consultants and contractors to complete the project under the various methods being considered.

~~[(2)(a)]~~ Rules adopted by state public procurement units and local public procurement units to implement this section may authorize the use of a Construction Manager/General Contractor as one method of construction contracting management.]

~~[(b)]~~ Those rules shall require that:]

~~[(i)]~~ the Construction Manager/General Contractor shall be selected using one of the source selection methods provided for in Part 4, Source Selections and Contract Formation, and Section 63G-6-502; and]

~~[(ii)]~~ when entering into any subcontract that was not specifically included in the Construction Manager/General Contractor's cost proposal submitted under the requirements of Subsection (2)(b)(i), the Construction Manager/General Contractor shall procure that subcontractor by using one of the source selection methods provided for in Part 4, Source Selections and Contract Formation, in the same manner as if the subcontract work was

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~~procured directly by the state.]~~

(4) An applicable rulemaking authority may make rules that authorize the use of a construction manager/general contractor as one method of construction contracting management.

(5) The rules described in Subsection (2) shall require that:

(a) the construction manager/general contractor be selected using:

(i) a procurement process; or

(ii) an exception to the requirement to use a procurement process; and

(b) when entering into a subcontract that was not specifically included in the construction manager/general contractor's cost proposal, the construction manager/general contractor shall procure the subcontractor by using a procurement process, or an exception to the requirement to use a procurement process, in the same manner as if the subcontract work was procured directly by the public procurement unit.

~~[(3)]~~ (6) Procurement rules adopted by the State Building Board under ~~[Subsection (1)]~~ Subsections (1) through (3) for state building construction projects may authorize the use of a design-build provider as one method of construction contracting management.

(7) A design-build contract may include a provision for obtaining the site for the construction project.

(8) A design-build contract or a construction manager/general contractor contract may include provision by the contractor of operations, maintenance, or financing.

Section ~~{157}~~ 158. Section **63G-6a-1303**, which is renumbered from Section 63G-6-604 is renumbered and amended to read:

~~[63G-6-604].~~ **63G-6a-1303. Drug and alcohol testing required for state construction contracts.**

(1) As used in this section:

(a) "Contractor" means a person who is or may be awarded a state construction contract.

(b) "Covered individual" means an individual who:

(i) on behalf of a contractor or subcontractor provides services directly related to design or construction under a state construction contract; and

(ii) is in a safety sensitive position, including a design position that has responsibilities

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that directly affect the safety of an improvement to real property that is the subject of a state construction contract.

(c) "Drug and alcohol testing policy" means a policy under which a contractor or subcontractor tests a covered individual to establish, maintain, or enforce the prohibition of:

(i) the manufacture, distribution, dispensing, possession, or use of drugs or alcohol, except the medically prescribed possession and use of a drug; or

(ii) the impairment of judgment or physical abilities due to the use of drugs or alcohol.

(d) "Random testing" means that a covered individual is subject to periodic testing for drugs and alcohol:

(i) in accordance with a drug and alcohol testing policy; and

(ii) on the basis of a random selection process.

~~[(e) For purposes of Subsection (6), "state" includes any of the following of the state:]~~

(e) "State executive entity" means:

(i) a state executive branch:

~~[(i)-a] (A) department;~~

~~[(ii)-a] (B) division;~~

~~[(iii)-an] (C) agency;~~

~~[(iv)-a] (D) board;~~

~~[(v)-a] (E) commission;~~

~~[(vi)-a] (F) council;~~

~~[(vii)-a] (G) committee; [and] or~~

~~[(viii)-an] (H) institution[, including a state institution of higher education, as defined under Section 53B-3-102.]; or~~

(ii) a state institution of higher education, as defined in Section 53B-3-102.

(f) "State construction contract" means a contract for design or construction entered into by a state ~~[public procurement unit]~~ executive entity.

~~[(g) (i) "Subcontractor" means a person under contract with a contractor or another subcontractor to provide services or labor for design or construction.]~~

~~[(ii) "Subcontractor" includes a trade contractor or specialty contractor.]~~

~~[(iii) "Subcontractor" does not include a supplier who provides only materials, equipment, or supplies to a contractor or subcontractor.]~~

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(2) Except as provided in Subsection (7), [~~on and after July 1, 2010,~~] a state [~~public procurement unit~~] executive entity may not enter into a state construction contract unless the [~~state~~] public construction contract requires [~~the following~~] that the contractor demonstrate to the state executive entity that the contractor:

~~[(a) A contractor shall demonstrate to the state public procurement unit that the contractor:]~~

~~[(i)]~~ (a) has and will maintain a drug and alcohol testing policy during the period of the state construction contract that applies to the covered individuals hired by the contractor;

~~[(ii)]~~ (b) posts in one or more conspicuous places notice to covered individuals hired by the contractor that the contractor has the drug and alcohol testing policy described in Subsection (2)(a)~~[(i); and]~~;

~~[(iii)]~~ (c) subjects the covered individuals to random testing under the drug and alcohol testing policy described in Subsection (2)(a)~~[(i)]~~ if at any time during the period of the state construction contract there are 10 or more individuals who are covered individuals hired by the contractor~~[-]; and~~

~~[(b) A contractor shall demonstrate to the state public procurement unit that the contractor]~~

(d) requires that as a condition of contracting with the contractor, a subcontractor:

(i) has and will maintain a drug and alcohol testing policy during the period of the state construction contract that applies to the covered individuals hired by the subcontractor;

(ii) posts in one or more conspicuous places notice to covered individuals hired by the subcontractor that the subcontractor has the drug and alcohol testing policy described in Subsection (2)~~[(b)]~~(d)(i); and

(iii) subjects the covered individuals hired by the subcontractor to random testing under the drug and alcohol testing policy described in Subsection (2)~~[(b)]~~(d)(i) if at any time during the period of the state construction contract there are 10 or more individuals who are covered individuals hired by the subcontractor.

(3) (a) Except as otherwise provided in this Subsection (3), if a contractor or subcontractor fails to comply with Subsection (2), the contractor or subcontractor may be suspended or debarred in accordance with this chapter.

(b) [~~On and after July 1, 2010, a~~] A state [public procurement unit] executive entity

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shall include in a state construction contract:

(i) a reference to the rules described in Subsection (4)(b); or

(ii) if the [~~state public procurement unit~~] applicable rulemaking authority has not made the rules described in Subsection (4)(b), a process that provides a contractor or subcontractor reasonable notice and opportunity to cure a violation of this section before suspension or debarment of the contractor or subcontractor in light of the circumstances of the state construction contract or the violation.

(c) (i) A contractor is not subject to penalties for the failure of a subcontractor to comply with Subsection (2).

(ii) A subcontractor is not subject to penalties for the failure of a contractor to comply with Subsection (2).

~~[(4) If otherwise authorized to make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, a state public procurement unit:]~~

(4) An authorized rulemaking authority:

(a) may make rules that establish the requirements and procedures a contractor [~~shall~~] is required to follow to comply with Subsection (2); and

(b) shall make rules that establish:

(i) the penalties that may be imposed in accordance with Subsection (3); and

(ii) a process that provides a contractor or subcontractor reasonable notice and opportunity to cure a violation of this section before suspension or debarment of the contractor or subcontractor in light of the circumstances of the state construction contract or the violation.

(5) The failure of a contractor or subcontractor to meet the requirements of Subsection (2):

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Part [~~8, Legal and Contractual Remedies~~] 17, Procurement Appeals Board, or Part 18, Appeals to Court and Court Proceedings; and

(b) may not be used by a state public procurement unit, a prospective bidder, an offeror, a contractor, or a subcontractor as a basis for an action that would suspend, disrupt, or terminate the design or construction under a state construction contract.

(6) (a) After a state [~~public procurement unit~~] executive entity enters into a state construction contract in compliance with this section, the state is not required to audit, monitor,

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or take any other action to ensure compliance with this section.

(b) The state is not liable in any action related to this section, including not being liable in relation to:

(i) a contractor or subcontractor having or not having a drug and alcohol testing policy;

(ii) failure to test for a drug or alcohol under a contractor's or subcontractor's drug and alcohol testing policy;

(iii) the requirements of a contractor's or subcontractor's drug and alcohol testing policy;

(iv) a contractor's or subcontractor's implementation of a drug and alcohol testing policy, including procedures for:

(A) collection of a sample;

(B) testing of a sample;

(C) evaluation of a test; or

(D) disciplinary or rehabilitative action on the basis of a test result;

(v) an individual being under the influence of drugs or alcohol; or

(vi) an individual under the influence of drugs or alcohol harming another person or causing property damage.

(7) This section does not apply if the state [~~public procurement unit~~] executive entity determines that the application of this section would severely disrupt the operation of a [~~state agency~~] public entity to the detriment of the [~~state agency~~] public entity or the general public, including:

(a) jeopardizing the receipt of federal funds;

(b) causing the state construction contract [~~being~~] to be a sole source contract; or

(c) causing the state construction contract [~~being~~] to be an emergency procurement.

(8) If a contractor or subcontractor meets the requirements of this section, this section may not be construed to restrict the contractor's or subcontractor's ability to impose or implement an otherwise lawful provision as part of a drug and alcohol testing policy.

Section ~~{158}~~159. Section **63G-6a-1401** is enacted to read:

Part 14. Transportation Contracts

63G-6a-1401. Title.

This part is known as "Transportation Contracts."

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Section ~~{159}~~160. Section **63G-6a-1402**, which is renumbered from Section 63G-6-502 is renumbered and amended to read:

~~[63G-6-502]~~. **63G-6a-1402**. **Procurement of design-build transportation project contracts.**

(1) As used in this section:

(a) "Design-build transportation project contract" means the procurement of both the design and construction of a transportation project in a single contract with a company or combination of companies capable of providing the necessary engineering services and construction.

(b) "Transportation agency" means:

(i) the Department of Transportation;

(ii) a county of the first or second class, as defined in Section 17-50-501;

(iii) a municipality of the first class, as defined in Section 10-2-301;

(iv) a public transit district that has more than 200,000 people residing within its boundaries; and

(v) a public airport authority.

(2) Except as provided in Subsection (3), a transportation agency may award a design-build transportation project contract for any transportation project that has an estimated cost of at least \$50,000,000 by following the requirements of this section.

(3) (a) The Department of Transportation:

(i) may award a design-build transportation project contract for any transportation project by following the requirements of this section; and

(ii) shall make rules, [~~by following the procedures and requirements of~~] in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing requirements for the procurement of its design-build transportation project contracts in addition to those required by this section.

(b) A public transit district that has more than 200,000 people residing within its boundaries:

(i) may award a design-build transportation project contract for any transportation project by following the requirements of this section; and

(ii) shall pass ordinances or a resolution establishing requirements for the procurement

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of its design-build transportation project contracts in addition to those required by this section.

(c) A design-build transportation project contract authorized under this Subsection (3) is not subject to the estimated cost threshold [~~under~~] described in Subsection (2).

(d) A design-build transportation project contract may include provision by the contractor of operations, maintenance, or financing.

(4) (a) Before entering into a design-build transportation project contract, a transportation agency may issue a request for qualifications to prequalify potential contractors.

(b) Public notice of the request for qualifications shall be given in accordance with [~~policy~~] board rules.

(c) A transportation agency shall require, as part of the qualifications specified in the request for qualifications, that potential contractors at least demonstrate their:

(i) construction experience;

(ii) design experience;

(iii) financial, manpower, and equipment resources available for the project; and

(iv) experience in other design-build transportation projects with attributes similar to the project being procured.

(d) The request for qualifications shall identify the number of eligible competing proposers that the transportation agency will select to submit a proposal, which [~~must be at least~~] may not be less than two.

(5) [~~(a)~~] The transportation agency shall:

[~~(i)~~] (a) evaluate the responses received from the request for qualifications;

[~~(ii)~~] (b) select from their number those qualified to submit proposals; and

[~~(iii)~~] (c) invite those respondents to submit proposals based upon the transportation agency's request for proposals.

[~~(b)(i)~~] (6) Except as provided in Subsection [~~(5)(b)(ii)~~] (7), if the transportation agency fails to receive at least two qualified eligible competing [~~proposers~~] proposals, the transportation agency shall readvertise the project.

[~~(ii)~~] (7) A transportation agency may award a contract for a transportation project that has an estimated cost of \$5,000,000 or less to a qualified eligible proposer if:

[~~(A)~~] (a) only a single proposal is received; and

[~~(B)~~] (b) the transportation agency determines that:

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~~[(#)]~~ (i) the proposal is advantageous to the state; and

~~[(#)]~~ (ii) the proposal price is reasonable.

~~[(#)]~~ (8) The transportation agency shall issue a request for proposals to those qualified respondents that:

(a) includes a scope of work statement constituting an information for proposal that may include:

(i) preliminary design concepts;

(ii) design criteria, needs, and objectives;

(iii) warranty and quality control requirements;

(iv) applicable standards;

(v) environmental documents;

(vi) constraints;

(vii) time expectations or limitations;

(viii) incentives or disincentives; and

(ix) other special considerations;

(b) requires submitters to provide:

(i) a sealed cost proposal;

(ii) a critical path matrix schedule, including cash flow requirements;

(iii) proposal security; and

(iv) other items required by the department for the project; and

(c) may include award of a stipulated fee to be paid to ~~[submitters]~~ offerors who submit unsuccessful proposals.

~~[(#)]~~ (9) The transportation agency shall:

(a) evaluate the submissions received in response to the request for proposals from the prequalified ~~[proposers]~~ offerors;

(b) comply with rules relating to discussion of proposals, best and final offers, and evaluations of the proposals submitted; and

(c) after considering price and other identified factors, award the contract to the responsive and responsible ~~[proposer]~~ offeror whose proposal is most advantageous to the state.

Section ~~[(#)]~~ 161. Section **63G-6a-1403**, which is renumbered from Section

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63G-6-503 is renumbered and amended to read:

~~[63G-6-503].~~ **63G-6a-1403. Procurement of tollway development agreements.**

(1) As used in this section ~~[(a) "Department" means the Department of Transportation. (b) "Tollway", "tollway development agreement" [has the same meaning] is as defined in Section 72-6-202.~~

(2) The ~~[department]~~ Department of Transportation and the Transportation Commission:

(a) may solicit a tollway development agreement proposal by following the requirements of this section;

(b) may award a solicited tollway development agreement contract for any tollway project by following the requirements of this section; and

(c) shall make rules, ~~[by following the procedures and requirements of]~~ in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing requirements for the procurement of tollway development agreement proposals in addition to those required by this section.

(3) (a) Before entering into a tollway development agreement, the ~~[department]~~ Department of Transportation may issue a request for qualifications to prequalify potential contractors.

(b) Public notice of the request for qualifications shall be given in accordance with ~~[policy]~~ board rules.

