

## SB0190S02 compared with SB0190S01

~~text~~ shows text that was in SB0190S01 but was deleted in SB0190S02.

text shows text that was not in SB0190S01 but was inserted into SB0190S02.

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Senator Scott K. Jenkins proposes the following substitute bill:

### PROCUREMENT REVISIONS

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Scott K. Jenkins**

House Sponsor: Brad L. Dee

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#### LONG TITLE

##### General Description:

This bill amends and makes corrections, modifications, and recodification changes to Title 63G, Chapter 6a, Utah Procurement Code.

##### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ relocates and makes corrections to definitions;
- ▶ makes corrections in the use of terms;
- ▶ subject to specified exceptions, designates as protected:
  - certain records that would impair governmental procurement proceedings or give an unfair advantage to a potential contractor; and
  - records submitted in response to a request for information;

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- ▶ describes the applicability of, and exceptions to, the Utah Procurement Code;
- ▶ describes the procurement units that have independent procurement authority;
- ▶ clarifies the prequalification process for potential bidders, offerors, or contractors;
- ▶ modifies public notice provisions;
- ▶ changes small purchase requirements;
- ▶ modifies provisions relating to a cost-benefit analysis and the publication of scores awarded by an evaluation committee;
- ▶ provides that a public transit district may contract with a county or municipality to fund a transportation project without going through a standard procurement process or an exception to a standard procurement process;
- ▶ changes the date by which a person responsible for procurements in a procurement unit in the executive branch is required to complete training on making small purchases;
- ▶ repeals a section relating to interest rates and reenacts the language into another section relating to interest rates;
- ▶ subject to certain exceptions, prohibits a person with an outstanding tax lien from submitting a quote, bid, or offer to, or contracting with, a procurement unit;
- ▶ describes contract types that are permitted and, subject to certain exceptions, contract types that are prohibited;
- ▶ describes contract requirements and grants rulemaking authority relating to contract requirements;
- ▶ describes requirements relating to installment payments and leases;
- ▶ modifies procurement appeal provisions;
- ▶ modifies provisions relating to agreements and cooperation between procurement units;
- ▶ addresses cooperative purchasing, purchasing under a contract held by another procurement unit, and purchasing directly from another government entity;
- ▶ repeals Part 22, Ethical Requirements;
- ▶ modifies criminal provisions and addresses additional unlawful activity relating to the Utah Procurement Code; and
- ▶ makes technical and conforming changes.

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### **Money Appropriated in this Bill:**

None

### **Other Special Clauses:**

If approved by two-thirds of all members elected to each house, this bill takes effect on May 1, 2013.

### **Utah Code Sections Affected:**

#### **AMENDS:**

**10-3-1304 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 347

**10-3-1305 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 347

**10-8-2**, as last amended by Laws of Utah 2010, Chapter 90

**17-16a-4 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 347

**17-50-302**, as last amended by Laws of Utah 2010, Chapter 385

**17B-1-106**, as last amended by Laws of Utah 2009, Chapter 188

**31A-31-104**, as last amended by Laws of Utah 2008, Chapter 382

**53-5-708**, as last amended by Laws of Utah 2010, Chapter 62

**53A-2-123**, as last amended by Laws of Utah 2009, Chapter 188

**54-3-28**, as last amended by Laws of Utah 2008, Chapter 382

**62A-16-204**, as enacted by Laws of Utah 2010, Chapter 239

**63C-4-102**, as last amended by Laws of Utah 2012, Chapters 324 and 377

**63G-2-201**, as last amended by Laws of Utah 2012, Chapter 377

**63G-2-202**, as last amended by Laws of Utah 2012, Chapter 377

**63G-2-301**, as last amended by Laws of Utah 2012, Chapter 377

**63G-2-305**, as last amended by Laws of Utah 2012, Chapters 331 and 377

**63G-2-309**, as last amended by Laws of Utah 2012, Chapter 377

**63G-2-403**, as last amended by Laws of Utah 2012, Chapter 377

**63G-2-406**, as enacted by Laws of Utah 2012, Chapter 377

**63G-6a-103 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 235 and renumbered and amended by Laws of Utah 2012, Chapter 347 and last amended by Coordination Clause, Laws of Utah 2012, Chapter 347

**63G-6a-105 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 91 and renumbered and amended by Laws of Utah 2012, Chapter 347 and last amended

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by Coordination Clause, Laws of Utah 2012, Chapter 347

**63G-6a-106 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
Chapter 347

**63G-6a-107 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
Chapter 347

**63G-6a-108 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

**63G-6a-201 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

**63G-6a-203 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 91  
and renumbered and amended by Laws of Utah 2012, Chapter 347 and last amended  
by Coordination Clause, Laws of Utah 2012, Chapter 347

**63G-6a-204 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
Chapter 347

**63G-6a-302 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
Chapter 347

**63G-6a-303 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
Chapter 347

**63G-6a-305 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
Chapter 347

**63G-6a-402 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

**63G-6a-403 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

**63G-6a-404 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

**63G-6a-406 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

**63G-6a-407 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
Chapter 347

**63G-6a-408 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

**63G-6a-503 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

**63G-6a-602 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

**63G-6a-603 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

**63G-6a-604 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

**63G-6a-605 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

**63G-6a-606 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

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**63G-6a-607 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

**63G-6a-608 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

**63G-6a-609 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

**63G-6a-610 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

**63G-6a-611 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

**63G-6a-612 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

**63G-6a-702 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

**63G-6a-703 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

**63G-6a-704 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

**63G-6a-705 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

**63G-6a-707 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

**63G-6a-708 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

**63G-6a-709 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

**63G-6a-710 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

**63G-6a-711 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
Chapter 347

**63G-6a-802 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
Chapter 347

**63G-6a-804 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
Chapter 347

**63G-6a-805 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
Chapter 347

**63G-6a-902 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
Chapter 347

**63G-6a-903 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
Chapter 347

**63G-6a-904 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
Chapter 347

**63G-6a-1002 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
Chapter 347

**63G-6a-1003 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,

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Chapter 347

**63G-6a-1102 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
Chapter 347

**63G-6a-1103 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
Chapter 347

**63G-6a-1202 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter  
330 and renumbered and amended by Laws of Utah 2012, Chapter 347

**63G-6a-1203 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
Chapter 347

**63G-6a-1204 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

**63G-6a-1205 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
Chapter 347

**63G-6a-1206 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
Chapter 347

**63G-6a-1302 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter  
330 and renumbered and amended by Laws of Utah 2012, Chapter 347

**63G-6a-1303 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
Chapter 347

**63G-6a-1502 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
Chapter 347

**63G-6a-1503 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
Chapter 347

**63G-6a-1506 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
Chapter 347

**63G-6a-1603 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 91  
and renumbered and amended by Laws of Utah 2012, Chapter 347 and last amended  
by Coordination Clause, Laws of Utah 2012, Chapter 347

**63G-6a-1702 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
Chapter 347 and last amended by Coordination Clause, Laws of Utah 2012, Chapter  
347

**63G-6a-1703 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,

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Chapter 347 and last amended by Coordination Clause, Laws of Utah 2012, Chapter 347

**63G-6a-1704 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 91 and renumbered and amended by Laws of Utah 2012, Chapter 347 and last amended by Coordination Clause, Laws of Utah 2012, Chapter 347

**63G-6a-1802 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012, Chapter 347 and last amended by Coordination Clause, Laws of Utah 2012, Chapter 347

**63G-6a-1902 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012, Chapter 347 and last amended by Coordination Clause, Laws of Utah 2012, Chapter 347

**63G-6a-1903 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 91 and renumbered and amended by Laws of Utah 2012, Chapter 347 and last amended by Coordination Clause, Laws of Utah 2012, Chapter 347

**63G-6a-1904 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 91 and renumbered and amended by Laws of Utah 2012, Chapter 347 and last amended by Coordination Clause, Laws of Utah 2012, Chapter 347

**63G-6a-1905 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 91 and renumbered and amended by Laws of Utah 2012, Chapter 347 and last amended by Coordination Clause, Laws of Utah 2012, Chapter 347

**63G-6a-1910 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012, Chapter 347 and last amended by Coordination Clause, Laws of Utah 2012, Chapter 347

**63G-6a-1911 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012, Chapter 347 and last amended by Coordination Clause, Laws of Utah 2012, Chapter 347

**63G-6a-2002 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012, Chapter 347

**63G-6a-2003 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012, Chapter 347

**63G-6a-2004 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,

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Chapter 347

**63G-6a-2101 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

**63G-6a-2102 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
Chapter 347

**63G-6a-2103 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
Chapter 347

**63G-6a-2104 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
Chapter 347

**63G-6a-2105 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
Chapter 347

**63G-6a-2302 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
Chapter 347

**63G-6a-2305 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

**63G-6a-2306 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

**63G-6a-2307 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

**67-16-4 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapters 202,  
202, and 347

**67-16-5 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 347

**67-16-5.3 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 347

**67-16-5.6**, as enacted by Laws of Utah 2000, Chapter 108

**67-16-6 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 347

**77-38-3**, as last amended by Laws of Utah 2011, Chapter 131

**78A-4-106**, as last amended by Laws of Utah 2012, Chapter 377

### ENACTS:

**63G-6a-505**, Utah Code Annotated 1953

**63G-6a-709.5**, Utah Code Annotated 1953

**63G-6a-806**, Utah Code Annotated 1953

**63G-6a-905**, Utah Code Annotated 1953

**63G-6a-1208**, Utah Code Annotated 1953

**63G-6a-1209**, Utah Code Annotated 1953

**63G-6a-1210**, Utah Code Annotated 1953



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**63G-6a-2304.5**, Utah Code Annotated 1953

**63G-6a-2308**, Utah Code Annotated 1953

### REPEALS AND REENACTS:

**63G-6a-104 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347 and last amended by Coordination Clause, Laws of Utah 2012, Chapter 347

### RENUMBERS AND AMENDS:

**63G-6a-1204.5 (Effective 05/01/13)**, (Renumbered from 63G-6a-405 (Effective 05/01/13), as enacted by Laws of Utah 2012, Chapter 347)

### REPEALS:

**63G-6-506.5**, as enacted by Laws of Utah 2012, Chapter 330

**63G-6a-1908 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012, Chapter 347 and last amended by Coordination Clause, Laws of Utah 2012, Chapter 347

**63G-6a-2201 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

**63G-6a-2202 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

**63G-6a-2303 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

**63G-6a-2304 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

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

Section 1. Section **10-3-1304 (Effective 05/01/13)** is amended to read:

**10-3-1304 (Effective 05/01/13). 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) [H] Except as provided in Subsection (4), it is an offense for an elected or appointed officer or municipal employee~~[-under circumstances not amounting to a violation of Section 63G-6a-2304 or 76-8-105,]~~ to:

(a) disclose or improperly use private, controlled, or protected information acquired by reason of the officer's or employee's official position or in the course of official duties in order

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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.