(c) The ~~[department]~~ Department of Transportation shall require, as part of the qualifications specified in the request for qualifications, that potential contractors at least provide:

(i) a demonstration of their experience with other transportation concession projects with attributes similar to the project being procured;

(ii) a financial statement of the firm or consortium of firms making the proposal;

(iii) a conceptual project development plan and financing plan;

(iv) the legal structure of the firm or consortium of firms making the proposal;

(v) the organizational structure for the project; and

(vi) a statement describing why the firm or consortium of firms is best qualified for the

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project.

(d) The request for qualifications shall identify the number of eligible competing [proposers] offerors that the [department] Department of Transportation will select to submit a proposal.

(4) The [department] Department of Transportation shall:

- (a) evaluate the responses received from the request for qualifications;
- (b) select from their number those qualified to submit proposals; and
- (c) invite those respondents to submit proposals based upon the [department's]

Department of Transportation's request for proposals.

(5) The [department] Department of Transportation shall issue a request for proposals to those qualified respondents that may require, as appropriate for the procurement:

- (a) a description of the proposed project or projects;
- (b) a financial plan for the project, including:
 - (i) the anticipated financial commitment of all parties;
 - (ii) equity, debt, and other financing mechanisms;
 - (iii) an analysis of the projected return, rate of return, or both; and
 - (iv) the monetary benefit and other value to a government entity;
- (c) assumptions about user fees or toll rates;
- (d) a project development and management plan, including:
 - (i) the contracting structure;
 - (ii) the plan for quality management;
 - (iii) the proposed toll enforcement plan; and
 - (iv) the plan for safety management; and

(e) that the proposal to comply with the minimum guidelines for tollway development agreement proposals under Section 72-6-204.

(6) The [department] Department of Transportation and the Transportation Commission:

(a) shall evaluate the submissions received in response to the request for proposals from the prequalified [proposers] offerors;

(b) shall comply with rules relating to discussion of proposals, best and final offers, and evaluations of the proposals submitted; and

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(c) may, after considering price and other identified factors and complying with the requirements of Section 72-6-206, award the contract to the responsive and responsible [~~proposer~~] offeror whose proposal is most advantageous to the state.

Section ~~{161}~~162. Section **63G-6a-1501** is enacted to read:

Part 15. Architect-Engineer Services

63G-6a-1501. Title.

This part is known as "Architect-Engineer Services."

Section ~~{162}~~163. Section **63G-6a-1502**, which is renumbered from Section 63G-6-701 is renumbered and amended to read:

~~[63G-6-701].~~ 63G-6a-1502. Policy regarding architect-engineer services.

(1) It is the policy of this state to publicly announce all requirements for architect-engineer services and to negotiate contracts for architect-engineer services on the basis of demonstrated competence and qualification for the type of services required, and at fair and reasonable prices.

(2) Architect-engineer services shall be procured as provided in this part except as authorized by Sections [~~63G-6-409 through 63G-6-411~~] 63G-6a-408, 63G-6a-802, and 63G-6a-803.

(3) This part does not affect the authority of, and does not apply to procedures undertaken by, a public procurement unit to obtain the services of architects or engineers in the capacity of employees of [~~such~~] the public procurement unit.

Section ~~{163}~~164. Section **63G-6a-1503**, which is renumbered from Section 63G-6-702 is renumbered and amended to read:

~~[63G-6-702].~~ 63G-6a-1503. Selection committee for architect-engineer services.

(1) In the procurement of architect-engineer services, the [~~chief~~] procurement officer or the head of a state purchasing [~~agency~~] unit shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data.

(2) The Building Board shall be the [~~selection~~] evaluation committee for architect-engineer services contracts under its authority. [~~Selection committees~~]

(3) An evaluation committee for architect-engineer services contracts not under the

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authority of the Building Board shall be established in accordance with rules ~~[and regulations promulgated by the policy board. Selection committees shall]~~ made by the applicable rulemaking authority.

(4) An evaluation committee shall:

(a) evaluate current statements of qualifications and performance data on file with the state, together with those that may be submitted by other firms in response to the announcement of the proposed contract~~[-Selection committees shall];~~

(b) consider no less than three firms ~~[and then shall select therefrom,];~~ and

(c) based upon criteria established and published by the ~~[selection committees,]~~ authorized purchasing entity, select no less than three of the firms considered to be the most highly qualified to provide the services required.

Section ~~{164}~~ 165. Section **63G-6a-1504**, which is renumbered from Section 63G-6-703 is renumbered and amended to read:

~~[63G-6-703].~~ **63G-6a-1504. Selection as part of design-build or lease.**

Notwithstanding any other provision of this chapter, architect-engineer services may be procured under Title 63A, Chapter 5, State Building Board - Division of Facilities Construction and Management, as part of the services obtained in a design-build contract or as part of the services obtained in a lease contract for real property, ~~[provided that]~~ if the qualifications of those providing the architect-engineer services are part of the consideration in the selection process.

Section ~~{165}~~ 166. Section **63G-6a-1505**, which is renumbered from Section 63G-6-704 is renumbered and amended to read:

~~[63G-6-704].~~ **63G-6a-1505. Determination of compensation for architect-engineer services.**

(1) The procurement officer shall award a contract to a qualified firm at compensation ~~[which]~~ that the procurement officer determines, in writing, to be fair and reasonable to the state.

(2) In making ~~[this decision,]~~ the determination described in Subsection (1), the procurement officer shall take into account the services':

(a) estimated value~~[-, the];~~

(b) scope~~[-, and];~~

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(c) complexity~~;~~; and ~~the~~

(d) professional nature ~~[of the services to be rendered. Should]~~.

(3) If the procurement officer ~~be~~ is unable to agree to a satisfactory contract with the firm first selected, at a price the procurement officer determines to be fair and reasonable to the state, ~~[discussions with that firm shall be formally terminated. The]~~ the procurement officer shall ~~then~~:

(a) formally terminate discussions with that firm; and

(b) undertake discussions with a second qualified firm. ~~[Failing accord with the second firm, the procurement officer shall formally terminate discussions. The procurement officer shall then]~~

(4) If the procurement officer is unable to agree to a satisfactory contract with the second firm selected, at a price the procurement officer determines to be fair and reasonable to the state, the procurement officer shall:

(a) formally terminate discussions with that firm; and

(b) undertake discussions with a third qualified firm. ~~[Should the procurement officer be]~~

(5) If the procurement officer is unable to award a contract at a fair and reasonable price ~~[with]~~ to any of the selected firms, the procurement officer shall:

(a) select additional firms~~;~~; and ~~[the procurement officer shall]~~

(b) continue discussions in accordance with this part until an agreement is reached.

Section ~~{166}~~ 167. Section **63G-6a-1506**, which is renumbered from Section 63G-6-705 is renumbered and amended to read:

~~[63G-6-705]~~. **63G-6a-1506. Restrictions on procurement of architect-engineer services.**

(1) Except as provided in Subsection (2), when ~~[a public procurement unit]~~ an authorized purchasing entity, in accordance with Section ~~[63G-6-701]~~ 63G-6a-1502, elects to obtain architect or engineering services by using a competitive procurement process and has provided public notice of its competitive procurement process:

(a) a higher education entity, or any part of one, may not submit a proposal in response to the ~~[public procurement unit's]~~ authorized purchasing entity's competitive procurement process; and

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(b) the [~~public procurement unit~~] authorized purchasing entity may not award a contract to perform the architect or engineering services solicited in the competitive procurement process to a higher education entity or any part of one.

(2) [~~A public procurement unit need not comply with the requirements of~~] Subsection (1) does not apply when the [~~public procurement unit~~] authorized purchasing entity is procuring architect or engineer services for contracts related to research activities and technology transfer.

Section ~~{167}~~ 168. Section **63G-6a-1601** is enacted to read:

Part 16. Controversies and Protests

63G-6a-1601. Title.

This part is known as "Controversies and Protests."

Section ~~{168}~~ 169. Section **63G-6a-1602**, which is renumbered from Section 63G-6-805 is renumbered and amended to read:

~~[63G-6-805].~~ **63G-6a-1602. Authority to resolve controversy between public procurement unit and contractor.**

The [~~chief~~] procurement officer, the head of [~~a purchasing agency~~] an authorized purchasing entity, or a designee of either [~~officer is authorized, prior to~~] may, before commencement of an action in court concerning the controversy, [~~to~~] settle and resolve a controversy [~~which~~] that arises between [~~the state~~] a public procurement unit or an authorized purchasing entity and a contractor [~~under or by virtue of a contract between them. This includes, without limitation, controversies~~] in relation to a contract or a procurement, including a controversy based upon breach of contract, [~~mistakes~~] a mistake, misrepresentation, or other cause for contract modification or rescission.

Section ~~{169}~~ 170. Section **63G-6a-1603**, which is renumbered from Section 63G-6-801 is renumbered and amended to read:

~~[63G-6-801].~~ **63G-6a-1603. Protest to procurement officer -- Time -- Authority to resolve protest.**

(1) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the [~~chief~~] procurement officer or the head of [~~a purchasing agency~~] an authorized purchasing entity. A protest with respect to an invitation for bids or a request for proposals shall be submitted in writing [~~prior~~

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~~to~~ before the opening of bids or the closing date for proposals, unless the aggrieved person did not know and should not have known of the facts giving rise to the protest [~~prior to~~] before the bid opening or the closing date for proposals. [~~The protest shall be submitted~~] An aggrieved person shall submit a protest in writing within [~~five working~~] seven days after the aggrieved person knows or should have known of the facts giving rise [~~thereto~~] to the protest.

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

Section ~~{170}~~ 171. Section **63G-6a-1604**, which is renumbered from Section 63G-6-806 is renumbered and amended to read:

~~[63G-6-806].~~ **63G-6a-1604. Decisions to be in writing -- Effect of no writing.**

(1) The [~~chief procurement officer, the head of a purchasing agency, or the designee of either officer~~] person who conducts a hearing under Section 63G-6a-1603 shall promptly issue a written decision regarding any protest, debarment [~~or~~], suspension, or contract controversy if it is not settled by a mutual agreement.

(2) The decision shall state the reasons for the action taken and inform the protestor, contractor, or prospective contractor of the right to judicial or administrative review as provided in this chapter.

~~(2)~~ (3) A decision [~~shall be~~] described in this section is effective until stayed or reversed on appeal, except to the extent provided in Section [~~63G-6-802~~] 63G-6a-1607. [~~A copy of the decision under Subsection (1) shall be mailed~~]

(4) A person who issues a decision under this section shall mail or otherwise [~~furnished~~] immediately furnish a copy of the decision to the protestor, prospective contractor, or contractor.

(5) The decision shall be final and conclusive unless the protestor, prospective contractor, or contractor:

(a) appeals administratively to the [procurement] applicable appeals board, if any, in accordance with Subsection [~~63G-6-810~~] 63G-6a-1703(2); or [~~the protestor, prospective contractor, or contractor~~]

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(b) if there is not an applicable appeals board, commences an action in district court in accordance with Section [~~63G-6-815~~] 63G-6a-1803.

~~(3)~~ (6) If the [~~chief~~] procurement officer, the head of [~~a purchasing agency~~] an authorized purchasing entity, or the designee of either [~~officer~~] does not issue the written decision [~~regarding a contract controversy~~] as required by this section within 60 [~~calendar~~] days after the day on which a written request for a final decision is made, or within [~~such~~] a longer period as may be agreed upon by the parties, then the protestor, contractor, or prospective contractor may proceed as if an adverse decision had been received.

Section ~~{171}~~ 172. Section **63G-6a-1605**, which is renumbered from Section 63G-6-907 is renumbered and amended to read:

~~[63G-6-907]~~. **63G-6a-1605. Resolution of local public procurement controversies.**

~~[Any]~~ A local public procurement unit [~~is authorized to~~] may enter into an agreement with the State Procurement Appeals Board to resolve controversies between the local public procurement unit and its bidders, offerors, contractors, regardless of whether [~~or not such~~] the controversy arose from a cooperative purchasing agreement.

Section ~~{172}~~ 173. Section **63G-6a-1606**, which is renumbered from Section 63G-6-802 is renumbered and amended to read:

~~[63G-6-802]~~. **63G-6a-1606. Effect of timely protest.**

In the event of a timely protest under Subsection [~~63G-6-801(1), 63G-6-810(1), or 63G-6-815(1), the state shall~~] 63G-6a-1603(1), 63G-6a-1703(1), or 63G-6a-1803(1), an authorized purchasing entity may not proceed further with the solicitation or with the award of the contract until all administrative and judicial remedies [~~have been~~] are exhausted or until the [~~chief~~] procurement officer, after consultation with the head of the [~~using agency~~] public procurement unit or the head of [~~a purchasing agency~~] an authorized purchasing entity, makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the state.

Section ~~{173}~~ 174. Section **63G-6a-1607**, which is renumbered from Section 63G-6-803 is renumbered and amended to read:

~~[63G-6-803]~~. **63G-6a-1607. Costs to or against protestor.**

(1) When a protest is sustained administratively or upon administrative or judicial

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review and the protesting bidder or offeror should have been awarded the contract under the solicitation but is not, the protestor shall be entitled to the following relief as a claim against the state:

- (a) the reasonable costs incurred in connection with the solicitation, including bid preparation and appeal costs; and
- (b) any equitable relief determined to be appropriate by the reviewing administrative or judicial body.

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

Section ~~{174}~~175. Section **63G-6a-1701** is enacted to read:

Part 17. Procurement Appeals Board

63G-6a-1701. Title.

This part is known as "Procurement Appeals Board."

Section ~~{175}~~176. Section **63G-6a-1702**, which is renumbered from Section 63G-6-807 is renumbered and amended to read:

~~[63G-6-807]~~. **63G-6a-1702. Creation of Procurement Appeals Board -- Creation of other appeals boards.**

(1) (a) A Procurement Appeals Board is created in the executive branch. The Procurement Appeals Board shall be composed of a chair and one other member, to be appointed by the governor, and a third member to be designated by the two appointed members on a case-by-case basis.

(b) None of the members of the Procurement Appeals Board shall otherwise be full-time employees of the state.

(c) The appointed members of the Procurement Appeals Board shall have been members in good standing of the state bar for at least five years and shall be experienced in contract or commercial matters.

(d) The designated member shall possess the technical expertise and experience needed for the proper disposition of the factual issues presented by the case.

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(2) (a) Except as required by Subsection (2)(b), as terms of current [board] members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of [board] members are staggered so that approximately half of the [board is] members of the Procurement Appeals Board are appointed every two years.

(c) The designated member shall serve for the case on which designated until the final disposition of the case.

(d) Appointed members may be reappointed for succeeding terms and may continue to serve after the expiration of their terms until a successor takes office.

(e) Qualified persons may be redesignated as members.

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

(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.

(5) A local public procurement unit, a non-executive state procurement unit, or a state institution of higher education may form its own appeals board to hear procurement protests.