~~(5)4~~ This section does not apply to an elected or appointed officer or municipal employee who engages in conduct that constitutes a violation of this section to the extent that the elected or appointed officer or municipal employee is chargeable, for the same conduct, under ~~Section 63G-6a-2304.5 or~~ Section 76-8-105.

Section 2. Section **10-3-1305 (Effective 05/01/13)** is amended to read:

**10-3-1305 (Effective 05/01/13). 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]~~ Except as provided in Subsection (6), it is an offense for an elected officer, or an appointed officer, who is a member of a public body~~[-under circumstances not amounting to a violation of Section 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

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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

(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.

(6) This section does not apply to an elected officer, or an appointed officer, who is a member of a public body and who engages in conduct that constitutes a violation of this section to the extent that the elected officer or appointed officer is chargeable, for the same conduct, under Section ~~{63G-6a-2304.5 or Section }~~76-8-105.

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Section 3. Section **10-8-2** is amended to read:

### **10-8-2. Appropriations -- Acquisition and disposal of property -- Municipal authority -- Corporate purpose -- Procedure -- Notice of intent to acquire real property.**

(1) (a) A municipal legislative body may:

(i) appropriate money for corporate purposes only;

(ii) provide for payment of debts and expenses of the corporation;

(iii) subject to Subsections (4) and (5), purchase, receive, hold, sell, lease, convey, and dispose of real and personal property for the benefit of the municipality, whether the property is within or without the municipality's corporate boundaries, if the action is in the public interest and complies with other law;

(iv) improve, protect, and do any other thing in relation to this property that an individual could do; and

(v) subject to Subsection (2) and after first holding a public hearing, authorize municipal services or other nonmonetary assistance to be provided to or waive fees required to be paid by a nonprofit entity, whether or not the municipality receives consideration in return.

(b) A municipality may:

(i) furnish all necessary local public services within the municipality;

(ii) purchase, hire, construct, own, maintain and operate, or lease public utilities located and operating within and operated by the municipality; and

(iii) subject to Subsection (1)(c), acquire by eminent domain, or otherwise, property located inside or outside the corporate limits of the municipality and necessary for any of the purposes stated in Subsections (1)(b)(i) and (ii), subject to restrictions imposed by Title 78B, Chapter 6, Part 5, Eminent Domain, and general law for the protection of other communities.

(c) Each municipality that intends to acquire property by eminent domain under Subsection (1)(b) shall, upon the first contact with the owner of the property sought to be acquired, deliver to the owner a copy of a booklet or other materials provided by the Office of the Property Rights Ombudsman, created under Section 13-43-201, dealing with the property owner's rights in an eminent domain proceeding.

(d) Subsection (1)(b) may not be construed to diminish any other authority a municipality may claim to have under the law to acquire by eminent domain property located inside or outside the municipality.

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(2) (a) Services or assistance provided pursuant to Subsection (1)(a)(v) is not subject to the provisions of Subsection (3).

(b) The total amount of services or other nonmonetary assistance provided or fees waived under Subsection (1)(a)(v) in any given fiscal year may not exceed 1% of the municipality's budget for that fiscal year.

(3) It is considered a corporate purpose to appropriate money for any purpose that, in the judgment of the municipal legislative body, provides for the safety, health, prosperity, moral well-being, peace, order, comfort, or convenience of the inhabitants of the municipality subject to the following:

(a) The net value received for any money appropriated shall be measured on a project-by-project basis over the life of the project.

(b) The criteria for a determination under this Subsection (3) shall be established by the municipality's legislative body. A determination of value received, made by the municipality's legislative body, shall be presumed valid unless it can be shown that the determination was arbitrary, capricious, or illegal.

(c) The municipality may consider intangible benefits received by the municipality in determining net value received.

(d) (i) Prior to the municipal legislative body making any decision to appropriate any funds for a corporate purpose under this section, a public hearing shall be held.

(ii) Notice of the hearing described in Subsection (3)(d)(i) shall be published:

(A) (I) in a newspaper of general circulation at least 14 days before the date of the hearing; or

(II) if there is no newspaper of general circulation, by posting notice in at least three conspicuous places within the municipality for the same time period; and

(B) on the Utah Public Notice Website created in Section 63F-1-701, at least 14 days before the date of the hearing.

(e) A study shall be performed before notice of the public hearing is given and shall be made available at the municipality for review by interested parties at least 14 days immediately prior to the public hearing, setting forth an analysis and demonstrating the purpose for the appropriation. In making the study, the following factors shall be considered:

(i) what identified benefit the municipality will receive in return for any money or

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resources appropriated;

(ii) the municipality's purpose for the appropriation, including an analysis of the way the appropriation will be used to enhance the safety, health, prosperity, moral well-being, peace, order, comfort, or convenience of the inhabitants of the municipality; and

(iii) whether the appropriation is necessary and appropriate to accomplish the reasonable goals and objectives of the municipality in the area of economic development, job creation, affordable housing, blight elimination, job preservation, the preservation of historic structures and property, and any other public purpose.

(f) (i) An appeal may be taken from a final decision of the municipal legislative body, to make an appropriation.

(ii) The appeal shall be filed within 30 days after the date of that decision, to the district court.

(iii) Any appeal shall be based on the record of the proceedings before the legislative body.

(iv) A decision of the municipal legislative body shall be presumed to be valid unless the appealing party shows that the decision was arbitrary, capricious, or illegal.

(g) The provisions of this Subsection (3) apply only to those appropriations made after May 6, 2002.

(h) This section applies only to appropriations not otherwise approved pursuant to Title 10, Chapter 5, Uniform Fiscal Procedures Act for Utah Towns, or Title 10, Chapter 6, Uniform Fiscal Procedures Act for Utah Cities.

(4) (a) Before a municipality may dispose of a significant parcel of real property, the municipality shall:

(i) provide reasonable notice of the proposed disposition at least 14 days before the opportunity for public comment under Subsection (4)(a)(ii); and

(ii) allow an opportunity for public comment on the proposed disposition.

(b) Each municipality shall, by ordinance, define what constitutes:

(i) a significant parcel of real property for purposes of Subsection (4)(a); and

(ii) reasonable notice for purposes of Subsection (4)(a)(i).

(5) (a) Except as provided in Subsection (5)(d), each municipality intending to acquire real property for the purpose of expanding the municipality's infrastructure or other facilities

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used for providing services that the municipality offers or intends to offer shall provide written notice, as provided in this Subsection (5), of its intent to acquire the property if:

(i) the property is located:

(A) outside the boundaries of the municipality; and

(B) in a county of the first or second class; and

(ii) the intended use of the property is contrary to:

(A) the anticipated use of the property under the general plan of the county in whose unincorporated area or the municipality in whose boundaries the property is located; or

(B) the property's current zoning designation.

(b) Each notice under Subsection (5)(a) shall:

(i) indicate that the municipality intends to acquire real property;

(ii) identify the real property; and

(iii) be sent to:

(A) each county in whose unincorporated area and each municipality in whose boundaries the property is located; and

(B) each affected entity.

(c) A notice under this Subsection (5) is a protected record as provided in Subsection 63G-2-305[(7)](8).

(d) (i) The notice requirement of Subsection (5)(a) does not apply if the municipality previously provided notice under Section 10-9a-203 identifying the general location within the municipality or unincorporated part of the county where the property to be acquired is located.

(ii) If a municipality is not required to comply with the notice requirement of Subsection (5)(a) because of application of Subsection (5)(d)(i), the municipality shall provide the notice specified in Subsection (5)(a) as soon as practicable after its acquisition of the real property.

Section 4. Section **17-16a-4 (Effective 05/01/13)** is amended to read:

**17-16a-4 (Effective 05/01/13). Prohibited use of official position -- Exception.**

(1) Except as provided in Subsection (3) or (4), it is an offense for an elected or appointed officer[~~, under circumstances not amounting to a violation of Section 63G-6a-2304 or 76-8-105,~~] to:

(a) disclose confidential information acquired by reason of the officer's official position

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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.

(4) This section does not apply to an elected or appointed officer who engages in conduct that constitutes a violation of this section to the extent that the elected or appointed officer is chargeable, for the same conduct, under Section [§63G-6a-2304.5](#) or Section [§76-8-105](#).

Section 5. Section **17-50-302** is amended to read:

### **17-50-302. General county powers.**

(1) (a) Except as provided in Subsection (1)(b), a county may:

(i) as prescribed by statute:

(A) levy a tax;

(B) perform an assessment;

(C) collect a tax;

(D) borrow money; or

(E) levy and collect a special assessment for a conferred benefit; or

(ii) provide a service, exercise a power, or perform a function that is reasonably related to the safety, health, morals, and welfare of county inhabitants, except as limited or prohibited



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by statute.

(b) A county or a governmental instrumentality of a county may not perform an action described in Subsection (1)(a)(i) or provide a service, exercise a power, or perform a function described in Subsection (1)(a)(ii) in another county or a municipality within the other county without first entering into an agreement under Title 11, Chapter 13, Interlocal Cooperation Act, or other contract with the other county to perform the action, provide the service, exercise the power, or perform the function.

(2) (a) A county may:

(i) sue and be sued;

(ii) subject to Subsection (2)(c), acquire real property by tax sale, purchase, lease, contract, or gift, and hold the real property as necessary and proper for county purposes;

(iii) (A) subject to Subsection (2)(b), acquire real property by condemnation, as provided in Title 78B, Chapter 6, Part 5, Eminent Domain; and

(B) hold the real property as necessary and proper for county purposes;

(iv) as may be necessary to the exercise of its powers, acquire personal property by purchase, lease, contract, or gift, and hold such personal property; and

(v) manage and dispose of its property as the interests of its inhabitants may require.

(b) (i) For purposes of Subsection (2)(a)(iii), water rights that are not appurtenant to land do not constitute real property that may be acquired by the county through condemnation.

(ii) Nothing in Subsection (2)(a)(iii) may be construed to authorize a county to acquire by condemnation the rights to water unless the land to which those water rights are appurtenant is acquired by condemnation.

(c) (i) Except as provided in Subsection (2)(c)(iv), each county intending to acquire real property for the purpose of expanding the county's infrastructure or other facilities used for providing services that the county offers or intends to offer shall provide written notice, as provided in this Subsection (2)(c), of its intent to acquire the property if:

(A) the property is located:

(I) outside the boundaries of the unincorporated area of the county; and

(II) in a county of the first or second class; and

(B) the intended use of the property is contrary to:

(I) the anticipated use of the property under the general plan of the county in whose

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unincorporated area or the municipality in whose boundaries the property is located; or

(II) the property's current zoning designation.

(ii) Each notice under Subsection (2)(c)(i) shall:

(A) indicate that the county intends to acquire real property;

(B) identify the real property; and

(C) be sent to:

(I) each county in whose unincorporated area and each municipality in whose boundaries the property is located; and

(II) each affected entity.

(iii) A notice under this Subsection (2)(c) is a protected record as provided in Subsection 63G-2-305[~~(7)~~](8).

(iv) (A) The notice requirement of Subsection (2)(c)(i) does not apply if the county previously provided notice under Section 17-27a-203 identifying the general location within the municipality or unincorporated part of the county where the property to be acquired is located.

(B) If a county is not required to comply with the notice requirement of Subsection (2)(c)(i) because of application of Subsection (2)(c)(iv)(A), the county shall provide the notice specified in Subsection (2)(c)(i) as soon as practicable after its acquisition of the real property.

Section 6. Section **17B-1-106** is amended to read:

**17B-1-106. Notice before preparing or amending a long-range plan or acquiring certain property.**

(1) As used in this section:

(a) (i) "Affected entity" means each county, municipality, local district under this title, special service district, school district, interlocal cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, and specified public utility:

(A) whose services or facilities are likely to require expansion or significant modification because of an intended use of land; or

(B) that has filed with the local district a copy of the general or long-range plan of the county, municipality, local district, school district, interlocal cooperation entity, or specified public utility.

(ii) "Affected entity" does not include the local district that is required under this

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section to provide notice.

(b) "Specified public utility" means an electrical corporation, gas corporation, or telephone corporation, as those terms are defined in Section 54-2-1.

(2) (a) If a local district under this title located in a county of the first or second class prepares a long-range plan regarding its facilities proposed for the future or amends an already existing long-range plan, the local district shall, before preparing a long-range plan or amendments to an existing long-range plan, provide written notice, as provided in this section, of its intent to prepare a long-range plan or to amend an existing long-range plan.

(b) Each notice under Subsection (2)(a) shall:

(i) indicate that the local district intends to prepare a long-range plan or to amend a long-range plan, as the case may be;

(ii) describe or provide a map of the geographic area that will be affected by the long-range plan or amendments to a long-range plan;

(iii) be:

(A) sent to each county in whose unincorporated area and each municipality in whose boundaries is located the land on which the proposed long-range plan or amendments to a long-range plan are expected to indicate that the proposed facilities will be located;

(B) sent to each affected entity;

(C) sent to the Automated Geographic Reference Center created in Section 63F-1-506;

(D) sent to each association of governments, established pursuant to an interlocal agreement under Title 11, Chapter 13, Interlocal Cooperation Act, of which a county or municipality described in Subsection (2)(b)(iii)(A) is a member; and

(E) (I) placed on the Utah Public Notice Website created under Section 63F-1-701, if the local district:

(Aa) is required under Subsection 52-4-203(3) to use that website to provide public notice of a meeting; or

(Bb) voluntarily chooses to place notice on that website despite not being required to do so under Subsection (2)(b)(iii)(E)(I)(Aa); or

(II) the state planning coordinator appointed under Section 63J-4-202, if the local district does not provide notice on the Utah Public Notice Website under Subsection (2)(b)(iii)(E)(I);

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(iv) with respect to the notice to counties and municipalities described in Subsection (2)(b)(iii)(A) and affected entities, invite them to provide information for the local district to consider in the process of preparing, adopting, and implementing the long-range plan or amendments to a long-range plan concerning:

(A) impacts that the use of land proposed in the proposed long-range plan or amendments to a long-range plan may have on the county, municipality, or affected entity; and

(B) uses of land that the county, municipality, or affected entity is planning or considering that may conflict with the proposed long-range plan or amendments to a long-range plan; and

(v) include the address of an Internet website, if the local district has one, and the name and telephone number of a person where more information can be obtained concerning the local district's proposed long-range plan or amendments to a long-range plan.

(3) (a) Except as provided in Subsection (3)(d), each local district intending to acquire real property in a county of the first or second class for the purpose of expanding the district's infrastructure or other facilities used for providing the services that the district is authorized to provide shall provide written notice, as provided in this Subsection (3), of its intent to acquire the property if the intended use of the property is contrary to:

(i) the anticipated use of the property under the county or municipality's general plan;  
or

(ii) the property's current zoning designation.

(b) Each notice under Subsection (3)(a) shall:

(i) indicate that the local district intends to acquire real property;

(ii) identify the real property; and

(iii) be sent to:

(A) each county in whose unincorporated area and each municipality in whose boundaries the property is located; and

(B) each affected entity.

(c) A notice under this Subsection (3) is a protected record as provided in Subsection 63G-2-305~~(7)~~(8).

(d) (i) The notice requirement of Subsection (3)(a) does not apply if the local district previously provided notice under Subsection (2) identifying the general location within the

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municipality or unincorporated part of the county where the property to be acquired is located.

(ii) If a local district is not required to comply with the notice requirement of Subsection (3)(a) because of application of Subsection (3)(d)(i), the local district shall provide the notice specified in Subsection (3)(a) as soon as practicable after its acquisition of the real property.

Section 7. Section **31A-31-104** is amended to read:

### **31A-31-104. Disclosure of information.**

(1) (a) Subject to Subsection (2), upon written request by an insurer to an authorized agency, the authorized agency may release to the insurer information or evidence that is relevant to any suspected insurance fraud.

(b) Upon written request by an authorized agency to an insurer, the insurer or an agent authorized by the insurer to act on the insurer's behalf shall release to the authorized agency information or evidence that is relevant to any suspected insurance fraud.

(2) (a) Any information or evidence furnished to an authorized agency under this section may be classified as a protected record in accordance with Subsection 63G-2-305[~~(9)~~](10).

(b) Any information or evidence furnished to an insurer under this section is not subject to discovery in a civil proceeding unless, after reasonable notice to any insurer, agent, or any authorized agency that has an interest in the information and subsequent hearing, a court determines that the public interest and any ongoing criminal investigation will not be jeopardized by the disclosure.

(c) An insurer shall report to the department agency terminations based upon a violation of this chapter.

Section 8. Section **53-5-708** is amended to read:

### **53-5-708. Permit -- Names private.**

(1) (a) The bureau shall maintain a record in its office of any permit issued under this part.

(b) Notwithstanding the requirements of Subsection 63G-2-301(2)(b), the names, addresses, telephone numbers, dates of birth, and Social Security numbers of persons receiving permits are protected records under Subsection 63G-2-305[~~(10)~~](11).

(2) The bureau shall immediately file a copy of each permit it issues under this part.

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Section 9. Section **53A-2-123** is amended to read:

**53A-2-123. Notice before preparing or amending a long-range plan or acquiring certain property.**

(1) As used in this section:

(a) "Affected entity" means each county, municipality, local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, special service district under Title 17D, Chapter 1, Special Service District Act, interlocal cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, and specified public utility:

(i) whose services or facilities are likely to require expansion or significant modification because of an intended use of land; or

(ii) that has filed with the school district a copy of the general or long-range plan of the county, municipality, local district, special service district, school district, interlocal cooperation entity, or specified public utility.

(b) "Specified public utility" means an electrical corporation, gas corporation, or telephone corporation, as those terms are defined in Section 54-2-1.

(2) (a) If a school district located in a county of the first or second class prepares a long-range plan regarding its facilities proposed for the future or amends an already existing long-range plan, the school district shall, before preparing a long-range plan or amendments to an existing long-range plan, provide written notice, as provided in this section, of its intent to prepare a long-range plan or to amend an existing long-range plan.

(b) Each notice under Subsection (2)(a) shall:

(i) indicate that the school district intends to prepare a long-range plan or to amend a long-range plan, as the case may be;

(ii) describe or provide a map of the geographic area that will be affected by the long-range plan or amendments to a long-range plan;

(iii) be:

(A) sent to each county in whose unincorporated area and each municipality in whose boundaries is located the land on which the proposed long-range plan or amendments to a long-range plan are expected to indicate that the proposed facilities will be located;

(B) sent to each affected entity;

(C) sent to the Automated Geographic Reference Center created in Section 63F-1-506;

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(D) sent to each association of governments, established pursuant to an interlocal agreement under Title 11, Chapter 13, Interlocal Cooperation Act, of which a county or municipality described in Subsection (2)(b)(iii)(A) is a member; and

(E) placed on the Utah Public Notice Website created under Section 63F-1-701;

(iv) with respect to the notice to counties and municipalities described in Subsection (2)(b)(iii)(A) and affected entities, invite them to provide information for the school district to consider in the process of preparing, adopting, and implementing the long-range plan or amendments to a long-range plan concerning:

(A) impacts that the use of land proposed in the proposed long-range plan or amendments to a long-range plan may have on the county, municipality, or affected entity; and

(B) uses of land that the county, municipality, or affected entity is planning or considering that may conflict with the proposed long-range plan or amendments to a long-range plan; and

(v) include the address of an Internet website, if the school district has one, and the name and telephone number of a person where more information can be obtained concerning the school district's proposed long-range plan or amendments to a long-range plan.

(3) (a) Except as provided in Subsection (3)(d), each school district intending to acquire real property in a county of the first or second class for the purpose of expanding the district's infrastructure or other facilities shall provide written notice, as provided in this Subsection (3), of its intent to acquire the property if the intended use of the property is contrary to:

(i) the anticipated use of the property under the county or municipality's general plan;

or

(ii) the property's current zoning designation.

(b) Each notice under Subsection (3)(a) shall:

(i) indicate that the school district intends to acquire real property;

(ii) identify the real property; and

(iii) be sent to:

(A) each county in whose unincorporated area and each municipality in whose boundaries the property is located; and

(B) each affected entity.

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(c) A notice under this Subsection (3) is a protected record as provided in Subsection 63G-2-305[(7)](8).

(d) (i) The notice requirement of Subsection (3)(a) does not apply if the school district previously provided notice under Subsection (2) identifying the general location within the municipality or unincorporated part of the county where the property to be acquired is located.

(ii) If a school district is not required to comply with the notice requirement of Subsection (3)(a) because of application of Subsection (3)(d)(i), the school district shall provide the notice specified in Subsection (3)(a) as soon as practicable after its acquisition of the real property.