Section ~~{176}~~177. Section **63G-6a-1703**, which is renumbered from Section 63G-6-810 is renumbered and amended to read:

~~[63G-6-810]~~. **63G-6a-1703. Jurisdiction of appeals board.**

Unless an action has been initiated previously in district courts for essentially the same cause of action, [the] an appeals board shall have jurisdiction to review and determine de novo:

(1) any protest of a solicitation or award of a contract addressed to the appeals board by an aggrieved actual or prospective bidder or offeror, or a contractor; and

(2) any appeal by an aggrieved party from a decision rendered or considered to have been rendered pursuant to Section ~~[63G-6-806]~~ 63G-6a-1604.

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Section ~~{177}~~178. Section **63G-6a-1704**, which is renumbered from Section 63G-6-808 is renumbered and amended to read:

~~[63G-6-808].~~ **63G-6a-1704. Rules of procedure to be adopted.**

The Procurement Appeals Board:

(1) shall adopt rules of procedure [~~which~~] that, to the fullest extent possible, [~~will~~] provide for the expeditious resolution of controversies, including procedures to encourage agreements between the parties to a controversy prior to a hearing [~~The board~~]; and

(2) may adopt small claims procedures for the resolution of controversies involving claims of less than \$15,000.

Section ~~{178}~~179. Section **63G-6a-1705**, which is renumbered from Section 63G-6-809 is renumbered and amended to read:

~~[63G-6-809].~~ **63G-6a-1705. Decisions of appeals board to be in writing.**

~~[The Procurement Appeals Board shall]~~

An appeals board shall:

(1) issue a decision in writing or take other appropriate action of each appeal submitted [~~A~~]; and

(2) provide a copy of any decision [~~shall be provided~~] to all parties and the [~~chief~~] procurement officer or the head of [~~a purchasing agency~~] an authorized purchasing entity.

Section ~~{179}~~180. Section **63G-6a-1706**, which is renumbered from Section 63G-6-811 is renumbered and amended to read:

~~[63G-6-811].~~ **63G-6a-1706. Time limits to file protest or appeal -- Effect of filing.**

(1) For a protest under Subsection [~~63G-6-810~~] 63G-6a-1703(1), the aggrieved person shall file a protest with the appeals board within [~~five working~~] seven days after the aggrieved person knows or should have known of the facts and circumstances upon which the protest is based [~~provided, however,~~] except that a protest with respect to an invitation for bids or request for proposals shall be filed [~~prior to~~] before the opening of bids or the closing date for proposals unless the aggrieved person did not know and should not have known of the facts giving rise to the protest [~~prior to~~] before the bid opening or the closing date for proposals.

(2) For an appeal from a decision regarding a protested solicitation or award, the aggrieved person shall file an appeal within seven [~~calendar days of receipt of a~~] days after the

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day on which the decision is rendered or considered to have been rendered [~~pursuant to Section 63G-6-806~~] under Section 63G-6a-1604.

(3) For an appeal from a decision regarding a debarment, suspension, or contract controversy, the aggrieved person shall file an appeal within 60 [~~calendar days of receipt of~~] days after the day on which the person receives a decision rendered or considered to have been rendered [~~pursuant to Section 63G-6-806~~] under Section 63G-6a-1604.

Section ~~{180}~~181. Section **63G-6a-1707**, which is renumbered from Section 63G-6-812 is renumbered and amended to read:

~~[63G-6-812].~~ **63G-6a-1707. Discontinued appeal with prejudice, except as authorized.**

After notice of an appeal [~~has been~~] is filed with the [~~Procurement Appeals Board~~] applicable appeals board, no party may discontinue the appeal without prejudice, except as authorized by the [~~Procurement Appeals Board~~] applicable appeals board.

Section ~~{181}~~182. Section **63G-6a-1708**, which is renumbered from Section 63G-6-813 is renumbered and amended to read:

~~[63G-6-813].~~ **63G-6a-1708. Factual determination of appeals board final and conclusive.**

(1) On any protest or appeal under Section [~~63G-6-810~~] 63G-6a-1703, the [~~Procurement Appeals Board~~] applicable appeals board shall promptly decide the contract controversy or whether the [~~solicitation~~] procurement or award was in accordance with this chapter. Any prior determinations by administrative officials regarding protests of [~~solicitations~~] procurements or awards, suspension or debarments, contract controversies, or breach of contract controversies [~~shall not be~~] are not final or conclusive.

(2) A determination of an issue of fact by the [~~Procurement Appeals Board~~] applicable appeals board under Subsection (1) [~~shall be~~] is final and conclusive unless arbitrary and capricious or clearly erroneous. No determination on an issue of law [~~shall be~~] by the applicable appeals board is final or conclusive.

(3) The applicable appeals board may, without a hearing, determine, in writing, that a protest is without merit.

Section ~~{182}~~183. Section **63G-6a-1801** is enacted to read:

Part 18. Appeals to Court and Court Proceedings

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63G-6a-1801. Title.

This part is known as "Appeals to Court and Court Proceedings."

Section ~~{183}~~184. Section **63G-6a-1802**, which is renumbered from Section 63G-6-814 is renumbered and amended to read:

~~[63G-6-814].~~ **63G-6a-1802. Right to appeal to Court of Appeals.**

Any person receiving an adverse decision₂ or the state₂ may appeal a decision of [~~the Procurement Appeals Board~~] an appeals board to the Court of Appeals. [~~However, no appeal may be made by the state~~] The state may not appeal a decision of an appeals board unless:

- (1) recommended by the chief procurement officer or the head of the state purchasing [agency] unit involved, and approved by the attorney general~~[-];~~ or
- (2) for a non-executive state procurement unit, approved by a person authorized by rule made by the applicable rulemaking authority.

Section ~~{184}~~185. Section **63G-6a-1803**, which is renumbered from Section 63G-6-815 is renumbered and amended to read:

~~[63G-6-815].~~ **63G-6a-1803. Jurisdiction of district court.**

(1) The district court shall have jurisdiction over an action, whether the action is at law or in equity, between the state and:

- (a) a bidder, offeror, or contractor, prospective or actual, who is aggrieved in connection with the [~~solicitation~~] procurement or award of a contract;
- (b) a person who is subject to a suspension or debarment proceeding; and
- (c) a contractor, for any cause of action [~~which~~] that arises under, or [~~by virtue of~~] or in relation to a contract.

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

Section ~~{185}~~186. Section **63G-6a-1804**, which is renumbered from Section 63G-6-817 is renumbered and amended to read:

~~[63G-6-817].~~ **63G-6a-1804. Statutes of limitations.**

(1) [~~Any~~] An action under Subsection [~~63G-6-815~~] 63G-6a-1803(1)(a) shall be initiated [~~as follows~~]:

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(a) within 20 ~~[calendar]~~ days after the day on which the aggrieved person knows or should have known of the facts giving rise to the action; ~~[provided, however, that an action]~~

~~(b)~~ with respect to an invitation for bids or request for proposals ~~[shall be initiated prior to]~~, before the opening of bids or the closing date for proposals unless the aggrieved person did not know and should not have known of the facts giving rise to the action ~~[prior to bid opening or the closing date for proposals]~~; or

~~(b)~~ (c) within 14 ~~[calendar]~~ days after receipt of a final administrative decision pursuant to either Section ~~[63G-6-806 or Section 63G-6-813]~~ 63G-6a-1604 or 63G-6a-1708, whichever is applicable.

(2) ~~[Any]~~ An action under Subsection ~~[63G-6-815]~~ 63G-6a-1803(1)(b) shall be commenced within six months after receipt of a final administrative decision, pursuant to Section ~~[63G-6-806 or Section 63G-6-813, whichever is applicable]~~ 63G-6a-1604 or 63G-6a-1708.

(3) The statutory limitations on an action between private persons on a contract or for breach of contract shall apply to any action commenced pursuant to Subsection ~~[63G-6-815]~~ 63G-6a-1803(1)(c), except notice of appeals from ~~[the Procurement Appeals Board]~~ an appeals board pursuant to Section ~~[63G-6-814]~~ 63G-6a-1802 concerning actions on a contract or for breach of contract, shall be filed within one year after the ~~[date of the Procurement Appeals Board decision]~~ day on which the decision of the appeals board is made.

Section ~~{186}~~ 187. Section **63G-6a-1805**, which is renumbered from Section 63G-6-816 is renumbered and amended to read:

~~[63G-6-816]~~. **63G-6a-1805. Effect of prior determination by agents of state.**

In any judicial action under Section ~~[63G-6-815]~~ 63G-6a-1803, determinations by employees, agents, or other persons appointed by the state shall be final and conclusive only as provided in Sections ~~[63G-6-419 and 63G-6-806]~~ 63G-6a-1604 and 63G-6a-1902, and Subsection ~~[63G-6-813]~~ 63G-6a-1708(2).

Section ~~{187}~~ 188. Section **63G-6a-1901** is enacted to read:

Part 19. General Provisions Related to Protest or Appeal

63G-6a-1901. Title.

This part is known as "General Provisions Related to Protest or Appeal."

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Section ~~{188}~~189. Section **63G-6a-1902**, which is renumbered from Section 63G-6-419 is renumbered and amended to read:

~~[63G-6-419]~~. **63G-6a-1902**. **Determinations final except when arbitrary and capricious.**

The determinations required [by Subsections ~~63G-6-401(6)~~, ~~63G-6-408(1)~~ and ~~(6)~~; Sections ~~63G-6-410~~, ~~63G-6-411~~, ~~63G-6-413~~, Subsection ~~63G-6-415(4)~~, Section ~~63G-6-416~~, and Subsection ~~63G-6-417(2)~~] under the following provisions are final and conclusive unless they are arbitrary and capricious or clearly erroneous[-]:

- (1) Section 63G-6a-605;
- (2) Section 63G-6a-702;
- (3) Subsection 63G-6a-708(1)(a);
- (4) Subsection 63G-6a-709(1);
- (5) Section 63G-6a-803;
- (6) Section 63G-6a-804;
- (7) Section 63G-6a-903;
- (8) Subsection 63G-6a-1204(1) or (2);
- (9) Subsection 63G-6a-1204(5);
- (10) Section 63G-6a-1205; or
- (11) Subsection 63G-6a-1206(5).

Section ~~{189}~~190. Section **63G-6a-1903**, which is renumbered from Section 63G-6-818 is renumbered and amended to read:

~~[63G-6-818]~~. **63G-6a-1903**. **Effect of violation prior to award of contract.**

If [~~prior to~~], before award of a contract, it is determined administratively or upon administrative or judicial review that a [~~solicitation~~] procurement or proposed award of a contract is in violation of law, the [~~solicitation~~] procurement or proposed award shall be cancelled or revised to comply with the law.

Section ~~{190}~~191. Section **63G-6a-1904**, which is renumbered from Section 63G-6-819 is renumbered and amended to read:

~~[63G-6-819]~~. **63G-6a-1904**. **Effect of violation after award of contract.**

If, after [~~an~~] award of a contract, it is determined administratively or upon administrative or judicial review that a [~~solicitation~~] procurement or award of a contract is in

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violation of law:

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

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

(b) (i) the contract may be terminated; and

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

(2) if the person awarded the contract has acted fraudulently or in bad faith:

(a) the contract may be declared null and void; or

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

Section ~~{191}~~ 192. Section **63G-6a-1905**, which is renumbered from Section 63G-6-820 is renumbered and amended to read:

~~[63G-6-820]~~. **63G-6a-1905. Interest rate.**

(1) Except as provided in Subsection (2), in controversies between the state and contractors under this part, Part 16, Controversies and Protests, Part 17, Procurement Appeals Board, or Part 18, Appeals to Court and Court Proceedings, interest on amounts ultimately determined to be due to a contractor or [~~to~~] the state are payable at the rate applicable to judgments from the date the claim arose through the date of decision or judgment, whichever is later.

(2) This section does not apply to public assistance benefits programs.

Section ~~{192}~~ 193. Section **63G-6a-2001** is enacted to read:

Part 20. Records

63G-6a-2001. Title.

This part is known as "Records."

Section ~~{193}~~ 194. Section **63G-6a-2002**, which is renumbered from Section 63G-6-106 is renumbered and amended to read:

~~[63G-6-106]~~. **63G-6a-2002. Records -- Retention.**

(1) All procurement records shall be retained and disposed of in accordance with Title

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63G, Chapter 2, Government Records Access and Management Act.

(2) Written determinations required by this chapter shall ~~[also]~~ be retained in the appropriate official contract file of ~~[the Division of Purchasing and General Services or the purchasing agency.]:~~

(a) the division;

(b) the state purchasing unit; or

(c) for a non-executive state procurement unit, the person designated by rule made by the applicable rulemaking authority.

(3) A public procurement unit shall keep, and make available to the public, upon request, a written record of all procurements made under this section for which an expenditure of \$50 or more is made, for the longer of:

(a) four years;

(b) the time otherwise required by law; or

(c) the time period provided by rule made by the applicable rulemaking authority.

(4) The written record described in Subsection (3) shall include:

(a) the name of the provider from whom the procurement was made;

(b) a description of the procurement item;

(c) the date of the procurement; and

(d) the expenditure made for the procurement.

Section ~~{194}~~195. Section **63G-6a-2003**, which is renumbered from Section 63G-6-421 is renumbered and amended to read:

~~[63G-6-421].~~ **63G-6a-2003. Records of contracts made -- Audits --**

Contract requirements.

The ~~[chief]~~ procurement officer or the head of ~~[a purchasing agency]~~ an authorized purchasing entity shall maintain a record listing all contracts made under Section ~~[63G-6-410 or 63G-6-411 and shall maintain the record]~~ 63G-6a-408, 63G-6a-802, or 63G-6a-803, in accordance with Title 63G, Chapter 2, Government Records Access and Management Act. The record shall contain each contractor's name, the amount and type of each contract, and a listing of the ~~[supplies, services, or construction procured under each contract]~~ procurement items to which the contract relates.

Section ~~{195}~~196. Section **63G-6a-2004**, which is renumbered from Section

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63G-6-905 is renumbered and amended to read:

~~[63G-6-905].~~ **63G-6a-2004.** Chief procurement officer's collection of information on procurement items.

(1) To the extent possible, the chief procurement officer may collect information concerning the type, cost, quality, and quantity of commonly used [~~supplies, services, or construction being~~] procurement items procured or used by [~~state~~] public procurement units [~~and local public procurement units~~].

(2) The chief procurement officer may make the information described in Subsection (1) available to any public procurement unit upon request.

Section ~~{196}~~197. Section **63G-6a-2101** is enacted to read:

Part 21. Interaction Between Public Procurement Units

63G-6a-2101. Title.

This part is known as "Interaction Between Public Procurement Units."

Section ~~{197}~~198. Section **63G-6a-2102**, which is renumbered from Section 63G-6-901 is renumbered and amended to read:

~~[63G-6-901].~~ **63G-6a-2102.** Agreements between public procurement units.