Section 10. Section **54-3-28** is amended to read:

**54-3-28. Notice required of certain public utilities before preparing or amending a long-range plan or acquiring certain property.**

(1) As used in this section:

(a) (i) "Affected entity" means each county, municipality, local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, special service district, school district, interlocal cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, and specified public utility:

(A) whose services or facilities are likely to require expansion or significant modification because of expected uses of land under a proposed long-range plan or under proposed amendments to a long-range plan; or

(B) that has filed with the specified public utility a copy of the general or long-range plan of the county, municipality, local district, special service district, school district, interlocal cooperation entity, or specified public utility.

(ii) "Affected entity" does not include the specified public utility that is required under Subsection (2) to provide notice.

(b) "Specified public utility" means an electrical corporation, gas corporation, or telephone corporation, as those terms are defined in Section 54-2-1.

(2) (a) If a specified public utility prepares a long-range plan regarding its facilities proposed for the future in a county of the first or second class or amends an already existing long-range plan, the specified public utility shall, before preparing a long-range plan or amendments to an existing long-range plan, provide written notice, as provided in this section,



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of its intent to prepare a long-range plan or to amend an existing long-range plan.

(b) Each notice under Subsection (2) shall:

(i) indicate that the specified public utility intends to prepare a long-range plan or to amend a long-range plan, as the case may be;

(ii) describe or provide a map of the geographic area that will be affected by the long-range plan or amendments to a long-range plan;

(iii) be sent to:

(A) each county in whose unincorporated area and each municipality in whose boundaries is located the land on which the proposed long-range plan or amendments to a long-range plan are expected to indicate that the proposed facilities will be located;

(B) each affected entity;

(C) the Automated Geographic Reference Center created in Section 63F-1-506;

(D) each association of governments, established pursuant to an interlocal agreement under Title 11, Chapter 13, Interlocal Cooperation Act, of which a county or municipality described in Subsection (2)(b)(iii)(A) is a member; and

(E) the state planning coordinator appointed under Section 63J-4-202;

(iv) with respect to the notice to counties and municipalities described in Subsection (2)(b)(iii)(A) and affected entities, invite them to provide information for the specified public utility to consider in the process of preparing, adopting, and implementing the long-range plan or amendments to a long-range plan concerning:

(A) impacts that the use of land proposed in the proposed long-range plan or amendments to a long-range plan may have on the county, municipality, or affected entity; and

(B) uses of land that the county, municipality, or affected entity is planning or considering that may conflict with the proposed long-range plan or amendments to a long-range plan; and

(v) include the address of an Internet website, if the specified public utility has one, and the name and telephone number of a person where more information can be obtained concerning the specified public utility's proposed long-range plan or amendments to a long-range plan.

(3) (a) Except as provided in Subsection (3)(d), each specified public utility intending to acquire real property in a county of the first or second class for the purpose of expanding its

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infrastructure or other facilities used for providing the services that the specified public utility is authorized to provide shall provide written notice, as provided in this Subsection (3), of its intent to acquire the property if the intended use of the property is contrary to:

(i) the anticipated use of the property under the county or municipality's general plan;

or

(ii) the property's current zoning designation.

(b) Each notice under Subsection (3)(a) shall:

(i) indicate that the specified public utility intends to acquire real property;

(ii) identify the real property; and

(iii) be sent to:

(A) each county in whose unincorporated area and each municipality in whose boundaries the property is located; and

(B) each affected entity.

(c) A notice under this Subsection (3) is a protected record as provided in Subsection 63G-2-305[(7)](8).

(d) (i) The notice requirement of Subsection (3)(a) does not apply if the specified public utility previously provided notice under Subsection (2) identifying the general location within the municipality or unincorporated part of the county where the property to be acquired is located.

(ii) If a specified public utility is not required to comply with the notice requirement of Subsection (3)(a) because of application of Subsection (3)(d)(i), the specified public utility shall provide the notice specified in Subsection (3)(a) as soon as practicable after its acquisition of the real property.

Section 11. Section **62A-16-204** is amended to read:

### **62A-16-204. Fatality Review Committee Proceedings.**

(1) A majority vote of committee members present constitutes the action of the committee.

(2) The department shall give the committee access to all reports, records, and other documents that are relevant to the fatality under investigation, including:

(a) narrative reports;

(b) case files;

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(c) autopsy reports; and

(d) police reports, unless the report is protected from disclosure under Subsection 63G-2-305~~(9) or~~(10) or (11).

(3) The Utah State Hospital and the Utah State Developmental Center shall provide protected health information to the committee if requested by a fatality review coordinator.

(4) A committee shall convene its first meeting within 14 days after the day on which a formal fatality review is ordered under Subsection 62A-16-201(6), unless this time is extended, for good cause, by the director of the Office of Services Review.

(5) A committee may interview a staff member, a provider, or any other person who may have knowledge or expertise that is relevant to the fatality review.

(6) A committee shall render an advisory opinion regarding:

(a) whether the provisions of law, rule, policy, and procedure relating to the deceased individual and the deceased individual's family were complied with;

(b) whether the fatality was responded to properly;

(c) whether to recommend that a law, rule, policy, or procedure be changed; and

(d) whether additional training is needed.

Section 12. Section **63C-4-102** is amended to read:

### **63C-4-102. Duties.**

(1) The Constitutional Defense Council is a council to assist the governor and the Legislature on the following types of issues:

(a) the constitutionality of federal mandates;

(b) when making recommendations to challenge the federal mandates and regulations described in Subsections (1)(f)(i) through (v), the rationale for and effectiveness of those federal mandates or regulations;

(c) legal and policy issues surrounding state and local government rights under R.S. 2477;

(d) legal issues relating to the rights of the School and Institutional Trust Lands Administration and its beneficiaries;

(e) a disagreement with another state regarding the use or ownership of water; and

(f) the advisability, feasibility, estimated cost, and likelihood of success of challenging:

(i) federal court rulings that:

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(A) hinder the management of the state's prison system and place undue financial hardship on the state's taxpayers;

(B) impact a power or a right reserved to the state or its citizens by the United States Constitution, Amendment IX or X; or

(C) expand or grant a power to the United States government beyond the limited, enumerated powers granted by the United States Constitution;

(ii) federal laws or regulations that reduce or negate water rights or the rights of owners of private property, or the rights and interest of state and local governments, including sovereignty interests and the power to provide for the health, safety, and welfare, and promote the prosperity of their inhabitants;

(iii) conflicting federal regulations or policies in land management on federal land;

(iv) federal intervention that would damage the state's mining, timber, and ranching industries;

(v) the authority of the Environmental Protection Agency and Congress to mandate local air quality standards and penalties; and

(vi) other issues that are relevant to this Subsection (1).

(2) The council shall:

(a) provide advice to the governor, state planning coordinator, and the public lands policy coordinator concerning coordination of:

(i) state and local government rights under R.S. 2477; and

(ii) other public lands issues;

(b) approve a plan for R.S. 2477 rights developed in accordance with Section 63C-4-104; and

(c) review, at least quarterly:

(i) financial statements concerning implementation of the plan for R.S. 2477 rights; and

(ii) financial and other reports from the Public Lands Policy Coordinating Office concerning its activities.

(3) The council chair may require the attorney general or a designee to provide testimony on potential legal actions that would enhance the state's sovereignty or authority on issues affecting Utah and the well-being of its citizens.

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(4) The council chair may direct the attorney general to initiate and prosecute any action that the council determines will further its purposes, including an action described in Section 67-5-29.

(5) (a) Subject to the provisions of this section, the council may select and employ attorneys to implement the purposes and duties of the council.

(b) The council chair may, in consultation with the council, direct any council attorney in any manner considered appropriate by the attorney general to best serve the purposes of the council.

(c) The attorney general shall negotiate a contract for services with any attorney selected and approved for employment under this section.

(6) The council chair may, only with the concurrence of the council, review and approve all claims for payments for:

(a) legal services that are submitted to the council;

(b) an action filed in accordance with Section 67-5-29; and

(c) costs related to a constitutional defense plan approved in accordance with Section 63C-4-104 that are submitted by:

(i) the Public Lands Policy Coordinating Office;

(ii) the School and Institutional Trust Lands Administration; or

(iii) the Office of the Attorney General.

(7) Within five business days' notice, the council chair may, with the concurrence of the council, order the attorney general or an attorney employed by the council to cease work to be charged to the fund.

(8) (a) At least 20 calendar days before the state submits comments on the draft environmental impact statement or environmental assessment for a proposed land management plan of any federal land management agency, the governor shall make those documents available to:

(i) members of the council; and

(ii) any county executive, county council member, or county commissioner of a county that is covered by the management plan and that has established formal cooperating agency status with the relevant federal land management agency regarding the proposed plan.

(b) (i) Council members or local government officials receiving the documents may

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make recommendations to the governor or the governor's designee concerning changes to the documents before they are submitted to the federal land management agency.

(ii) Council members or local government officials shall submit recommendations to the governor or the governor's designee no later than 10 calendar days after receiving the documents under Subsection (8)(a).

(c) Documents transmitted or received under this Subsection (8) are drafts and are protected records pursuant to Subsection 63G-2-305[~~(21)~~](22).

(9) The council shall submit a report on December 1 of each year by electronic mail that summarizes the council's activities to each legislator.

Section 13. Section **63G-2-201** is amended to read:

### **63G-2-201. Right to inspect records and receive copies of records.**

(1) Every person has the right to inspect a public record free of charge, and the right to take a copy of a public record during normal working hours, subject to Sections 63G-2-203 and 63G-2-204.

(2) A record is public unless otherwise expressly provided by statute.

(3) The following records are not public:

(a) a record that is private, controlled, or protected under Sections 63G-2-302, 63G-2-303, 63G-2-304, and 63G-2-305; and

(b) a record to which access is restricted pursuant to court rule, another state statute, federal statute, or federal regulation, including records for which access is governed or restricted as a condition of participation in a state or federal program or for receiving state or federal funds.

(4) Only a record specified in Section 63G-2-302, 63G-2-303, 63G-2-304, or 63G-2-305 may be classified private, controlled, or protected.

(5) (a) A governmental entity may not disclose a record that is private, controlled, or protected to any person except as provided in Subsection (5)(b), Subsection (5)(c), Section 63G-2-202, 63G-2-206, or 63G-2-303.

(b) A governmental entity may disclose a record that is private under Subsection 63G-2-302(2) or protected under Section 63G-2-305 to persons other than those specified in Section 63G-2-202 or 63G-2-206 if the head of a governmental entity, or a designee, determines that:

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(i) there is no interest in restricting access to the record; or  
(ii) the interests favoring access are greater than or equal to the interest favoring restriction of access.