~~[Under the terms agreed upon among the parties, any]~~

(1) For purposes of this section only, "public procurement unit" includes an external procurement unit.

(2) A public procurement unit may enter into [~~agreements~~] an agreement with one or more other public procurement units to:

~~{1}~~ (a) sponsor, conduct, or administer a cooperative agreement for the procurement or disposal of [~~any supplies, services, or construction~~] a procurement item;

~~{2}~~ (b) cooperatively use [~~supplies or services~~] a procurement item;

~~{3}~~ (c) commonly use or share warehousing facilities, capital equipment, and other facilities;

~~{4}~~ (d) provide personnel~~[; provided that the requesting], if the receiving~~ public procurement unit [~~shall pay~~] pays the public procurement unit providing the personnel the direct and indirect cost of providing the personnel, in accordance with the agreement; or

~~{5}~~ (e) make available informational, technical, and other services, [~~provided that~~], if:

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(i) the requirements of the public procurement unit tendering the services [~~shall~~] have precedence over the [~~requesting~~] public procurement unit that receives the services; and [~~that~~]

(ii) the [~~requesting~~] receiving public procurement unit [~~shall pay for~~] pays the expenses of the services [~~so~~] provided, in accordance with the agreement.

(3) If a public procurement unit does not have the expertise necessary to administer a particular procurement, the public procurement unit may enter into an agreement for administration of the procurement with:

(a) another public procurement unit; or

(b) a person that is under contract to administer procurements.

Section ~~{198}~~199. Section **63G-6a-2103**, which is renumbered from Section 63G-6-902 is renumbered and amended to read:

~~[63G-6-902].~~ **63G-6a-2103. Services between public procurement units.**

(1) Upon request, [~~any~~] a public procurement unit may make services available to [~~other~~] another public procurement [~~units the following services, among others~~] unit, including:

(a) standard forms;

(b) printed manuals;

(c) qualified products lists;

(d) source information;

(e) common use commodities listings;

(f) supplier prequalification information;

(g) supplier performance ratings;

(h) debarred and suspended bidders lists;

(i) forms for invitation for bids, requests for proposals, instructions to bidders, general contract provisions, and [~~other~~] contract forms; [~~and~~] or

(j) contracts or published summaries [~~thereof~~] of contracts, including price and time of delivery information.

(2) [~~Any~~] A public procurement unit may provide [~~the following~~] technical services[;] [~~among others, to other~~] to another public procurement [~~units;~~] unit, including:

(a) development of specifications;

(b) development of quality assurance test methods, including receiving, inspection, and acceptance procedures;

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(c) use of testing and inspection facilities; ~~and~~ or

(d) use of personnel training programs.

(3) Public procurement units may enter into contractual arrangements and publish a schedule of fees for the services provided under Subsections (1) and (2).

Section ~~{199}~~200. Section **63G-6a-2104**, which is renumbered from Section 63G-6-904 is renumbered and amended to read:

~~[63G-6-904].~~ **63G-6a-2104**. **Compliance by one public procurement unit pursuant to agreement considered compliance by others to agreement.**

~~[Where the]~~ (1) ~~When a public procurement unit [administering] that administers a cooperative purchase complies with the requirements of this chapter, any public procurement unit participating in [such a] the purchase [shall be] is considered to have complied with this chapter. [Public procurement units]~~

(2) A public procurement unit may not enter into a cooperative purchasing agreement for the purpose of circumventing this chapter.

Section ~~{200}~~201. Section **63G-6a-2105**, which is renumbered from Section 63G-6-424 is renumbered and amended to read:

~~[63G-6-424].~~ **63G-6a-2105**. **Participation of counties, municipalities, and public procurement units in agreements or contracts of public procurement units.**

~~[Utah counties, municipalities, and local public procurement units]~~

(1) A Utah county or municipality may purchase [from] under or otherwise participate in [state public procurement unit agreements and contracts:] an agreement or contract of a Utah public procurement unit.

(2) A state purchasing unit or a Utah public procurement unit may:

(a) contract with the federal government without going through a procurement process or an exception to a procurement process;

(b) purchase under, or otherwise participate in, an agreement or contract of another Utah public procurement unit; or

(c) purchase under, or otherwise participate in, an agreement or contract of an external public procurement unit, if:

(i) the procurement was conducted in accordance with the requirements of this chapter;

and

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(ii) the Utah participating addendum to the contract contains the terms and conditions required by the applicable rulemaking authority that enters into the Utah participating addendum.

(3) A public transit district, organized under Title 17B, Chapter 2a, Part 8, Public Transit District Act, may, without going through a procurement process or an exception to a procurement process, contract with a county or municipality to receive money from the county or municipality to fund a transportation project.

Section ~~{201}~~202. Section **63G-6a-2201** is enacted to read:

Part 22. Ethical Requirements

63G-6a-2201. Title.

This part is known as "Ethical Requirements."

Section ~~{202}~~203. Section **63G-6a-2202** is enacted to read:

63G-6a-2202. Ethical requirements for public procurement.

(1) As used in this section, "~~{interested person}~~" means a person who is interested in providing a procurement item to a public entity in response to an anticipated or pending acquisition of a procurement item by an invitation for bids, a request for proposals, a request for quotes, or another process.

—— (2) A person acting on behalf of a public entity in a procurement by the public entity, regardless of whether the person is a public employee, shall conduct and participate in the procurement in an ethical manner.

—— (3) Ethical conduct and participation by a person described in Subsection (2) includes:

—— (a) acting as a fiduciary and trustee of public money;

—— (b) remaining independent from a person who is interested in providing a procurement item to the public entity, including an actual or prospective bidder, offeror, or contractor;

—— (c) acting only in the public interest;

—— (d) abiding by all applicable law and rules relating to a procurement by the public entity;

—— (e) avoiding the appearance of unethical behavior;

—— (f) except as provided in Subsection (4), not engaging in a social interaction with an interested person of the public entity, if engaging in the social interaction would lead a reasonable person to believe that the interested person is receiving an unfair advantage in an

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~~anticipated or pending procurement by the public entity;~~

~~— (g) subject to the ethics provisions of the Government Records Access and Management Act, maintaining confidentiality in a manner that ensures a fair procurement process; and~~

~~— (h) identifying and eliminating any conflict of interest.~~

~~— (4) Subsection (3)(f) does not prohibit a chance meeting.~~

~~— (5) An interested person, or any other person that may benefit from a procurement by a public entity, shall act in an ethical manner with respect to the procurement, including:~~

~~— (a) refraining from engaging in any conduct with the intent to gain an unfair advantage in a procurement from a public entity;~~

~~— (b) refraining from engaging in any conduct that would lead a reasonable person to believe that the interested person will, or is, receiving an unfair advantage in a procurement from a public entity;~~

~~— (c) refraining from any activity that would create the appearance of impropriety or conflict of interest with respect to the procurement by the public entity;~~

~~— (d) identifying and eliminating any conflicts of interest with respect to the procurement by the public entity;~~

~~— (e) not interfering with efforts by the public entity to ensure that all interested persons are afforded an equal opportunity to compete in a fair and open environment;~~

~~— (f) not engaging in a social interaction with a person acting on behalf of a public entity in a procurement, if engaging in the social interaction would lead a reasonable person to believe that the interested person is receiving an unfair advantage in an anticipated or pending procurement by the public entity; and~~

~~— (g) not entering into collusion with other interested buyers with the intent to unfairly manipulate the price or other terms of a procurement by a public entity.~~

~~— (6) model procurement code" means the following provisions of Article 12 of the 2000 American Bar Association Model Procurement Code for State and Local Governments:~~

~~(a) Section 12-202, General Standards of Ethical Conduct;~~

~~(b) Section 12-204, Employee Conflict of Interest;~~

~~(c) Section 12-205, Employee Disclosure Requirements;~~

~~(d) Section 12-206, Gratuities and Kickbacks;~~

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(e) Section 12-207, Prohibition Against Contingent Fees;

(f) Section 12-208, Restrictions on Employment of Present and Former Employees;

and

(g) Section 12-209, Use of Confidential Information.

(2) The applicable rulemaking authority ~~{may make rules to further define and regulate the ethical requirements described in this section.~~

~~(7) The~~ shall make rules that prescribe ethical standards for its agents and employees in relation to a procurement.

(3) The ethical standards described in Subsection (2) shall be based upon the general principles of the ethics provisions of the model procurement code.

(4) The applicable rulemaking authority:

(a) is not required to adopt or implement any of the specific provisions of the ethics provisions of the model procurement code; and

(b) may not adopt any provision of the ethics provisions of the model procurement code that conflict with this chapter.

(5) A public entity shall advise its employees and agents who are involved in a procurement process for the public entity regarding the following provisions and the penalties associated with those provisions:

(a) the provisions of this ~~{section are in addition to, and not in lieu of,}~~ part and rules made under this part;

(b) Subsections 63G-6a-408 (4) and (5), relating to artificially dividing a procurement;

(c) Section 63G-6a-2303, Offering a gratuity;

(d) Section 63G-6a-2304, Accepting or requesting a gratuity;

(e) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act;

(f) Section 76-8-103, Bribery or offering a bribe;

(g) Section 76-8-105, Receiving or soliciting bribe or bribery by public servant ; and

(h) Section 76-8-402. Misusing public money.

Section ~~{203}~~204. Section **63G-6a-2301** is enacted to read:

Part 23. Unlawful Conduct and Penalties

63G-6a-2301. Title.

This part is known as "Unlawful Conduct and Penalties."

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Section ~~{204}~~205. Section **63G-6a-2302**, which is renumbered from Section 63G-6-420 is renumbered and amended to read:

~~[63G-6-420]~~. **63G-6a-2302. Factual information to attorney general if collusion suspected.**

~~[When for any reason]~~ If a public procurement unit suspects collusion or other anticompetitive practices [are suspected] among bidders or offerors, the public procurement unit shall transmit a notice of the relevant facts [shall be transmitted] to the attorney general.

Section ~~{205}~~206. Section **63G-6a-2303** is enacted to read:

63G-6a-2303. Offering a gratuity.

(1) As used in this section, "interested person" means a person who is interested in any way in the sale of a procurement item, real property, or insurance to a public entity.

(2) Except as provided in Subsection (5), it is unlawful for an interested person to give, offer, or promise to give an emolument, gratuity, contribution, loan, or reward to:

(a) a procurement officer of the public entity that is seeking to obtain the procurement item;

(b) any employee, official, or agent of the public entity that is seeking to obtain the procurement item; or

(c) another person or entity on behalf of a person described in Subsection (2)(a) or (b).

(3) The conduct described in Subsection (2) is unlawful, regardless of whether the emolument, gratuity, contribution, loan, or reward is given for:

(a) the person's own use; or

(b) the use or benefit of any other person.

(4) A person who violates this section is guilty of:

(a) a felony of the second degree if the total value of the emolument, gratuity, contribution, loan, or reward is \$1,000 or more;

(b) a felony of the third degree if the total value of the emolument, gratuity, contribution, loan, or reward is \$250 or more, but less than \$1,000;

(c) a class A misdemeanor if the value of the emolument, gratuity, contribution, loan, or reward is \$100 or more, but less than \$250; or

(d) a class B misdemeanor if the value of the emolument, gratuity, contribution, loan, or reward is less than \$100.

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(5) A person is not guilty of a violation of this section if:

(a) (i) the gift is an item of less than \$10 in value;

(ii) the total value of all gifts given by the person to a person described in Subsection (2), or another person in that person's behalf, during that calendar year does not exceed \$50; and

(iii) the gift is not given with the intent to induce a person to make a procurement decision in reciprocation for the gift; or

(b) the gift:

(i) is a philanthropic donation to a government entity; and

(ii) is not given with the intent to induce a person to make a procurement decision in reciprocation for the gift.

Section ~~{206}~~207. Section **63G-6a-2304** is enacted to read:

63G-6a-2304. Accepting or requesting a gratuity.

(1) As used in this section, "associate" means any of the following:

(a) the chief procurement officer;

(b) a procurement officer;

(c) a public employee;

(d) a public official; or

(e) an agent of a public entity.

(2) Except as provided in Subsection (4), it is unlawful for an associate of a public entity that is engaged in obtaining a procurement item, real property, or insurance to ask, receive, offer to receive, accept, or ask for a promise to receive, an emolument, gratuity, contribution, loan, or reward for the associate's own use or benefit, or the use or benefit of any other person interested in the procurement item, real property, or insurance.

(3) A person who violates this section is guilty of:

(a) a felony of the second degree if the total value of the emolument, gratuity, contribution, loan, or reward is \$1,000 or more;

(b) a felony of the third degree if the total value of the emolument, gratuity, contribution, loan, or reward is \$250 or more, but less than \$1,000;

(c) a class A misdemeanor if the value of the emolument, gratuity, contribution, loan, or reward is \$100 or more, but less than \$250; or

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(d) a class B misdemeanor if the value of the emolument, gratuity, contribution, loan, or reward is less than \$100.

(4) A person is not guilty of a violation of this section if:

(a) (i) the associate receives a gift of less than \$10 in value;

(ii) the total value of all gifts received by the associate from the same person during that calendar year does not exceed \$50; and

(iii) the associate does not make a procurement decision, or intend to make a procurement decision, in reciprocation for the gift; or

(b) the associate:

(i) receives a philanthropic donation on behalf of a government entity; and

(ii) does not make a procurement decision, or intend to make a procurement decision, in reciprocation for the donation.

Section ~~{207}~~208. Section **63G-6a-2305** is enacted to read:

63G-6a-2305. Penalties for artificially dividing a purchase.

~~{(1) Except as described in Subsection (2), a}~~A person who violates Subsection 63G-6a-408(~~{3}, {4}~~{1}) or (5) is guilty of:

~~{a}~~1) a felony of the second degree if the total value of the divided procurements is \$1,000,000 or more;

~~{b}~~2) a felony of the third degree if the total value of the divided procurements is \$250,000 or more, but less than \$1,000,000;

~~{c}~~3) a class A misdemeanor if the total value of the divided procurements is \$100,000 or more, but less than \$250,000; or

~~{d}~~4) a class B misdemeanor if the total value of the divided procurements is less than \$100,000.

~~{~~(2) A person who violates Subsection 63G-6a-408(3) with the intent to financially benefit himself, herself, or another, is guilty of:

~~——~~(a) a felony of the second degree if the total value of the divided procurements is \$250,000 or more; or

~~——~~(b) a felony of the third degree if the total value of the divided procurements is less than \$250,000.

~~‡~~ Section ~~{208}~~209. Section **63G-6a-2306** is enacted to read:

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63G-6a-2306. Penalties.