(c) In addition to the disclosure under Subsection (5)(b), a governmental entity may disclose a record that is protected under Subsection 63G-2-305[~~(50)~~](51) if:

(i) the head of the governmental entity, or a designee, determines that the disclosure:

(A) is mutually beneficial to:

(I) the subject of the record;

(II) the governmental entity; and

(III) the public; and

(B) serves a public purpose related to:

(I) public safety; or

(II) consumer protection; and

(ii) the person who receives the record from the governmental entity agrees not to use or allow the use of the record for advertising or solicitation purposes.

(6) (a) The disclosure of a record to which access is governed or limited pursuant to court rule, another state statute, federal statute, or federal regulation, including a record for which access is governed or limited as a condition of participation in a state or federal program or for receiving state or federal funds, is governed by the specific provisions of that statute, rule, or regulation.

(b) This chapter applies to records described in Subsection (6)(a) insofar as this chapter is not inconsistent with the statute, rule, or regulation.

(7) A governmental entity shall provide a person with a certified copy of a record if:

(a) the person requesting the record has a right to inspect it;

(b) the person identifies the record with reasonable specificity; and

(c) the person pays the lawful fees.

(8) (a) In response to a request, a governmental entity is not required to:

(i) create a record;

(ii) compile, format, manipulate, package, summarize, or tailor information;

(iii) provide a record in a particular format, medium, or program not currently maintained by the governmental entity;

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(iv) fulfill a person's records request if the request unreasonably duplicates prior records requests from that person; or

(v) fill a person's records request if:

(A) the record requested is accessible in the identical physical form and content in a public publication or product produced by the governmental entity receiving the request;

(B) the governmental entity provides the person requesting the record with the public publication or product; and

(C) the governmental entity specifies where the record can be found in the public publication or product.

(b) Upon request, a governmental entity may provide a record in a particular form under Subsection (8)(a)(ii) or (iii) if:

(i) the governmental entity determines it is able to do so without unreasonably interfering with the governmental entity's duties and responsibilities; and

(ii) the requester agrees to pay the governmental entity for providing the record in the requested form in accordance with Section 63G-2-203.

(9) (a) A governmental entity may allow a person requesting more than 50 pages of records to copy the records if:

(i) the records are contained in files that do not contain records that are exempt from disclosure, or the records may be segregated to remove private, protected, or controlled information from disclosure; and

(ii) the governmental entity provides reasonable safeguards to protect the public from the potential for loss of a public record.

(b) When the requirements of Subsection (9)(a) are met, the governmental entity may:

(i) provide the requester with the facilities for copying the requested records and require that the requester make the copies; or

(ii) allow the requester to provide the requester's own copying facilities and personnel to make the copies at the governmental entity's offices and waive the fees for copying the records.

(10) (a) A governmental entity that owns an intellectual property right and that offers the intellectual property right for sale or license may control by ordinance or policy the duplication and distribution of the material based on terms the governmental entity considers to



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be in the public interest.

(b) Nothing in this chapter shall be construed to limit or impair the rights or protections granted to the governmental entity under federal copyright or patent law as a result of its ownership of the intellectual property right.

(11) A governmental entity may not use the physical form, electronic or otherwise, in which a record is stored to deny, or unreasonably hinder the rights of a person to inspect and receive a copy of a record under this chapter.

(12) Subject to the requirements of Subsection (8), a governmental entity shall provide access to an electronic copy of a record in lieu of providing access to its paper equivalent if:

- (a) the person making the request requests or states a preference for an electronic copy;
- (b) the governmental entity currently maintains the record in an electronic format that is reproducible and may be provided without reformatting or conversion; and
- (c) the electronic copy of the record:
  - (i) does not disclose other records that are exempt from disclosure; or
  - (ii) may be segregated to protect private, protected, or controlled information from disclosure without the undue expenditure of public resources or funds.

Section 14. Section **63G-2-202** is amended to read:

### **63G-2-202. Access to private, controlled, and protected documents.**

(1) Upon request, and except as provided in Subsection (11)(a), a governmental entity shall disclose a private record to:

- (a) the subject of the record;
- (b) the parent or legal guardian of an unemancipated minor who is the subject of the record;
- (c) the legal guardian of a legally incapacitated individual who is the subject of the record;
- (d) any other individual who:
  - (i) has a power of attorney from the subject of the record;
  - (ii) submits a notarized release from the subject of the record or the individual's legal representative dated no more than 90 days before the date the request is made; or
  - (iii) if the record is a medical record described in Subsection 63G-2-302(1)(b), is a health care provider, as defined in Section 26-33a-102, if releasing the record or information in

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the record is consistent with normal professional practice and medical ethics; or

(e) any person to whom the record must be provided pursuant to:

(i) court order as provided in Subsection (7); or

(ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena

Powers.

(2) (a) Upon request, a governmental entity shall disclose a controlled record to:

(i) a physician, psychologist, certified social worker, insurance provider or producer, or a government public health agency upon submission of:

(A) a release from the subject of the record that is dated no more than 90 days prior to the date the request is made; and

(B) a signed acknowledgment of the terms of disclosure of controlled information as provided by Subsection (2)(b); and

(ii) any person to whom the record must be disclosed pursuant to:

(A) a court order as provided in Subsection (7); or

(B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena

Powers.

(b) A person who receives a record from a governmental entity in accordance with Subsection (2)(a)(i) may not disclose controlled information from that record to any person, including the subject of the record.

(3) If there is more than one subject of a private or controlled record, the portion of the record that pertains to another subject shall be segregated from the portion that the requester is entitled to inspect.

(4) Upon request, and except as provided in Subsection (10) or (11)(b), a governmental entity shall disclose a protected record to:

(a) the person who submitted the record;

(b) any other individual who:

(i) has a power of attorney from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification; or

(ii) submits a notarized release from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification or from their legal representatives dated no more than 90 days prior to the date the request is made;

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(c) any person to whom the record must be provided pursuant to:

(i) a court order as provided in Subsection (7); or

(ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena

Powers; or

(d) the owner of a mobile home park, subject to the conditions of Subsection 41-1a-116(5).

(5) A governmental entity may disclose a private, controlled, or protected record to another governmental entity, political subdivision, another state, the United States, or a foreign government only as provided by Section 63G-2-206.

(6) Before releasing a private, controlled, or protected record, the governmental entity shall obtain evidence of the requester's identity.

(7) A governmental entity shall disclose a record pursuant to the terms of a court order signed by a judge from a court of competent jurisdiction, provided that:

(a) the record deals with a matter in controversy over which the court has jurisdiction;

(b) the court has considered the merits of the request for access to the record;

(c) the court has considered and, where appropriate, limited the requester's use and further disclosure of the record in order to protect:

(i) privacy interests in the case of private or controlled records;

(ii) business confidentiality interests in the case of records protected under Subsection 63G-2-305(1), (2), [~~39~~] (40)(a)(ii), or [~~39~~] (40)(a)(vi); and

(iii) privacy interests or the public interest in the case of other protected records;

(d) to the extent the record is properly classified private, controlled, or protected, the interests favoring access, considering limitations thereon, are greater than or equal to the interests favoring restriction of access; and

(e) where access is restricted by a rule, statute, or regulation referred to in Subsection 63G-2-201(3)(b), the court has authority independent of this chapter to order disclosure.

(8) (a) A governmental entity may disclose or authorize disclosure of private or controlled records for research purposes if the governmental entity:

(i) determines that the research purpose cannot reasonably be accomplished without use or disclosure of the information to the researcher in individually identifiable form;

(ii) determines that:

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(A) the proposed research is bona fide; and

(B) the value of the research is greater than or equal to the infringement upon personal privacy;

(iii) (A) requires the researcher to assure the integrity, confidentiality, and security of the records; and

(B) requires the removal or destruction of the individual identifiers associated with the records as soon as the purpose of the research project has been accomplished;

(iv) prohibits the researcher from:

(A) disclosing the record in individually identifiable form, except as provided in Subsection (8)(b); or

(B) using the record for purposes other than the research approved by the governmental entity; and

(v) secures from the researcher a written statement of the researcher's understanding of and agreement to the conditions of this Subsection (8) and the researcher's understanding that violation of the terms of this Subsection (8) may subject the researcher to criminal prosecution under Section 63G-2-801.

(b) A researcher may disclose a record in individually identifiable form if the record is disclosed for the purpose of auditing or evaluating the research program and no subsequent use or disclosure of the record in individually identifiable form will be made by the auditor or evaluator except as provided by this section.

(c) A governmental entity may require indemnification as a condition of permitting research under this Subsection (8).

(9) (a) Under Subsections 63G-2-201(5)(b) and 63G-2-401(6), a governmental entity may disclose to persons other than those specified in this section records that are:

(i) private under Section 63G-2-302; or

(ii) protected under Section 63G-2-305 subject to Section 63G-2-309 if a claim for business confidentiality has been made under Section 63G-2-309.

(b) Under Subsection 63G-2-403(11)(b), the records committee may require the disclosure to persons other than those specified in this section of records that are:

(i) private under Section 63G-2-302;

(ii) controlled under Section 63G-2-304; or

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(iii) protected under Section 63G-2-305 subject to Section 63G-2-309 if a claim for business confidentiality has been made under Section 63G-2-309.

(c) Under Subsection 63G-2-404(8), the court may require the disclosure of records that are private under Section 63G-2-302, controlled under Section 63G-2-304, or protected under Section 63G-2-305 to persons other than those specified in this section.

(10) A record contained in the Management Information System, created in Section 62A-4a-1003, that is found to be unsubstantiated, unsupported, or without merit may not be disclosed to any person except the person who is alleged in the report to be a perpetrator of abuse, neglect, or dependency.

(11) (a) A private record described in Subsection 63G-2-302(2)(f) may only be disclosed as provided in Subsection (1)(e).

(b) A protected record described in Subsection 63G-2-305[~~(42)~~](43) may only be disclosed as provided in Subsection (4)(c) or Section 62A-3-312.

(12) (a) A private, protected, or controlled record described in Section 62A-16-301 shall be disclosed as required under:

(i) Subsections 62A-16-301(1)(b), (2), and (4)(c); and

(ii) Subsections 62A-16-302(1) and (6).

(b) A record disclosed under Subsection (12)(a) shall retain its character as private, protected, or controlled.

Section 15. Section **63G-2-301** is amended to read:

### **63G-2-301. Records that must be disclosed.**

(1) As used in this section:

(a) "Business address" means a single address of a governmental agency designated for the public to contact an employee or officer of the governmental agency.

(b) "Business email address" means a single email address of a governmental agency designated for the public to contact an employee or officer of the governmental agency.

(c) "Business telephone number" means a single telephone number of a governmental agency designated for the public to contact an employee or officer of the governmental agency.

(2) The following records are public except to the extent they contain information expressly permitted to be treated confidentially under the provisions of Subsections 63G-2-201(3)(b) and (6)(a):

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(a) laws;

(b) the name, gender, gross compensation, job title, job description, business address, business email address, business telephone number, number of hours worked per pay period, dates of employment, and relevant education, previous employment, and similar job qualifications of a current or former employee or officer of the governmental entity, excluding:

(i) undercover law enforcement personnel; and

(ii) investigative personnel if disclosure could reasonably be expected to impair the effectiveness of investigations or endanger any individual's safety;

(c) final opinions, including concurring and dissenting opinions, and orders that are made by a governmental entity in an administrative, adjudicative, or judicial proceeding except that if the proceedings were properly closed to the public, the opinion and order may be withheld to the extent that they contain information that is private, controlled, or protected;

(d) final interpretations of statutes or rules by a governmental entity unless classified as protected as provided in Subsection 63G-2-305~~[(16) or~~(17) or (18)];

(e) information contained in or compiled from a transcript, minutes, or report of the open portions of a meeting of a governmental entity as provided by Title 52, Chapter 4, Open and Public Meetings Act, including the records of all votes of each member of the governmental entity;

(f) judicial records unless a court orders the records to be restricted under the rules of civil or criminal procedure or unless the records are private under this chapter;

(g) unless otherwise classified as private under Section 63G-2-303, records or parts of records filed with or maintained by county recorders, clerks, treasurers, surveyors, zoning commissions, the Division of Forestry, Fire, and State Lands, the School and Institutional Trust Lands Administration, the Division of Oil, Gas, and Mining, the Division of Water Rights, or other governmental entities that give public notice of:

(i) titles or encumbrances to real property;

(ii) restrictions on the use of real property;

(iii) the capacity of persons to take or convey title to real property; or

(iv) tax status for real and personal property;

(h) records of the Department of Commerce that evidence incorporations, mergers, name changes, and uniform commercial code filings;

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(i) data on individuals that would otherwise be private under this chapter if the individual who is the subject of the record has given the governmental entity written permission to make the records available to the public;

(j) documentation of the compensation that a governmental entity pays to a contractor or private provider;

(k) summary data;

(l) voter registration records, including an individual's voting history, except for those parts of the record that are classified as private in Subsection 63G-2-302(1)(i);

(m) for an elected official, as defined in Section 11-47-102, a telephone number, if available, and email address, if available, where that elected official may be reached as required in Title 11, Chapter 47, Access to Elected Officials;

(n) for a school community council member, a telephone number, if available, and email address, if available, where that elected official may be reached directly as required in Section 53A-1a-108; and

(o) annual audited financial statements of the Utah Educational Savings Plan described in Section 53B-8a-111.

(3) The following records are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under Subsection 63G-2-201(3)(b), Section 63G-2-302, 63G-2-304, or 63G-2-305:

(a) administrative staff manuals, instructions to staff, and statements of policy;

(b) records documenting a contractor's or private provider's compliance with the terms of a contract with a governmental entity;

(c) records documenting the services provided by a contractor or a private provider to the extent the records would be public if prepared by the governmental entity;

(d) contracts entered into by a governmental entity;

(e) any account, voucher, or contract that deals with the receipt or expenditure of funds by a governmental entity;

(f) records relating to government assistance or incentives publicly disclosed, contracted for, or given by a governmental entity, encouraging a person to expand or relocate a business in Utah, except as provided in Subsection 63G-2-305[(34)](35);

(g) chronological logs and initial contact reports;

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(h) correspondence by and with a governmental entity in which the governmental entity determines or states an opinion upon the rights of the state, a political subdivision, the public, or any person;

(i) empirical data contained in drafts if:

(i) the empirical data is not reasonably available to the requester elsewhere in similar form; and

(ii) the governmental entity is given a reasonable opportunity to correct any errors or make nonsubstantive changes before release;

(j) drafts that are circulated to anyone other than:

(i) a governmental entity;

(ii) a political subdivision;

(iii) a federal agency if the governmental entity and the federal agency are jointly responsible for implementation of a program or project that has been legislatively approved;

(iv) a government-managed corporation; or

(v) a contractor or private provider;

(k) drafts that have never been finalized but were relied upon by the governmental entity in carrying out action or policy;

(l) original data in a computer program if the governmental entity chooses not to disclose the program;

(m) arrest warrants after issuance, except that, for good cause, a court may order restricted access to arrest warrants prior to service;

(n) search warrants after execution and filing of the return, except that a court, for good cause, may order restricted access to search warrants prior to trial;

(o) records that would disclose information relating to formal charges or disciplinary actions against a past or present governmental entity employee if:

(i) the disciplinary action has been completed and all time periods for administrative appeal have expired; and

(ii) the charges on which the disciplinary action was based were sustained;

(p) records maintained by the Division of Forestry, Fire, and State Lands, the School and Institutional Trust Lands Administration, or the Division of Oil, Gas, and Mining that evidence mineral production on government lands;



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(q) final audit reports;

(r) occupational and professional licenses;

(s) business licenses; and

(t) a notice of violation, a notice of agency action under Section 63G-4-201, or similar records used to initiate proceedings for discipline or sanctions against persons regulated by a governmental entity, but not including records that initiate employee discipline.

(4) The list of public records in this section is not exhaustive and should not be used to limit access to records.

Section 16. Section **63G-2-305** is amended to read:

### **63G-2-305. Protected records.**

The following records are protected if properly classified by a governmental entity:

(1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the governmental entity with the information specified in Section 63G-2-309;

(2) commercial information or nonindividual financial information obtained from a person if:

(a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;

(b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and

(c) the person submitting the information has provided the governmental entity with the information specified in Section 63G-2-309;

(3) commercial or financial information acquired or prepared by a governmental entity to the extent that disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the governmental entity or cause substantial financial injury to the governmental entity or state economy;

(4) records, the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, a commercial project entity as defined in Subsection 11-13-103(4);

(5) test questions and answers to be used in future license, certification, registration, employment, or academic examinations;

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(6) records, the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right of a person to have access to, ~~once~~ after the contract or grant has been awarded and signed by all parties, a bid, proposal, ~~or~~ application, or other information submitted to or by a governmental entity in response to:

(a) ~~a request~~ an invitation for bids;

(b) a request for proposals;

(c) a request for quotes;

~~(d)~~ (d) a grant; or

~~(e)~~ (e) other similar document;

(7) information submitted to or by a governmental entity in response to a request for information, except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict the right of a person to have access to the information, after:

(a) a contract directly relating to the subject of the request for information has been awarded and signed by all parties; or

(b) (i) a final determination is made not to enter into a contract that relates to the subject of the request for information; and

(ii) at least two years have passed after the day on which the request for information is issued;

~~(7)~~ (8) records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired unless:

(a) public interest in obtaining access to the information is greater than or equal to the governmental entity's need to acquire the property on the best terms possible;

(b) the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(c) in the case of records that would identify property, potential sellers of the described property have already learned of the governmental entity's plans to acquire the property;

(d) in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the governmental entity's estimated value

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of the property; or

(e) the property under consideration for public acquisition is a single family residence and the governmental entity seeking to acquire the property has initiated negotiations to acquire the property as required under Section 78B-6-505;

~~[(8)]~~ (9) records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property, unless:

(a) the public interest in access is greater than or equal to the interests in restricting access, including the governmental entity's interest in maximizing the financial benefit of the transaction; or

(b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

~~[(9)]~~ (10) records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:

(a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;

(b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;

(c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

(d) reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or

(e) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts;

~~[(10)]~~ (11) records the disclosure of which would jeopardize the life or safety of an

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individual;

~~[(11)]~~ (12) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft, or other appropriation or use contrary to law or public policy;

~~[(12)]~~ (13) records that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment, probation, or parole;

~~[(13)]~~ (14) records that, if disclosed, would reveal recommendations made to the Board of Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board of Pardons and Parole, or the Department of Human Services that are based on the employee's or contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;

~~[(14)]~~ (15) records and audit workpapers that identify audit, collection, and operational procedures and methods used by the State Tax Commission, if disclosure would interfere with audits or collections;

~~[(15)]~~ (16) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;

~~[(16)]~~ (17) records that are subject to the attorney client privilege;

~~[(17)]~~ (18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer, employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial, quasi-judicial, or administrative proceeding;

~~[(18)]~~ (19) (a) (i) personal files of a state legislator, including personal correspondence to or from a member of the Legislature; and

(ii) notwithstanding Subsection ~~[(18)]~~ (19)(a)(i), correspondence that gives notice of legislative action or policy may not be classified as protected under this section; and

(b) (i) an internal communication that is part of the deliberative process in connection with the preparation of legislation between:

(A) members of a legislative body;

(B) a member of a legislative body and a member of the legislative body's staff; or

(C) members of a legislative body's staff; and

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(ii) notwithstanding Subsection [~~(18)~~] (19)(b)(i), a communication that gives notice of legislative action or policy may not be classified as protected under this section;

~~(19)~~ (20) (a) records in the custody or control of the Office of Legislative Research and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or contemplated course of action before the legislator has elected to support the legislation or course of action, or made the legislation or course of action public; and

(b) notwithstanding Subsection [~~(19)~~] (20)(a), the form to request legislation submitted to the Office of Legislative Research and General Counsel is a public document unless a legislator asks that the records requesting the legislation be maintained as protected records until such time as the legislator elects to make the legislation or course of action public;

~~(20)~~ (21) research requests from legislators to the Office of Legislative Research and General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response to these requests;

~~(21)~~ (22) drafts, unless otherwise classified as public;

~~(22)~~ (23) records concerning a governmental entity's strategy about:

(a) collective bargaining; or

(b) imminent or pending litigation;

~~(23)~~ (24) records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities;

~~(24)~~ (25) records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest;

~~(25)~~ (26) records that reveal the location of historic, prehistoric, paleontological, or biological resources that if known would jeopardize the security of those resources or of valuable historic, scientific, educational, or cultural information;

~~(26)~~ (27) records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;

~~(27)~~ (28) records of an institution within the state system of higher education defined in Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions, which could be properly discussed in a meeting closed in

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accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of the final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;

~~[(28)]~~ (29) records of the governor's office, including budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the governor's contemplated policies or contemplated courses of action before the governor has implemented or rejected those policies or courses of action or made them public;

~~[(29)]~~ (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

~~[(30)]~~ (31) records provided by the United States or by a government entity outside the state that are given to the governmental entity with a requirement that they be managed as protected records if the providing entity certifies that the record would not be subject to public disclosure if retained by it;

~~[(31)]~~ (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body except as provided in Section 52-4-206;