(1) Except as provided in Subsection (2), in addition to any penalty contained in any other provision of law, a public officer or public employee who intentionally violates a provision of Section 63G-6a-2303, Section 63G-6a-2304, or Section 63G-6a-2305 shall be dismissed from employment or removed from office.

(2) An elected official who intentionally violates a provision of Section 63G-6a-2303, Section 63G-6a-2304, or Section 63G-6a-2305 may only be removed from office in accordance with the requirements of law relating to removal of the elected official from office.

(3) Except as provided in Subsection (4), a public officer or public employee who intentionally violates a provision of this chapter, including Part 22, Ethical Requirements, is subject to disciplinary action, up to and including dismissal from employment or dismissal from office.

(4) An elected official who intentionally violates a provision of this chapter, including Part 22, Ethical Requirements, may only be disciplined or removed from office in accordance with the requirements of law relating to discipline of the elected official or removal of the elected official from office.

Section ~~{209}~~210. Section **63G-6a-2307** is enacted to read:

63G-6a-2307. Contract awarded in relation to criminal conduct void.

If a person who is awarded a contract intentionally violates a provision of Section 63G-6a-2303 or Section 63G-6a-2304 in relation to the contract, the contract is void and unenforceable.

Section ~~{210}~~211. Section **63G-7-804** is amended to read:

63G-7-804. Liability insurance -- Methods for purchase or renewal.

(1) Except as provided in Subsection (2), a contract or policy of insurance may be purchased or renewed under this chapter only upon public bid to be let to the lowest and best bidder.

(2) The purchase or renewal of insurance by the state shall be conducted in accordance with the provisions of Title 63G, Chapter [6] 6a, Utah Procurement Code.

Section ~~{211}~~212. Section **63G-10-403** is amended to read:

63G-10-403. Department of Transportation bid or request for proposals protest settlement agreement approval and review.

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(1) As used in this section:

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

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

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

(3) A settlement agreement that is being settled by the department as part of a bid or request for proposal protest, in accordance with Section [~~63G-6-801~~] 63G-6a-1603, that might cost government entities more than \$100,000 to implement shall be presented to the Transportation Commission for approval or rejection.

(4) A settlement agreement that is being settled by the department as part of a bid or request for proposal protest, in accordance with Section [~~63G-6-801~~] 63G-6a-1603, that might cost government entities more than \$500,000 to implement shall be presented:

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

(b) to the governor for approval or rejection.

(5) (a) A settlement agreement that is being settled by the department as part of a bid or request for proposal protest, in accordance with Section [~~63G-6-801~~] 63G-6a-1603, that might cost government entities more than \$1,000,000 to implement shall be presented:

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

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

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

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

(6) (a) The department may not enter into a settlement agreement that resolves a bid or request for proposal protest, in accordance with Section [~~63G-6-801~~] 63G-6a-1603, that might cost government entities more than \$100,000 to implement until the Transportation Commission has approved the agreement.

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(b) The department may not enter into a settlement agreement that resolves a bid or request for proposal protest, in accordance with Section [~~63G-6-801~~] 63G-6a-1603, that might cost government entities more than \$500,000 to implement until the Transportation Commission and the governor have approved the agreement.

(c) The department may not enter into a settlement agreement that resolves a bid or request for proposal protest, in accordance with Section [~~63G-6-801~~] 63G-6a-1603, that might cost government entities more than \$1,000,000 to implement until:

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

Section ~~{212}~~213. Section **63H-2-504** is amended to read:

63H-2-504. Relation to other state statutes.

(1) The authority is subject to review by the Retirement and Independent Entities Committee in accordance with Title 63E, Chapter 1, Independent Entities Act.

(2) The authority is subject to:

- (a) Title 51, Chapter 5, Funds Consolidation Act;
- (b) Title 51, Chapter 7, State Money Management Act;
- (c) Title 52, Chapter 4, Open and Public Meetings Act;
- (d) Title 63A, Utah Administrative Services Code;
- (e) Title 63G, Chapter 2, Government Records Access and Management Act;
- (f) Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- (g) Title 63G, Chapter 4, Administrative Procedures Act;
- (h) Title 63G, Chapter [~~6~~] 6a, Utah Procurement Code;
- (i) Title 63J, Chapter 1, Budgetary Procedures Act;
- (j) Title 63J, Chapter 2, Revenue Procedures and Control Act; and
- (k) Title 67, Chapter 19, Utah State Personnel Management Act.

Section ~~{213}~~214. Section **63H-3-109** is amended to read:

63H-3-109. Relation to certain acts.

(1) The authority is exempt from:

- (a) Title 51, Chapter 5, Funds Consolidation Act;
- (b) Title 63A, Chapter 1, Department of Administrative Services;

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- (c) Title 63G, Chapter [6] 6a, Utah Procurement Code;
- (d) Title 63J, Chapter 1, Budgetary Procedures Act; and
- (e) Title 67, Chapter 19, Utah State Personnel Management Act.

(2) The authority is subject to audit by:

- (a) the state auditor pursuant to Title 67, Chapter 3, Auditor; and
- (b) the legislative auditor general pursuant to Section 36-12-15.

(3) The authority shall annually report to the Retirement and Independent Entities

Committee created under Section 63E-1-201 concerning the authority's implementation of this part.

Section ~~{214}~~215. Section **63H-4-108** is amended to read:

63H-4-108. Relation to certain acts.

(1) The authority is exempt from:

- (a) Title 51, Chapter 5, Funds Consolidation Act;
- (b) Title 63A, Utah Administrative Services Code;
- (c) Title 63G, Chapter [6] 6a, Utah Procurement Code;
- (d) Title 63J, Chapter 1, Budgetary Procedures Act; and
- (e) Title 67, Chapter 19, Utah State Personnel Management Act.

(2) The authority is subject to audit by the state auditor pursuant to Title 67, Chapter 3, Auditor, and by the legislative auditor general pursuant to Section 36-12-15.

Section ~~{215}~~216. Section **63H-5-108** is amended to read:

63H-5-108. Relation to certain acts.

(1) The authority is exempt from:

- (a) Title 51, Chapter 5, Funds Consolidation Act;
- (b) Title 63A, Chapter 1, Department of Administrative Services;
- (c) Title 63G, Chapter [6] 6a, Utah Procurement Code;
- (d) Title 63J, Chapter 1, Budgetary Procedures Act; and
- (e) Title 67, Chapter 19, Utah State Personnel Management Act.

(2) The authority is subject to audit by the state auditor pursuant to Title 67, Chapter 3, Auditor, and by the legislative auditor general pursuant to Section 36-12-15.

Section ~~{216}~~217. Section **63H-6-103** is amended to read:

63H-6-103. Utah State Fair Corporation -- Legal status -- Powers.

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(1) There is created an independent public nonprofit corporation known as the "Utah State Fair Corporation."

(2) The board shall file articles of incorporation for the corporation with the Division of Corporations and Commercial Code.

(3) The corporation, subject to this chapter, has all powers and authority permitted nonprofit corporations by law.

(4) The corporation shall, subject to approval of the board:

(a) have general management, supervision, and control over all activities relating to the state fair and have charge of all state expositions except as otherwise provided by statute;

(b) for public entertainment, displays, and exhibits or similar events:

(i) provide, sponsor, or arrange the events;

(ii) publicize and promote the events; and

(iii) secure funds to cover the cost of the exhibits from:

(A) private contributions;

(B) public appropriations;

(C) admission charges; and

(D) other lawful means;

(c) establish the time, place, and purpose of state expositions; and

(d) acquire and designate exposition sites.

(5) (a) The corporation shall:

(i) use generally accepted accounting principals in accounting for its assets, liabilities, and operations;

(ii) seek corporate sponsorships for the state fair park and for individual buildings or facilities within the fair park;

(iii) work with county and municipal governments, the Salt Lake Convention and Visitor's Bureau, the Utah Travel Council, and other entities to develop and promote expositions and the use of the state fair park;

(iv) develop and maintain a marketing program to promote expositions and the use of the state fair park;

(v) in cooperation with the Division of Facilities Construction and Management, maintain the physical appearance and structural integrity of the state fair park and the buildings

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located at the state fair park;

(vi) hold an annual exhibition that:

(A) is called the state fair or a similar name;

(B) includes expositions of livestock, poultry, agricultural, domestic science, horticultural, floricultural, mineral, and industrial products, manufactured articles, and domestic animals that, in the corporation's opinion will best stimulate agricultural, industrial, artistic, and educational pursuits and the sharing of talents among the people of Utah;

(C) includes the award of premiums for the best specimens of the exhibited articles and animals;

(D) permits competition by livestock exhibited by citizens of other states and territories of the United States; and

(E) is arranged according to plans approved by the board;

(vii) fix the conditions of entry to the exposition described in Subsection (5)(a)(vi); and

(viii) publish a list of premiums that will be awarded at the exhibition described in Subsection (5)(a)(vi) for the best specimens of exhibited articles and animals.

(b) In addition to the state fair to be held in accordance with Subsection (5)(a)(vi), the corporation may hold other exhibitions of livestock, poultry, agricultural, domestic science, horticultural, floricultural, mineral, and industrial products, manufactured articles, and domestic animals that, in its opinion, will best stimulate agricultural, industrial, artistic, and educational pursuits and the sharing of talents among the people of Utah.

(6) The corporation may:

(a) employ advisers, consultants, and agents, including financial experts and independent legal counsel, and fix their compensation;

(b) procure insurance against any loss in connection with its property and other assets, including mortgage loans;

(c) receive and accept aid or contributions of money, property, labor, or other things of value from any source, including any grants or appropriations from any department, agency, or instrumentality of the United States or Utah;

(d) hold, use, loan, grant, and apply that aid and those contributions to carry out the purposes of the corporation, subject to the conditions, if any, upon which the aid and contributions were made;

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(e) enter into management agreements with any person or entity for the performance of its functions or powers;

(f) establish whatever accounts and procedures as necessary to budget, receive, and disburse, account for, and audit all funds received, appropriated, or generated;

(g) enter into agreements for the leasing of any of the facilities at the state fair park, if approved by the board; and

(h) sponsor events as approved by the board.

(7) (a) Except as provided in Subsection (7)(c), as an independent agency of Utah, the corporation is exempt from:

(i) Title 51, Chapter 5, Funds Consolidation Act;

(ii) Title 51, Chapter 7, State Money Management Act;

(iii) Title 63A, Utah Administrative Services Code;

(iv) Title 63G, Chapter [6] 6a, Utah Procurement Code;

(v) Title 63J, Chapter 1, Budgetary Procedures Act; and

(vi) Title 67, Chapter 19, Utah State Personnel Management Act.

(b) The board shall adopt policies parallel to and consistent with:

(i) Title 51, Chapter 5, Funds Consolidation Act;

(ii) Title 51, Chapter 7, State Money Management Act;

(iii) Title 63A, Utah Administrative Services Code;

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

(v) Title 63J, Chapter 1, Budgetary Procedures Act.

(c) The corporation shall comply with the legislative approval requirements for new facilities established in Subsection 63A-5-104(3).

Section ~~217~~218. Section **63I-1-263** is amended to read:

63I-1-263. Repeal dates, Titles 63A to 63M.

(1) Section 63A-4-204, authorizing the Risk Management Fund to provide coverage to any public school district which chooses to participate, is repealed July 1, 2016.

(2) Section 63A-5-603, State Facility Energy Efficiency Fund, is repealed July 1, 2016.

(3) Section 63C-8-106, rural residency training program, is repealed July 1, 2015.

(4) Title 63C, Chapter 13, Prison Relocation and Development Authority Act, is repealed July 1, 2014.

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(5) Subsection [~~63G-6-502(5)(b)(ii)~~] 63G-6a-1402(7) authorizing certain transportation agencies to award a contract for a design-build transportation project in certain circumstances, is repealed July 1, 2015.

(6) Title 63H, Chapter 4, Heber Valley Historic Railroad Authority, is repealed July 1, 2020.

(7) The Resource Development Coordinating Committee, created in Section 63J-4-501, is repealed July 1, 2015.

(8) Title 63M, Chapter 1, Part 4, Enterprise Zone Act, is repealed July 1, 2018.

(9) (a) Title 63M, Chapter 1, Part 11, Recycling Market Development Zone Act, is repealed January 1, 2021.

(b) Subject to Subsection (9)(c), Sections 59-7-610 and 59-10-1007 regarding tax credits for certain persons in recycling market development zones, are repealed for taxable years beginning on or after January 1, 2012.

(c) A person may not claim a tax credit under Section 59-7-610 or 59-10-1007:

(i) for the purchase price of machinery or equipment described in Section 59-7-610 or 59-10-1007, if the machinery or equipment is purchased on or after January 1, 2012; or

(ii) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), if the expenditure is made on or after January 1, 2012.

(d) Notwithstanding Subsections (9)(b) and (c), a person may carry forward a tax credit in accordance with Section 59-7-610 or 59-10-1007 if:

(i) the person is entitled to a tax credit under Section 59-7-610 or 59-10-1007; and

(ii) (A) for the purchase price of machinery or equipment described in Section 59-7-610 or 59-10-1007, the machinery or equipment is purchased on or before December 31, 2011; or

(B) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), the expenditure is made on or before December 31, 2011.

(10) The Crime Victim Reparations and Assistance Board, created in Section 63M-7-504, is repealed July 1, 2017.

(11) Title 63M, Chapter 8, Utah Commission for Women and Families Act, is repealed July 1, 2011.

(12) Title 63M, Chapter 9, Families, Agencies, and Communities Together for

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Children and Youth At Risk Act, is repealed July 1, 2016.

(13) Title 63M, Chapter 11, Utah Commission on Aging, is repealed July 1, 2012.

Section ~~218~~219. Section **63M-1-2602** is amended to read:

63M-1-2602. Definitions.

As used in this part:

(1) "Affected department" means, as applicable, the Board of Education or the Department of Technology Services.

(2) "Board" means the Board of Business and Economic Development created under Section 63M-1-301.

(3) "Board of Education" means the Utah State Board of Education.

(4) "Chief procurement officer" means the chief procurement officer appointed under Section ~~63G-6-203~~ 63G-6a-302.

(5) "Committee" means the proposal review committee created under Section 63M-1-2604.

(6) "Day" means a calendar day.

(7) "Director" is as defined in Section 63M-1-102.

(8) "Executive Appropriations Committee" means the Legislature's Executive Appropriations Committee.

(9) "Information technology" is as defined in Section 63F-1-102.

(10) "Office" means the Governor's Office of Economic Development created under Section 63M-1-201.

(11) "Private entity" means a person submitting a proposal under this part for the purpose of entering into a project.

(12) "Project" means the subject of a proposal or an agreement for the procurement or disposal of:

(a) information technology or telecommunications products or services; or

(b) supplies or services for or on behalf of the Department of Technology Services or the Board of Education.

(13) "Proposal" means an unsolicited offer by a private entity to undertake a project, including an initial proposal under Section 63M-1-2605 and a detailed proposal under Section 63M-1-2608.