~~[(32)]~~ (33) records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

~~[(33)]~~ (34) memoranda prepared by staff and used in the decision-making process by an administrative law judge, a member of the Board of Pardons and Parole, or a member of any other body charged by law with performing a quasi-judicial function;

~~[(34)]~~ (35) records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;

~~[(35)]~~ (36) materials to which access must be limited for purposes of securing or maintaining the governmental entity's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets;

~~[(36)]~~ (37) the name of a donor or a prospective donor to a governmental entity,

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including an institution within the state system of higher education defined in Section 53B-1-102, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:

(a) the donor requests anonymity in writing;

(b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the governmental entity under this Subsection [~~(36)~~] (37); and

(c) except for an institution within the state system of higher education defined in Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of the donor's immediate family, or any entity owned or controlled by the donor or the donor's immediate family;

[~~(37)~~] (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and 73-18-13;

[~~(38)~~] (39) a notification of workers' compensation insurance coverage described in Section 34A-2-205;

[~~(39)~~] (40) (a) the following records of an institution within the state system of higher education defined in Section 53B-1-102, which have been developed, discovered, disclosed to, or received by or on behalf of faculty, staff, employees, or students of the institution:

(i) unpublished lecture notes;

(ii) unpublished notes, data, and information:

(A) relating to research; and

(B) of:

(I) the institution within the state system of higher education defined in Section 53B-1-102; or

(II) a sponsor of sponsored research;

(iii) unpublished manuscripts;

(iv) creative works in process;

(v) scholarly correspondence; and

(vi) confidential information contained in research proposals;

(b) Subsection [~~(39)~~] (40)(a) may not be construed to prohibit disclosure of public information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

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(c) Subsection [~~(39)~~] (40)(a) may not be construed to affect the ownership of a record; [~~(40)~~] (41) (a) records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit prior to the date that audit is completed and made public; and

(b) notwithstanding Subsection [~~(40)~~] (41)(a), a request for a legislative audit submitted to the Office of the Legislative Auditor General is a public document unless the legislator asks that the records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit be maintained as protected records until the audit is completed and made public;

[~~(41)~~] (42) records that provide detail as to the location of an explosive, including a map or other document that indicates the location of:

(a) a production facility; or

(b) a magazine;

[~~(42)~~] (43) information:

(a) contained in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1; or

(b) received or maintained in relation to the Identity Theft Reporting Information System (IRIS) established under Section 67-5-22;

[~~(43)~~] (44) information contained in the Management Information System and Licensing Information System described in Title 62A, Chapter 4a, Child and Family Services;

[~~(44)~~] (45) information regarding National Guard operations or activities in support of the National Guard's federal mission;

[~~(45)~~] (46) records provided by any pawn or secondhand business to a law enforcement agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;

[~~(46)~~] (47) information regarding food security, risk, and vulnerability assessments performed by the Department of Agriculture and Food;

[~~(47)~~] (48) except to the extent that the record is exempt from this chapter pursuant to Section 63G-2-106, records related to an emergency plan or program, a copy of which is provided to or prepared or maintained by the Division of Emergency Management, and the disclosure of which would jeopardize:



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- (a) the safety of the general public; or
- (b) the security of:
  - (i) governmental property;
  - (ii) governmental programs; or
  - (iii) the property of a private person who provides the Division of Emergency

Management information;

~~[(48)]~~ (49) records of the Department of Agriculture and Food that provides for the identification, tracing, or control of livestock diseases, including any program established under Title 4, Chapter 24, Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Control of Animal Disease;

~~[(49)]~~ (50) as provided in Section 26-39-501:

(a) information or records held by the Department of Health related to a complaint regarding a child care program or residential child care which the department is unable to substantiate; and

(b) information or records related to a complaint received by the Department of Health from an anonymous complainant regarding a child care program or residential child care;

~~[(50)]~~ (51) unless otherwise classified as public under Section 63G-2-301 and except as provided under Section 41-1a-116, an individual's home address, home telephone number, or personal mobile phone number, if:

(a) the individual is required to provide the information in order to comply with a law, ordinance, rule, or order of a government entity; and

(b) the subject of the record has a reasonable expectation that this information will be kept confidential due to:

- (i) the nature of the law, ordinance, rule, or order; and
- (ii) the individual complying with the law, ordinance, rule, or order;

~~[(51)]~~ (52) the name, home address, work addresses, and telephone numbers of an individual that is engaged in, or that provides goods or services for, medical or scientific research that is:

(a) conducted within the state system of higher education, as defined in Section 53B-1-102; and

(b) conducted using animals;

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~~[(52)]~~ (53) an initial proposal under Title 63M, Chapter 1, Part 26, Government Procurement Private Proposal Program, to the extent not made public by rules made under that chapter;

~~[(53)]~~ (54) in accordance with Section 78A-12-203, any record of the Judicial Performance Evaluation Commission concerning an individual commissioner's vote on whether or not to recommend that the voters retain a judge;

~~[(54)]~~ (55) information collected and a report prepared by the Judicial Performance Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public, the information or report;

~~[(55)]~~ (56) records contained in the Management Information System created in Section 62A-4a-1003;

~~[(56)]~~ (57) records provided or received by the Public Lands Policy Coordinating Office in furtherance of any contract or other agreement made in accordance with Section 63J-4-603;

~~[(57)]~~ (58) information requested by and provided to the Utah State 911 Committee under Section 53-10-602;

~~[(58)]~~ (59) recorded Children's Justice Center investigative interviews, both video and audio, the release of which are governed by Section 77-37-4;

~~[(59)]~~ (60) in accordance with Section 73-10-33:

(a) a management plan for a water conveyance facility in the possession of the Division of Water Resources or the Board of Water Resources; or

(b) an outline of an emergency response plan in possession of the state or a county or municipality;

~~[(60)]~~ (61) the following records in the custody or control of the Office of Inspector General of Medicaid Services, created in Section 63J-4a-201:

(a) records that would disclose information relating to allegations of personal misconduct, gross mismanagement, or illegal activity of a person if the information or allegation cannot be corroborated by the Office of Inspector General of Medicaid Services through other documents or evidence, and the records relating to the allegation are not relied upon by the Office of Inspector General of Medicaid Services in preparing a final investigation

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report or final audit report;

(b) records and audit workpapers to the extent they would disclose the identity of a person who, during the course of an investigation or audit, communicated the existence of any Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or regulation adopted under the laws of this state, a political subdivision of the state, or any recognized entity of the United States, if the information was disclosed on the condition that the identity of the person be protected;

(c) before the time that an investigation or audit is completed and the final investigation or final audit report is released, records or drafts circulated to a person who is not an employee or head of a governmental entity for the person's response or information;

(d) records that would disclose an outline or part of any investigation, audit survey plan, or audit program; or

(e) requests for an investigation or audit, if disclosure would risk circumvention of an investigation or audit;

~~[(61)]~~ (62) records that reveal methods used by the Office of Inspector General of Medicaid Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or abuse;

~~[(62)]~~ (63) information provided to the Department of Health or the Division of Occupational and Professional Licensing under Subsection 58-68-304(3) or (4); and

~~[(63)]~~ (64) a record described in Section 63G-12-210.

Section 17. Section **63G-2-309** is amended to read:

### **63G-2-309. Confidentiality claims.**

(1) (a) (i) Any person who provides to a governmental entity a record that the person believes should be protected under Subsection 63G-2-305(1) or (2) or both Subsections 63G-2-305(1) and (2) shall provide with the record:

(A) a written claim of business confidentiality; and

(B) a concise statement of reasons supporting the claim of business confidentiality.

(ii) Any of the following who provides to an institution within the state system of higher education defined in Section 53B-1-102 a record that the person or governmental entity believes should be protected under Subsection 63G-2-305~~[(39)]~~(40)(a)(ii) or (vi) or both Subsections 63G-2-305~~[(39)]~~(40)(a)(ii) and (vi) shall provide the institution within the state

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system of higher education a written claim of business confidentiality in accordance with Section 53B-16-304:

- (A) a person;
- (B) a federal governmental entity;
- (C) a state governmental entity; or
- (D) a local governmental entity.

(b) A person or governmental entity who complies with this Subsection (1) shall be notified by the governmental entity to whom the request for a record is made if:

(i) a record claimed to be protected under one of the following is classified public:

- (A) Subsection 63G-2-305(1);
- (B) Subsection 63G-2-305(2);
- (C) Subsection 63G-2-305[(39)](40)(a)(ii);
- (D) Subsection 63G-2-305[(39)](40)(a)(vi); or
- (E) a combination of the provisions described in Subsections (1)(b)(i)(A) through (D);

or

(ii) the governmental entity to whom the request for a record is made determines that the record claimed to be protected under a provision listed in Subsection (1)(b)(i) should be released after balancing interests under Subsection 63G-2-201(5)(b) or 63G-2-401(6).

(2) Except as provided by court order, the governmental entity to whom the request for a record is made may not disclose a record claimed to be protected under a provision listed in Subsection (1)(b)(i) but which the governmental entity or records committee determines should be disclosed until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal. This Subsection (2) does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the records committee.

(3) Disclosure or acquisition of information under this chapter does not constitute misappropriation under Subsection 13-24-2(2).

Section 18. Section **63G-2-403** is amended to read:

### **63G-2-403. Appeals to the records committee.**

(1) A petitioner, including an aggrieved person who did not participate in the appeal to the governmental entity's chief administrative officer, may appeal to the records committee by filing a notice of appeal with the executive secretary no later than:

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(a) 30 days after the day on which the chief administrative officer of the governmental entity grants or denies the record request in whole or in part, including a denial under Subsection 63G-2-204(8);

(b) 45 days after the day on which the original request for a record is made if:

(i) the circumstances described in Subsection 63G-2-401(1)(b) occur; and

(ii) the chief administrative officer failed to make a determination under Section 63G-2-401.

(2) The notice of appeal shall contain the following information:

(a) the petitioner's name, mailing address, and daytime telephone number;

(b) a copy of any denial of the record request; and

(c) the relief sought.

(3) The petitioner:

(a) shall, on the day on which the petitioner files an appeal to the records committee, serve a copy of the appeal on the government entity, described in Subsection (1), to which the appeal relates; and

(b) may file a short statement of facts, reasons, and legal authority in support of the appeal.

(4) (a) Except as provided in Subsection (4)(b), no later than five business days after receiving a notice of appeal, the executive secretary of the records committee shall:

(i) schedule a hearing for the records committee to discuss the appeal at the next regularly scheduled committee meeting falling at least 14 days after the date the notice of appeal is filed but no longer than 52 calendar days after the date the notice of appeal was filed except that the records committee may schedule an expedited hearing upon application of the petitioner and good cause shown;

(ii) send a copy of the notice of hearing to the petitioner; and

(iii) send a copy of the notice of appeal, supporting statement, and a notice of hearing

to:

(A) each member of the records committee;

(B) the records officer and the chief administrative officer of the governmental entity from which the appeal originated;

(C) any person who made a business confidentiality claim under Section 63G-2-309 for

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a record that is the subject of the appeal; and

(D) all persons who participated in the proceedings before the governmental entity's chief administrative officer.