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(14) "Services" is as defined in Section [~~63G-6-103~~] 63G-6a-103.

(15) "Supplies" is as defined in Section [~~63G-6-103~~] 63G-6a-103.

(16) "Telecommunications" is as defined in Section 63F-1-102.

Section ~~{219}~~220. Section **63M-1-2603** is amended to read:

63M-1-2603. Government Procurement Private Proposal Program -- Proposals --

Rulemaking.

(1) There is created within the office the Government Procurement Private Proposal Program.

(2) In accordance with this part, the board may:

(a) accept a proposal for a project;

(b) solicit comments, suggestions, and modifications to a project in accordance with Section [~~63G-6-408.5~~] 63G-6a-711; and

(c) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing requirements, including time limits for any action required by the affected department, a directly affected state entity or school district, or the Governor's Office of Planning and Budget, for the procurement of a project to the extent not governed by Title 63G, Chapter ~~[6]~~ 6a, Utah Procurement Code.

Section ~~{220}~~221. Section **63M-1-2605** is amended to read:

63M-1-2605. Initial proposal -- Requirements.

(1) In accordance with this part, a private entity may at any time submit to the committee an initial proposal for a project.

(2) An initial proposal shall include:

(a) a conceptual description of the project;

(b) a description of the economic benefit of the project to the state and the affected department;

(c) information concerning the products, services, and supplies currently being provided by the state, that are similar to the project;

(d) an estimate of the following costs associated with the project:

(i) design;

(ii) implementation;

(iii) operation and maintenance; and

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(iv) any other related project cost; and

(e) the name and address of a person who may be contacted for further information concerning the initial proposal.

(3) A private entity submitting an initial proposal under this section shall pay the fee required by Section 63M-1-2612 when the initial proposal is submitted.

(4) An initial proposal submitted under this section is a protected record under Title 63G, Chapter 2, Government Records Access and Management Act, until the chief procurement officer initiates a procurement process in accordance with Section [~~63G-6-408.5~~] 63G-6a-711.

(5) The board shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, detailing the portions of an initial proposal that remain protected after the chief procurement officer initiates a procurement process.

Section ~~{221}~~222. Section **63M-1-2606** is amended to read:

63M-1-2606. Review of initial proposal -- Affected department review.

(1) The committee shall review and evaluate an initial proposal submitted in accordance with:

(a) this part; and

(b) any rule established by the board under Section 63M-1-2603.

(2) If the committee, in its sole discretion, determines to proceed with the project, the committee shall submit a copy of the initial proposal to:

(a) the affected department; and

(b) the Governor's Office of Planning and Budget.

(3) (a) An affected department, directly affected state entity, and school district receiving a copy of the initial proposal under Subsection (2) or (4) shall review the initial proposal and provide the committee with any comment, suggestion, or modification to the project.

(b) After receiving an initial proposal, the Governor's Office of Planning and Budget shall prepare an economic feasibility report containing:

(i) information concerning the economic feasibility and effectiveness of the project based upon competent evidence;

(ii) a dollar amount representing the total estimated fiscal impact of the project to the

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affected department and the state; and

(iii) any other matter the committee requests or is required by the board by rule.

(4) In reviewing an initial proposal, the affected department shall share the initial proposal with any other state entity or school district that will be directly affected if the proposal is ultimately adopted, if the confidentiality of the initial proposal is maintained.

(5) If the committee determines to proceed with the project, the committee shall submit a copy of the initial proposal, including any comment, suggestion, or modification to the initial proposal, to:

(a) the chief procurement officer in accordance with Section [~~63G-6-408.5~~]

63G-6a-711; and

(b) the Executive Appropriations Committee, for informational purposes.

(6) Before taking any action under Subsection (5), the committee shall consider:

(a) any comment, suggestion, or modification to the initial proposal submitted in accordance with Subsection (3);

(b) the extent to which the project is practical, efficient, and economically beneficial to the state and the affected department;

(c) the economic feasibility report prepared by the Governor's Office of Planning and Budget; and

(d) any other reasonable factor identified by the committee or required by the board by rule.

Section ~~{222}~~223. Section **63M-1-2607** is amended to read:

63M-1-2607. Acceptance of initial proposal -- Obtaining detailed proposals.

(1) If an initial proposal is accepted under Section 63M-1-2606, the chief procurement officer shall:

(a) take action under Section [~~63G-6-408.5~~] 63G-6a-711 to initiate a procurement process to obtain one or more detailed proposals using information from portions of the initial proposal that are not protected records under Title 63G, Chapter 2, Government Records [~~and~~] Access and Management Act;

(b) consult with the committee during the procurement process; and

(c) submit all detailed proposals that meet the guidelines established under Subsection 63M-1-2608(1), including the detailed proposal submitted by the private entity that submitted

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the initial proposal for the project, to:

- (i) the committee; and
 - (ii) the Governor's Office of Planning and Budget.
- (2) The office is considered the purchasing agency for a procurement process initiated

under this part.

Section ~~{223}~~224. Section **63M-1-2608** is amended to read:

63M-1-2608. Detailed proposal -- Requirements -- Cooperation of affected department.

(1) A detailed proposal submitted in response to a procurement process initiated under Section 63M-1-2607 shall include:

- (a) a conceptual description of the project, including the scope of the work;
- (b) a description of the economic benefit of the project to the state and the affected department;
- (c) an estimate of the design, implementation, operation, maintenance, or other costs associated with the project;
- (d) information concerning the information technology or telecommunication product and service or other supply or service currently provided by the state that is similar to the project being proposed, if applicable;
- (e) a statement setting forth the private entity's general plan for financing the project, including any appropriation by the Legislature or other public money and, if applicable, the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity;
- (f) the name and address of the person who may be contacted for further information concerning the detailed proposal;
- (g) a statement describing the private entity's experience with other similar projects and a description of why the private entity is best qualified for the project; and
- (h) any other information:
- (i) reasonably requested by the affected department or the committee, or required by the board by rule; or
- (ii) that the private entity considers necessary or appropriate to complete or describe the detailed proposal.

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(2) To assist each private entity in preparing a detailed proposal:

(a) the affected department shall provide each private entity with access to all information, records, documents, and reports related to the proposal and the project that are designated public records under Title 63G, Chapter 2, Government Records Access and Management Act; and

(b) the affected department and the committee shall cooperate with each private entity to assist the private entity in the development of a detailed proposal that is:

(i) practical;

(ii) efficient; and

(iii) economically beneficial to the state and the affected department.

(3) The committee or any private entity may choose to terminate the development of the detailed proposal at any time before the submission of the detailed proposal to the chief procurement officer under Section [~~63G-6-408.5~~] 63G-6a-711.

Section ~~{224}~~225. Section **63M-1-2610** is amended to read:

63M-1-2610. Project agreement.

(1) If the board accepts the detailed proposal, the director shall:

(a) prepare a project agreement in consultation with the affected department and any other state entity directly impacted by the detailed proposal; and

(b) enter into the project agreement with the private entity.

(2) A project agreement shall be signed by the director, the affected department, a directly affected state entity or school district, and the private entity.

(3) A project agreement shall include provisions concerning:

(a) the scope of the project;

(b) the pricing method of the project;

(c) the director's or the state's ability to terminate for convenience or for default, and any termination compensation to be paid to the private entity, if applicable;

(d) the ability to monitor performance under the project agreement;

(e) the appropriate limits of liability;

(f) the appropriate transition of services, if applicable;

(g) the exceptions from applicable rules and procedures for the implementation and administration of the project by the affected department, if any;

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(h) the clauses and remedies applicable to state contracts under Title 63G, Chapter [6, Part 6, Contract Clauses] 6a, Part 12, Contracts and Change Orders; and

(i) any other matter reasonably requested by the committee or required by the board by rule.

(4) A copy of the signed project agreement shall be submitted to:

(a) the affected department; and

(b) the Executive Appropriations Committee.

(5) A project agreement is considered a contract under Title 63G, Chapter [6] 6a, Utah Procurement Code.

(6) The affected department shall implement and administer the project agreement in accordance with rules made under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, except as modified by the project agreement under Subsection (3)(g).

Section ~~{225}~~226. Section **64-13a-13** is amended to read:

64-13a-13. Purchases of material -- Exemption.

(1) The Division of Correctional Industries is exempt from the provisions of Title 63G, Chapter [6] 6a, Utah Procurement Code, in respect to goods or services purchased by or sold to the department.

(2) The purchase of raw materials for use by the division in manufacturing or processing products for resale is exempt from the powers and duties of the state purchasing agent.

Section ~~{226}~~227. Section **67-16-4** is amended to read:

67-16-4. Improperly disclosing or using private, controlled, or protected information -- Using position to secure privileges or exemptions -- Accepting employment which would impair independence of judgment or ethical performance -- Exceptions.

(1) Except as provided in Subsection (3), it is an offense for a public officer, public employee, or legislator, under circumstances not amounting to a violation of Section [~~63G-6-1001~~] 63G-6a-2304 or 76-8-105, to:

(a) accept employment or engage in any business or professional activity that he might reasonably expect would require or induce him to improperly disclose controlled information that he has gained by reason of his official position;

(b) disclose or improperly use controlled, private, or protected information acquired by

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reason of his official position or in the course of official duties in order to further substantially the officer's or employee's personal economic interest or to secure special privileges or exemptions for himself or others;

(c) use or attempt to use his official position to:

(i) further substantially the officer's or employee's personal economic interest; or

(ii) secure special privileges or exemptions for himself or others;

(d) accept other employment that he might expect would impair his independence of judgment in the performance of his public duties; or

(e) accept other employment that he might expect would interfere with the ethical performance of his public duties.

(2) (a) Subsection (1) does not apply to the provision of education-related services to public school students by public education employees acting outside their regular employment.

(b) The conduct referred to in Subsection (2)(a) is subject to Section 53A-1-402.5.

(3) A county legislative body member who does not participate in the process of selecting a mental health or substance abuse service provider does not commit an offense under Subsection (1)(a) or (b) by:

(a) serving also as a member of the governing board of the provider of mental health or substance abuse services under contract with the county; or

(b) discharging, in good faith, the duties and responsibilities of each position.

Section ~~{227}~~228. Section **67-16-5** is amended to read:

67-16-5. Accepting gift, compensation, or loan -- When prohibited.

(1) As used in this section, "economic benefit tantamount to a gift" includes:

(a) a loan at an interest rate that is substantially lower than the commercial rate then currently prevalent for similar loans; and

(b) compensation received for private services rendered at a rate substantially exceeding the fair market value of the services.

(2) It is an offense for a public officer or public employee, under circumstances not amounting to a violation of Section [~~63G-6-1001~~] 63G-6a-2304 or 76-8-105, to knowingly receive, accept, take, seek, or solicit, directly or indirectly for himself or another a gift of substantial value or a substantial economic benefit tantamount to a gift:

(a) that would tend improperly to influence a reasonable person in the person's position

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to depart from the faithful and impartial discharge of the person's public duties;

(b) that the public officer or public employee knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the public officer or public employee for official action taken; or

(c) if the public officer or public employee recently has been, is now, or in the near future may be involved in any governmental action directly affecting the donor or lender, unless a disclosure of the gift, compensation, or loan and other relevant information has been made in the manner provided in Section 67-16-6.

(3) Subsection (2) does not apply to:

(a) an occasional nonpecuniary gift, having a value of not in excess of \$50;

(b) an award publicly presented in recognition of public services;

(c) any bona fide loan made in the ordinary course of business; or

(d) a political campaign contribution.

Section ~~{228}~~229. Section **67-16-5.3** is amended to read:

67-16-5.3. Requiring donation, payment, or service to government agency in exchange for approval -- When prohibited.

(1) It is an offense for a public officer, public employee, or legislator, under circumstances not amounting to a violation of Section [~~63G-6-1001~~] 63G-6a-2304 or 76-8-105, to demand from any person as a condition of granting any application or request for a permit, approval, or other authorization, that the person donate personal property, money, or services to any agency.

(2) (a) Subsection (1) does not apply to any donation of property, funds, or services to an agency that is:

(i) expressly required by statute, ordinance, or agency rule;

(ii) mutually agreed to between the applicant and the entity issuing the permit, approval, or other authorization;

(iii) made voluntarily by the applicant; or

(iv) a condition of a consent decree, settlement agreement, or other binding instrument entered into to resolve, in whole or in part, an actual or threatened agency enforcement action.

(b) If a person donates property, funds, or services to an agency, the agency shall, as part of the permit or other written authorization:

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- (i) identify that a donation has been made;
- (ii) describe the donation;
- (iii) certify, in writing, that the donation was voluntary; and
- (iv) place that information in its files.

Section ~~{229}~~230. Section 67-16-6 is amended to read:

67-16-6. Receiving compensation for assistance in transaction involving an agency -- Filing sworn statement.

(1) It is an offense for a public officer or public employee, under circumstances not amounting to a violation of Section [~~63G-6-1001~~] 63G-6a-2304 or 76-8-105, to receive or agree to receive compensation for assisting any person or business entity in any transaction involving an agency unless the public officer or public employee files a sworn, written statement containing the information required by Subsection (2) with:

- (a) the head of the officer or employee's own agency;
- (b) the agency head of the agency with which the transaction is being conducted; and
- (c) the state attorney general.

(2) The statement shall contain:

- (a) the name and address of the public officer or public employee involved;
- (b) the name of the public officer's or public employee's agency;
- (c) the name and address of the person or business entity being or to be assisted; and
- (d) a brief description of:
 - (i) the transaction as to which service is rendered or is to be rendered; and
 - (ii) the nature of the service performed or to be performed.

(3) The statement required to be filed under Subsection (1) shall be filed within 10 days after the date of any agreement between the public officer or public employee and the person or business entity being assisted or the receipt of compensation, whichever is earlier.

(4) The statement is public information and shall be available for examination by the public.

Section ~~{230}~~231. Section 72-6-107 is amended to read:

72-6-107. Construction or improvement of highway -- Contracts -- Retainage -- Certain indemnification provisions forbidden.

(1) As used in this section, "design professional" means:

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(a) an architect, licensed under Title 58, Chapter 3a, Architects Licensing Act;

(b) a landscape architect, licensed under Title 58, Chapter 53, Landscape Architects Licensing Act; and

(c) a professional engineer or professional land surveyor, licensed under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

(2) (a) The department shall make plans, specifications, and estimates prior to the construction or improvement of any state highway.

(b) Except as provided in Section [~~63G-6-502~~] 63G-6a-1402 and except for construction or improvements performed with state prison labor, a construction or improvement project with an estimated cost exceeding the bid limit as defined in Section 72-6-109 for labor and materials shall be performed under contract awarded to the lowest responsible bidder.

(c) (i) The department:

(A) shall publish an advertisement for bids in accordance with Section 45-1-101, for a period of two weeks ending no more than 10 days before bids are opened; and

(B) may publish an advertisement for bids in a newspaper of general circulation in the county in which the work is to be performed.

(ii) If the department publishes an advertisement for bids in a newspaper under Subsection (2)(c)(i)(B), the department shall publish the advertisement at least once a week for two consecutive weeks, with the last publication at least 10 days before bids are opened.

(d) The department shall receive sealed bids and open the bids at the time and place designated in the advertisement. The department may then award the contract but may reject any and all bids.

(e) If the department's estimates are substantially lower than any responsible bid received, the department may perform any work by force account.

(3) If any payment on a contract with a private contractor for construction or improvement of a state highway is retained or withheld, the payment shall be retained or withheld and released as provided in Section 13-8-5.

(4) If the department performs a construction or improvement project by force account, the department shall:

(a) provide an accounting of the costs and expenditures of the improvement including

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material and labor;

(b) disclose the costs and expenditures to any person upon request and allow the person to make a copy and pay for the actual cost of the copy; and

(c) perform the work using the same specifications and standards that would apply to a private contractor.

(5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall establish procedures for:

(a) hearing evidence that a region within the department violated this section; and

(b) administering sanctions against the region if the region is found in violation.

(6) (a) Beginning May 12, 2009, a contract, including an amendment to an existing contract, entered into under authority of this chapter may not require that a design professional indemnify another from liability claims that arise out of the design professional's services, unless the liability claim arises from the design professional's negligent act, wrongful act, error or omission, or other liability imposed by law.

(b) Subsection (6)(a) may not be waived by contract.

(c) Notwithstanding Subsections (6)(a) and (b), a design professional may be required to indemnify a person for whom the design professional has direct or indirect control or responsibility.

Section ~~231~~232. Section **72-6-107.5** is amended to read:

72-6-107.5. Construction of improvements of highway -- Contracts -- Health insurance coverage.

(1) For purposes of this section:

(a) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who:

(i) works at least 30 hours per calendar week; and

(ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following 90 days from the date of hire.

(b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

(c) "Qualified health insurance coverage" is as defined in Section 26-40-115.

(d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

(2) (a) Except as provided in Subsection (3), this section applies to contracts entered

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into by the department on or after July 1, 2009, for construction or design of highways and to a prime contractor or to a subcontractor in accordance with Subsection (2)(b).

(b) (i) A prime contractor is subject to this section if the prime contract is in the amount of \$1,500,000 or greater.

(ii) A subcontractor is subject to this section if a subcontract is in the amount of \$750,000 or greater.

(3) This section does not apply if:

(a) the application of this section jeopardizes the receipt of federal funds;

(b) the contract is a sole source contract; or

(c) the contract is an emergency procurement.

(4) (a) This section does not apply to a change order as defined in Section [~~63G-6-103~~] 63G-6a-103, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection (2).

(b) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection (2) is guilty of an infraction.

(5) (a) A contractor subject to Subsection (2) shall demonstrate to the department that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employees' dependents during the duration of the contract.

(b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall demonstrate to the department that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the contract.

(c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (5)(b).

(ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A subcontractor is not subject to penalties for the failure of a contractor to meet the

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requirements of Subsection (5)(a).

(6) The department shall adopt administrative rules:

(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(b) in coordination with:

(i) the Department of Environmental Quality in accordance with Section 19-1-206;

(ii) the Department of Natural Resources in accordance with Section 79-2-404;

(iii) the State Building Board in accordance with Section 63A-5-205;

(iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

(v) a public transit district in accordance with Section 17B-2a-818.5; and

(vi) the Legislature's Administrative Rules Review Committee; and

(c) which establish:

(i) the requirements and procedures a contractor must follow to demonstrate to the department compliance with this section which shall include:

(A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or (b) more than twice in any 12-month period; and

(B) that the actuarially equivalent determination required for qualified health insurance coverage in Subsection (1) is met by the contractor if the contractor provides the department or division with a written statement of actuarial equivalency from either:

(I) the Utah Insurance Department;

(II) an actuary selected by the contractor or the contractor's insurer; or

(III) an underwriter who is responsible for developing the employer group's premium rates;

(ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:

(A) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation;

(B) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation;

(C) an action for debarment of the contractor or subcontractor in accordance with Section [~~63G-6-804~~] 63G-6a-904 upon the third or subsequent violation; and

(D) monetary penalties which may not exceed 50% of the amount necessary to

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purchase qualified health insurance coverage for an employee and a dependent of the employee of the contractor or subcontractor who was not offered qualified health insurance coverage during the duration of the contract; and

(iii) a website on which the department shall post the benchmark for the qualified health insurance coverage identified in Subsection (1)(c).

(7) (a) (i) In addition to the penalties imposed under Subsection (6), a contractor or subcontractor who intentionally violates the provisions of this section shall be liable to the employee for health care costs that would have been covered by qualified health insurance coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection (7)(a)(i) if:

(A) the employer relied in good faith on a written statement of actuarial equivalency provided by:

(I) an actuary; or

(II) an underwriter who is responsible for developing the employer group's premium rates; or

(B) the department determines that compliance with this section is not required under the provisions of Subsection (3) or (4).

(b) An employee has a private right of action only against the employee's employer to enforce the provisions of this Subsection (7).

(8) Any penalties imposed and collected under this section shall be deposited into the Medicaid Restricted Account created in Section 26-18-402.

(9) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this section:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section [~~63G-6-801~~] 63G-6a-1603 or any other provision in Title 63G, Chapter [~~6, Part 8, Legal and Contractual Remedies~~] 6a, Utah Procurement Code; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.

Section ~~{232}~~233. Section **72-6-108** is amended to read:

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72-6-108. Class B and C roads -- Improvement projects -- Contracts -- Retainage.

(1) A county executive for class B roads and the municipal executive for class C roads shall cause plans, specifications, and estimates to be made prior to the construction of any improvement project, as defined in Section 72-6-109, on a class B or C road if the estimated cost for any one project exceeds the bid limit as defined in Section 72-6-109 for labor, equipment, and materials.

(2) (a) All projects in excess of the bid limit shall be performed under contract to be let to the lowest responsible bidder.

(b) If the estimated cost of the improvement project exceeds the bid limit for labor, equipment, and materials, the project may not be divided to permit the construction in parts, unless each part is done by contract.

(3) (a) The advertisement on bids shall be published:

(i) in a newspaper of general circulation in the county in which the work is to be performed at least once a week for three consecutive weeks; and

(ii) in accordance with Section 45-1-101 for three weeks.

(b) If there is no newspaper of general circulation as described in Subsection (3)(a)(i), the notice shall be posted for at least 20 days in at least five public places in the county.

(4) The county or municipal executive or their designee shall receive sealed bids and open the bids at the time and place designated in the advertisement. The county or municipal executive or their designee may then award the contract but may reject any and all bids.

(5) The person, firm, or corporation that is awarded a contract under this section is subject to the provisions of Title 63G, Chapter [6] 6a, Utah Procurement Code.

(6) If any payment on a contract with a private contractor for construction or improvement of a class B or C road is retained or withheld, the payment shall be retained or withheld and released as provided in Section 13-8-5.

Section ~~233~~234. Section **72-6-205** is amended to read:

72-6-205. Solicited and unsolicited tollway development agreement proposals.

(1) In accordance with this section, the department may:

(a) accept unsolicited tollway development agreement proposals; or

(b) solicit tollway development agreement proposals for a proposed project.

(2) The department shall solicit tollway development agreement proposals in

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accordance with Section [~~63G-6-503~~] 63G-6a-1403.

(3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department and the commission shall establish rules and procedures for accepting unsolicited proposals that require the:

(a) private entity that submits the unsolicited proposal to comply with the minimum requirements for tollway development agreement proposals under Section 72-6-204;

(b) department to issue a request for competing proposals and qualifications that includes:

(i) a description of the proposed tollway development facility and the terms and conditions of a tollway development agreement;

(ii) submittal requirements;

(iii) the criteria to be used to evaluate the proposals;

(iv) the relative weight given to the criteria; and

(v) the deadline by which competing proposals must be received; and

(c) department to publish a notice advertising the request for competing proposals and providing information regarding how to obtain a copy of the request.

(4) (a) The department may establish a fee in accordance with Section 63J-1-504 for reviewing unsolicited proposals and competing proposals submitted under this section.

(b) The department may waive the fee under Subsection (4)(a) if it determines that it is reasonable and in the best interest of the state.

Section ~~{234}~~235. Section **72-7-504** is amended to read:

72-7-504. Advertising prohibited near interstate or primary system -- Exceptions -- Logo advertising -- Department rules.

(1) Outdoor advertising that is capable of being read or comprehended from any place on the main-traveled way of an interstate or primary system may not be erected or maintained, except:

(a) directional and other official signs and notices authorized or required by law, including signs and notices pertaining to natural wonders and scenic and historic attractions, informational or directional signs regarding utility service, emergency telephone signs, buried or underground utility markers, and above ground utility closure signs;

(b) signs advertising the sale or lease of property upon which they are located;

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(c) signs advertising activities conducted on the property where they are located, including signs on the premises of a public assembly facility as provided in Section 72-7-504.5;

(d) signs located in a commercial or industrial zone;

(e) signs located in unzoned industrial or commercial areas as determined from actual land uses; and

(f) logo advertising under Subsection (2).

(2) (a) The department may itself or by contract erect, administer, and maintain informational signs on the main-traveled way of an interstate or primary system for the display of logo advertising and information of interest to the traveling public if:

(i) the department complies with Title 63G, Chapter [6] 6a, Utah Procurement Code, in the lease or other contract agreement with a private party for the sign or sign space; and

(ii) the private party for the lease of the sign or sign space pays an amount set by the department to be paid to the department or the party under contract with the department under this Subsection (2).

(b) The amount shall be sufficient to cover the costs of erecting, administering, and maintaining the signs or sign spaces.

(c) The department may consult the Governor's Office of Economic Development in carrying out this Subsection (2).

(3) (a) Revenue generated under Subsection (2) shall be:

(i) applied first to cover department costs under Subsection (2); and

(ii) deposited in the Transportation Fund.

(b) Revenue in excess of costs under Subsection (2)(a) shall be deposited in the General Fund as a dedicated credit for use by the Governor's Office of Economic Development no later than the following fiscal year.

(4) Outdoor advertising under Subsections (1)(a), (d), (e), and (f) shall conform to the rules made by the department under Sections 72-7-506 and 72-7-507.

Section ~~235~~236. Section 73-10-27 is amended to read:

73-10-27. Definitions -- Project priorities -- Considerations -- Determinations of feasibility -- Bids and contracts -- Definitions -- Retainage.

(1) As used in this section:

(a) "Board" means the Board of Water Resources created in Section 73-10-1.5.

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(b) "Estimated cost" means the cost of the labor, material, and equipment necessary for construction of the contemplated project.

(c) "Lowest responsible bidder" means a licensed contractor:

(i) who:

(A) submits the lowest bid; and

(B) furnishes a payment bond and a performance bond under Sections 14-1-18 and [~~63G-6-505~~] 63G-6a-1103; and

(ii) whose bid:

(A) is in compliance with the invitation for a bid; and

(B) meets the plans and specifications.

(2) In considering the priority for a project to be built or financed with funds made available under Section 73-10-24, the board shall give preference to a project that:

(a) is sponsored by, or for the benefit of, the state or a political subdivision of the state;

(b) meets a critical local need;

(c) has greater economic feasibility;

(d) will yield revenue to the state within a reasonable time or will return a reasonable rate of interest, based on financial feasibility; and

(e) meets other considerations deemed necessary by the board, including wildlife management and recreational needs.

(3) (a) In determining the economic feasibility, the board shall establish a benefit-to-cost ratio for each project, using a uniform standard of procedure for all projects.

(b) In considering whether a project should be built, the benefit-to-cost ratio for each project shall be weighted based on the relative cost of the project.

(c) A project, when considered in total with all other projects constructed under this chapter and still the subject of a repayment contract, may not cause the accumulative benefit-to-cost ratio of the projects to be less than one to one.

(4) A project may not be built if the project is not:

(a) in the public interest, as determined by the board; or

(b) adequately designed based on sound engineering and geologic considerations.

(5) In preparing a project constructed by the board, the board shall:

(a) based on a competitive bid, award a contract for:

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(i) a flood control project:

(A) involving a city or county; and

(B) costing in excess of \$35,000;

(ii) the construction of a storage reservoir in excess of 100 acre-feet; or

(iii) the construction of a hydroelectric generating facility;

(b) publish an advertisement for a competitive bid:

(i) at least once a week for three consecutive weeks in a newspaper with general circulation in the state, with the last date of publication appearing at least five days before the scheduled bid opening; and

(ii) indicating that the board:

(A) will award the contract to the lowest responsible bidder; and

(B) reserves the right to reject any and all bids;

(c) readvertise the project in the manner specified in Subsection (5)(b) if the board rejects all of the initial bids on the project; and

(d) keep an accurate record of all facts and representations relied upon in preparing the board's estimated cost for a project that is subject to the competitive bidding requirements of this section.

(6) If no satisfactory bid is received by the board upon the readvertisement of the project in accordance with Subsection (5), the board may proceed to construct the project in accordance with the plan and specifications used to calculate the estimated cost of the project.

(7) If a payment on a contract with a private contractor for construction of a project under this section is retained or withheld, it shall be retained or withheld and released as provided in Section 13-8-5.

Section ~~236~~237. Section **73-23-3** is amended to read:

73-23-3. Duties and powers of Division of Water Resources.

For purposes of this chapter, the Division of Water Resources:

(1) shall provide for the construction, operation, and maintenance of the West Desert Pumping Project;

(2) may enter into agreements as necessary to provide for all or any portion of the West Desert Pumping Project, including any indemnification agreements required by the federal government;

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(3) may acquire land or any other property right by any lawful means, including eminent domain;

(4) is exempt from Title 63G, Chapter ~~[6, the]~~ 6a, Utah Procurement Code; and

(5) may proceed without obtaining water right approval from the state engineer.

Section ~~{237}~~238. Section **76-10-1602** is amended to read:

76-10-1602. Definitions.

As used in this part:

(1) "Enterprise" means any individual, sole proprietorship, partnership, corporation, business trust, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity, and includes illicit as well as licit entities.

(2) "Pattern of unlawful activity" means engaging in conduct which constitutes the commission of at least three episodes of unlawful activity, which episodes are not isolated, but have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall demonstrate continuing unlawful conduct and be related either to each other or to the enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful activity as defined by this part shall have occurred within five years of the commission of the next preceding act alleged as part of the pattern.

(3) "Person" includes any individual or entity capable of holding a legal or beneficial interest in property, including state, county, and local governmental entities.

(4) "Unlawful activity" means to directly engage in conduct or to solicit, request, command, encourage, or intentionally aid another person to engage in conduct which would constitute any offense described by the following crimes or categories of crimes, or to attempt or conspire to engage in an act which would constitute any of those offenses, regardless of whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor or a felony:

(a) any act prohibited by the criminal provisions of Title 13, Chapter 10, Unauthorized Recording Practices Act;

(b) any act prohibited by the criminal provisions of Title 19, Environmental Quality Code, Sections 19-1-101 through 19-7-109;

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(c) taking, destroying, or possessing wildlife or parts of wildlife for the primary purpose of sale, trade, or other pecuniary gain, in violation of Title 23, Wildlife Resources Code of Utah, or Section 23-20-4;

(d) false claims for medical benefits, kickbacks, and any other act prohibited by Title 26, Chapter 20, Utah False Claims Act, Sections 26-20-1 through 26-20-12;

(e) any act prohibited by the criminal provisions of Title 32B, Chapter 4, Criminal Offenses and Procedure Act;

(f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform Land Sales Practices Act;

(g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d, Clandestine Drug Lab Act;

(h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform Securities Act;

(i) any act prohibited by the criminal provisions of Title 63G, Chapter [6] 6a, Utah Procurement Code;

(j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;

(k) a threat of terrorism, Section 76-5-107.3;

(l) criminal homicide, Sections 76-5-201, 76-5-202, and 76-5-203;

(m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;

(n) sexual exploitation of a minor, Section 76-5b-201;

(o) arson or aggravated arson, Sections 76-6-102 and 76-6-103;

(p) causing a catastrophe, Section 76-6-105;

(q) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;

(r) burglary of a vehicle, Section 76-6-204;

(s) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;

(t) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;

(u) theft, Section 76-6-404;

(v) theft by deception, Section 76-6-405;

(w) theft by extortion, Section 76-6-406;

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- (x) receiving stolen property, Section 76-6-408;
- (y) theft of services, Section 76-6-409;
- (z) forgery, Section 76-6-501;
- (aa) fraudulent use of a credit card, Sections 76-6-506.2, 76-6-506.3, 76-6-506.5, and 76-6-506.6;
- (bb) deceptive business practices, Section 76-6-507;
- (cc) bribery or receiving bribe by person in the business of selection, appraisal, or criticism of goods, Section 76-6-508;
- (dd) bribery of a labor official, Section 76-6-509;
- (ee) defrauding creditors, Section 76-6-511;
- (ff) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- (gg) unlawful dealing with property by fiduciary, Section 76-6-513;
- (hh) bribery or threat to influence contest, Section 76-6-514;
- (ii) making a false credit report, Section 76-6-517;
- (jj) criminal simulation, Section 76-6-518;
- (kk) criminal usury, Section 76-6-520;
- (ll) fraudulent insurance act, Section 76-6-521;
- (mm) retail theft, Section 76-6-602;
- (nn) computer crimes, Section 76-6-703;
- (oo) identity fraud, Section 76-6-1102;
- (pp) mortgage fraud, Section 76-6-1203;
- (qq) sale of a child, Section 76-7-203;
- (rr) bribery to influence official or political actions, Section 76-8-103;
- (ss) threats to influence official or political action, Section 76-8-104;
- (tt) receiving bribe or bribery by public servant, Section 76-8-105;
- (uu) receiving bribe or bribery for endorsement of person as public servant, Section 76-8-106;
- (vv) official misconduct, Sections 76-8-201 and 76-8-202;
- (ww) obstruction of justice, Section 76-8-306;
- (xx) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;
- (yy) false or inconsistent material statements, Section 76-8-502;

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- (zz) false or inconsistent statements, Section 76-8-503;
- (aaa) written false statements, Section 76-8-504;
- (bbb) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
- (ccc) retaliation against a witness, victim, or informant, Section 76-8-508.3;
- (ddd) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- (eee) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or 76-8-1205;
- (fff) unemployment insurance fraud, Section 76-8-1301;
- (ggg) intentionally or knowingly causing one animal to fight with another, Subsection 76-9-301(2)(d) or (e), or Section 76-9-301.1;
- (hhh) possession, use, or removal of explosives, chemical, or incendiary devices or parts, Section 76-10-306;
- (iii) delivery to common carrier, mailing, or placement on premises of an incendiary device, Section 76-10-307;
- (jjj) possession of a deadly weapon with intent to assault, Section 76-10-507;
- (kkk) unlawful marking of pistol or revolver, Section 76-10-521;
- (lll) alteration of number or mark on pistol or revolver, Section 76-10-522;
- (mmm) forging or counterfeiting trademarks, trade name, or trade device, Section 76-10-1002;
- (nnn) selling goods under counterfeited trademark, trade name, or trade devices, Section 76-10-1003;
- (ooo) sales in containers bearing registered trademark of substituted articles, Section 76-10-1004;
- (ppp) selling or dealing with article bearing registered trademark or service mark with intent to defraud, Section 76-10-1006;
- (qqq) gambling, Section 76-10-1102;
- (rrr) gambling fraud, Section 76-10-1103;
- (sss) gambling promotion, Section 76-10-1104;
- (ttt) possessing a gambling device or record, Section 76-10-1105;
- (uuu) confidence game, Section 76-10-1109;
- (vvv) distributing pornographic material, Section 76-10-1204;

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- (www) inducing acceptance of pornographic material, Section 76-10-1205;
- (xxx) dealing in harmful material to a minor, Section 76-10-1206;
- (yyy) distribution of pornographic films, Section 76-10-1222;
- (zzz) indecent public displays, Section 76-10-1228;
- (aaaa) prostitution, Section 76-10-1302;
- (bbbb) aiding prostitution, Section 76-10-1304;
- (cccc) exploiting prostitution, Section 76-10-1305;
- (dddd) aggravated exploitation of prostitution, Section 76-10-1306;
- (eeee) communications fraud, Section 76-10-1801;
- (ffff) any act prohibited by the criminal provisions of [~~Chapter 10,~~] Part 19, Money Laundering and Currency Transaction Reporting Act;
- (gggg) vehicle compartment for contraband, Section 76-10-2801;
- (hhhh) any act prohibited by the criminal provisions of the laws governing taxation in this state; and
- (iiii) any act illegal under the laws of the United States and enumerated in 18 U.S.C. Sec. 1961 (1)(B), (C), and (D).

Section ~~238~~239. Section **78A-2-112** is amended to read:

78A-2-112. Grants to nonprofit legal assistance organization.

Subject to legislative appropriation, the state court administrator shall, in accordance with Title 63G, Chapter [6] 6a, Utah Procurement Code, solicit requests for proposals and award grants to nonprofit legal assistance providers to provide legal assistance throughout the state to:

- (1) low to moderate income victims of domestic violence; and
- (2) low to moderate income individuals in family law matters.

Section ~~239~~240. Section **79-2-404** is amended to read:

79-2-404. Contracting powers of department -- Health insurance coverage.

- (1) For purposes of this section:
 - (a) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who:
 - (i) works at least 30 hours per calendar week; and
 - (ii) meets employer eligibility waiting requirements for health care insurance which

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may not exceed the first day of the calendar month following 90 days from the date of hire.

(b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

(c) "Qualified health insurance coverage" is as defined in Section 26-40-115.

(d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

(2) (a) Except as provided in Subsection (3), this section applies a design or construction contract entered into by, or delegated to, the department or a division, board, or council of the department on or after July 1, 2009, and to a prime contractor or to a subcontractor in accordance with Subsection (2)(b).

(b) (i) A prime contractor is subject to this section if the prime contract is in the amount of \$1,500,000 or greater.

(ii) A subcontractor is subject to this section if a subcontract is in the amount of \$750,000 or greater.

(3) This section does not apply to contracts entered into by the department or a division, board, or council of the department if:

(a) the application of this section jeopardizes the receipt of federal funds;

(b) the contract or agreement is between:

(i) the department or a division, board, or council of the department; and

(ii) (A) another agency of the state;

(B) the federal government;

(C) another state;

(D) an interstate agency;

(E) a political subdivision of this state; or

(F) a political subdivision of another state; or

(c) the contract or agreement is:

(i) for the purpose of disbursing grants or loans authorized by statute;

(ii) a sole source contract; or

(iii) an emergency procurement.

(4) (a) This section does not apply to a change order as defined in Section [~~63G-6-103~~] 63G-6a-103, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection (2).

(b) A person who intentionally uses change orders or contract modifications to

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circumvent the requirements of Subsection (2) is guilty of an infraction.

(5) (a) A contractor subject to Subsection (2)(b)(i) shall demonstrate to the department that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employees' dependents during the duration of the contract.

(b) If a subcontractor of the contractor is subject to Subsection (2)(b)(ii), the contractor shall demonstrate to the department that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the contract.

(c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (5)(b).

(ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (5)(a).

(6) The department shall adopt administrative rules:

(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(b) in coordination with:

(i) the Department of Environmental Quality in accordance with Section 19-1-206;

(ii) a public transit district in accordance with Section 17B-2a-818.5;

(iii) the State Building Board in accordance with Section 63A-5-205;

(iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

(v) the Department of Transportation in accordance with Section 72-6-107.5; and

(vi) the Legislature's Administrative Rules Review Committee; and

(c) which establish:

(i) the requirements and procedures a contractor must follow to demonstrate compliance with this section to the department which shall include:

(A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or

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(b) more than twice in any 12-month period; and

(B) that the actuarially equivalent determination required for qualified health insurance coverage in Subsection (1) is met by the contractor if the contractor provides the department or division with a written statement of actuarial equivalency from either:

(I) the Utah Insurance Department;

(II) an actuary selected by the contractor or the contractor's insurer; or

(III) an underwriter who is responsible for developing the employer group's premium rates;

(ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:

(A) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation;

(B) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation;

(C) an action for debarment of the contractor or subcontractor in accordance with Section [~~63G-6-804~~] 63G-6a-904 upon the third or subsequent violation; and

(D) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for an employee and a dependent of an employee of the contractor or subcontractor who was not offered qualified health insurance coverage during the duration of the contract; and

(iii) a website on which the department shall post the benchmark for the qualified health insurance coverage identified in Subsection (1)(c).

(7) (a) (i) In addition to the penalties imposed under Subsection (6), a contractor or subcontractor who intentionally violates the provisions of this section shall be liable to the employee for health care costs that would have been covered by qualified health insurance coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection (7)(a)(i) if:

(A) the employer relied in good faith on a written statement of actuarial equivalency provided by:

(I) an actuary; or

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(II) an underwriter who is responsible for developing the employer group's premium rates; or

(B) the department determines that compliance with this section is not required under the provisions of Subsection (3) or (4).

(b) An employee has a private right of action only against the employee's employer to enforce the provisions of this Subsection (7).

(8) Any penalties imposed and collected under this section shall be deposited into the Medicaid Restricted Account created in Section 26-18-402.

(9) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this section:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section [~~63G-6-801~~] 63G-6a-1603 or any other provision in Title 63G, Chapter [~~6, Part 8, Legal and Contractual Remedies~~] 6a, Utah Procurement Code; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.

Section ~~{240}~~241. Section **79-4-203** is amended to read:

79-4-203. Powers and duties of division.

(1) As used in this section, "real property" includes land under water, upland, and all other property commonly or legally defined as real property.

(2) The Division of Wildlife Resources shall retain the power and jurisdiction conferred upon it by law within state parks and on property controlled by the Division of Parks and Recreation with reference to fish and game.

(3) The division shall permit multiple use of state parks and property controlled by it for purposes such as grazing, fishing, hunting, mining, and the development and utilization of water and other natural resources.

(4) (a) The division may acquire real and personal property in the name of the state by all legal and proper means, including purchase, gift, devise, eminent domain, lease, exchange, or otherwise, subject to the approval of the executive director and the governor.

(b) In acquiring any real or personal property, the credit of the state may not be pledged without the consent of the Legislature.

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(5) (a) Before acquiring any real property, the division shall notify the county legislative body of the county where the property is situated of its intention to acquire the property.

(b) If the county legislative body requests a hearing within 10 days of receipt of the notice, the division shall hold a public hearing in the county concerning the matter.

(6) Acceptance of gifts or devises of land or other property is at the discretion of the division, subject to the approval of the executive director and the governor.

(7) The division shall acquire property by eminent domain in the manner authorized by Title 78B, Chapter 6, Part 5, Eminent Domain.

(8) (a) The division may make charges for special services and use of facilities, the income from which is available for park and recreation purposes.

(b) The division may conduct and operate those services necessary for the comfort and convenience of the public.

(9) (a) The division may lease or rent concessions of all lawful kinds and nature in state parks and property to persons, partnerships, and corporations for a valuable consideration upon the recommendation of the board.

(b) The division shall comply with Title 63G, Chapter [6] 6a, Utah Procurement Code, in selecting concessionaires.

(10) The division shall proceed without delay to negotiate with the federal government concerning the Weber Basin and other recreation and reclamation projects.

(11) The division shall receive and distribute voluntary contributions collected under Section 41-1a-422 in accordance with Section 79-4-404.

Section ~~{241}~~242. **Repealer.**

This bill repeals:

Section **10-7-87, Procurement -- Use of recycled goods.**

Section **11-37-101, Definition -- Procurement -- Use of recycled goods.**

Section **17-15-24, Procurement -- Use of recycled goods.**

Section **17B-1-109, Procurement -- Use of recycled goods.**

Section **26A-1-108.7, Procurement -- Use of recycled goods.**

Section **63G-6-206, Transfer of power to policy board.**

Section **63G-6-301, Rules for specifications.**

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Section **63G-6-401, Contracts awarded by sealed bidding -- Procedure.**

Section **63G-6-402, Contracts awarded by reverse auction.**

Section **63G-6-403, Procurement -- Use of recycled goods.**

Section **63G-6-406, Preference for recycled paper and paper products.**

Section **63G-6-407, Use of alkaline paper.**

Section **63G-6-408, Use of competitive sealed proposals in lieu of bids -- Procedure.**

Section **63G-6-409, Small purchases.**

Section **63G-6-411, Emergency procurements.**

Section **63G-6-414, Prequalification of suppliers.**

Section **63G-6-417, Period of time for contract of supplies.**

Section **63G-6-418, Right of state to inspect place of business of contractor or subcontractor.**

Section **63G-6-422, Exemptions from source selection and contract requirements --**

Violation penalty.

Section **63G-6-426, Tie bids -- Preference for providers of state products --**

Resolution of tie bids -- Record of tie bids.

Section **63G-6-903, Payments between public procurement units.**

Section **63G-6-906, Resolving controversy arising under a cooperative purchasing agreement.**

Section **63G-6-1001, Felony to accept emolument.**

Section **63G-6-1002, Felony to offer emolument.**

Section ~~{242}~~243. **Effective date.**

This bill takes effect on January 1, 2013.

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Legislative Review Note

~~as of 1-26-12 8:59 AM~~

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