(b) (i) The executive secretary of the records committee may decline to schedule a hearing if the record series that is the subject of the appeal has been found by the committee in a previous hearing involving the same government entity to be appropriately classified as private, controlled, or protected.

(ii) (A) If the executive secretary of the records committee declines to schedule a hearing, the executive secretary of the records committee shall send a notice to the petitioner indicating that the request for hearing has been denied and the reason for the denial.

(B) The committee shall make rules to implement this section as provided by Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(5) (a) A written statement of facts, reasons, and legal authority in support of the governmental entity's position must be submitted to the executive secretary of the records committee not later than five business days before the hearing.

(b) The governmental entity shall send a copy of the written statement to the petitioner by first class mail, postage prepaid. The executive secretary shall forward a copy of the written statement to each member of the records committee.

(6) (a) No later than 10 business days after the notice of appeal is sent by the executive secretary, a person whose legal interests may be substantially affected by the proceeding may file a request for intervention before the records committee.

(b) Any written statement of facts, reasons, and legal authority in support of the intervener's position shall be filed with the request for intervention.

(c) The person seeking intervention shall provide copies of the statement described in Subsection (6)(b) to all parties to the proceedings before the records committee.

(7) The records committee shall hold a hearing within the period of time described in Subsection (4).

(8) At the hearing, the records committee shall allow the parties to testify, present evidence, and comment on the issues. The records committee may allow other interested persons to comment on the issues.

(9) (a) The records committee may review the disputed records. However, if the

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committee is weighing the various interests under Subsection (11), the committee must review the disputed records. The review shall be in camera.

(b) Members of the records committee may not disclose any information or record reviewed by the committee in camera unless the disclosure is otherwise authorized by this chapter.

(10) (a) Discovery is prohibited, but the records committee may issue subpoenas or other orders to compel production of necessary evidence.

(b) When the subject of a records committee subpoena disobeys or fails to comply with the subpoena, the records committee may file a motion for an order to compel obedience to the subpoena with the district court.

(c) The records committee's review shall be de novo.

(11) (a) No later than seven business days after the hearing, the records committee shall issue a signed order either granting the petition in whole or in part or upholding the determination of the governmental entity in whole or in part.

(b) Except as provided in Section 63G-2-406, the records committee may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private, controlled, or protected if the public interest favoring access is greater than or equal to the interest favoring restriction of access.

(c) In making a determination under Subsection (11)(b), the records committee shall consider and, where appropriate, limit the requester's use and further disclosure of the record in order to protect:

(i) privacy interests in the case of a private or controlled record;

(ii) business confidentiality interests in the case of a record protected under Subsection 63G-2-305(1), (2), [~~39~~] (40)(a)(ii), or [~~39~~] (40)(a)(vi); and

(iii) privacy interests or the public interest in the case of other protected records.

(12) The order of the records committee shall include:

(a) a statement of reasons for the decision, including citations to this chapter, court rule or order, another state statute, federal statute, or federal regulation that governs disclosure of the record, provided that the citations do not disclose private, controlled, or protected information;

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(b) a description of the record or portions of the record to which access was ordered or denied, provided that the description does not disclose private, controlled, or protected information or information exempt from disclosure under Subsection 63G-2-201(3)(b);

(c) a statement that any party to the proceeding before the records committee may appeal the records committee's decision to district court; and

(d) a brief summary of the appeals process, the time limits for filing an appeal, and a notice that in order to protect its rights on appeal, the party may wish to seek advice from an attorney.

(13) If the records committee fails to issue a decision within 57 calendar days of the filing of the notice of appeal, that failure shall be considered the equivalent of an order denying the appeal. The petitioner shall notify the records committee in writing if the petitioner considers the appeal denied.

(14) (a) Unless a notice of intent to appeal is filed under Subsection (14)(b), each party to the proceeding shall comply with the order of the records committee.

(b) If a party disagrees with the order of the records committee, that party may file a notice of intent to appeal the order of the records committee.

(c) If the records committee orders the governmental entity to produce a record and no appeal is filed, or if, as a result of the appeal, the governmental entity is required to produce a record, the governmental entity shall:

(i) produce the record; and

(ii) file a notice of compliance with the records committee.

(d) (i) If the governmental entity that is ordered to produce a record fails to file a notice of compliance or a notice of intent to appeal, the records committee may do either or both of the following:

(A) impose a civil penalty of up to \$500 for each day of continuing noncompliance; or

(B) send written notice of the governmental entity's noncompliance to:

(I) the governor for executive branch entities;

(II) the Legislative Management Committee for legislative branch entities; and

(III) the Judicial Council for judicial branch agencies entities.

(ii) In imposing a civil penalty, the records committee shall consider the gravity and circumstances of the violation, including whether the failure to comply was due to neglect or



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was willful or intentional.

Section 19. Section **63G-2-406** is amended to read:

### **63G-2-406. Evidentiary standards for release of certain enforcement and litigation records.**

(1) A record that is classified as protected under Subsection 63G-2-305[(9), (16), (17), (22), (23), or (32)](10), (17), (18), (23), (24), or (33) may be ordered to be disclosed under the provisions of Subsection 63G-2-401(6), 63G-2-403(11)(b), or 63G-2-404(8)(a) only if the person or party seeking disclosure of the record has established, by a preponderance of the evidence, that the public interest favoring access is equal to or greater than the interest favoring restriction of access.

(2) A record that is classified as protected under Subsection 63G-2-305[(10)](11) may be ordered to be disclosed under the provisions of Subsection 63G-2-401(6), 63G-2-403(11)(b), or 63G-2-404(8) only if the person or party seeking disclosure of the record has established, by clear and convincing evidence, that the public interest favoring access is equal to or greater than the interest favoring restriction of access.

Section 20. Section **63G-6a-103 (Effective 05/01/13)** is amended to read:

### **63G-6a-103 (Effective 05/01/13). 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 (h), 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;]

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~~[(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;]~~

~~[(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;]~~

~~[(h) as it relates to a local district or a special service district, the board, except to the extent that the local district or special service district enacts its own rules;]~~

~~[(i) with respect to a subject addressed by board rules; or]~~

~~[(ii) that are in addition to board rules;]~~

~~[(i) 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;]~~

~~[(j) as it relates to the state executive branch and all public procurement units other than those described in Subsections (2)(a) through (h), the board; or]~~

~~[(k) as it relates to an entity described in Subsection (2)(i), except to the extent that the rules relate to procurement authority expressly granted to the entity by statute, the board;]~~

~~[(3)] (1) "Architect-engineer services" 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.~~

~~[(4)] (2) "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;]~~

~~[(7)] (3) "Change order directive" means~~

~~— (a) (1) a written order signed by the procurement officer that directs the contractor to~~

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suspend work or make changes, as authorized by contract, without the consent of the contractor ~~[-or]~~.

~~[(b)]~~ (4) "Change order" means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract, upon mutual agreement of the parties to the contract.

~~[(8)]~~ (4;5) "Chief procurement officer" means the chief procurement officer appointed under Subsection 63G-6a-302(1).

~~[(9)]~~ (5;6) (a) "Construction" means the process of building, renovating, altering, improving, or repairing a public building or public work.

(b) "Construction" does not include the routine operation, routine repair, or routine maintenance of an existing structure, building, or real property.

~~[(10)]~~ (6;7) (a) "Construction manager/general contractor" means a contractor who enters into a contract for the management of a construction project when the contract allows the contractor to subcontract for additional labor and materials that are not included in the contractor's cost proposal submitted at the time of the procurement of the contractor's services.

(b) "Construction manager/general contractor" does not include a contractor whose only subcontract work not included in the contractor's cost proposal submitted as part of the procurement of the contractor's services is to meet subcontracted portions of change orders approved within the scope of the project.

~~[(11)]~~ (7;8) "Contract" means an agreement for the procurement or disposal of a procurement item.

~~[(12)]~~ (8;9) "Contractor" means a person who is awarded a contract with a ~~[public]~~ procurement unit.

~~[(13)]~~ (9;10) "Cooperative ~~[purchasing]~~ procurement" means procurement conducted by, or on behalf of, more than one ~~[public]~~ procurement unit, or by a ~~[public]~~ procurement unit and an external procurement unit.

~~[(10;11)]~~ "Cost-plus-a-percentage-of-cost contract" means a contract where the contractor is paid a percentage over and above the contractor's actual expenses or costs.

~~[(14)]~~ (11;12) "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.

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~~(15)~~ ~~(12)~~13 "Days" means calendar days, unless expressly provided otherwise.

~~(13)~~14 "Definite quantity contract" means a fixed price contract that provides for the supply of a specified amount of goods over a specified period, with deliveries scheduled according to a specified schedule.

~~(16)~~ ~~(14)~~15 "Design-build" means the procurement of architect-engineer services and construction by the use of a single contract with the design-build provider.

~~(17)~~ ~~(15)~~16 "Director" means the director of the division.

~~(18)~~ "Division" means the ~~Division of Purchasing and General Services.~~

~~(19)~~ ~~(16)~~17 "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.

~~(17)~~18 "Fixed price contract" means a contract that provides a price, for each procurement item obtained under the contract, that is not subject to adjustment except to the extent that:

- (a) the contract provides, under circumstances specified in the contract, for an adjustment in price that is not based on cost to the contractor; or
- (b) an adjustment is required by law.

~~(18)~~19 "Fixed price contract with price adjustment" means a fixed price contract that provides for an upward or downward revision of price, precisely described in the contract, that:

- (a) is based on the consumer price index or another commercially acceptable index, source, or formula; and
- (b) is not based on a percentage of the cost to the contractor.

~~(19)~~~~(20)~~~~(19)~~ (a) "Grant" means furnishing, by a public entity or by any other public or private source, financial or other assistance to a person to support a program authorized by law.

(b) "Grant" does not include:

- (i) an award whose primary purpose is to procure an end product or procurement item;

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or

(ii) a contract that is awarded as a result of a procurement or a procurement process.

~~ff(21)-ff(20)~~ "Head of a [public] procurement unit" means:

(a) as it relates to ~~[the state legislative branch]~~ a legislative procurement unit, any person designated by rule made by the applicable rulemaking authority;

(b) as it relates to ~~[the state executive branch]~~ an executive branch procurement unit:

(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]~~ a judicial procurement unit:

(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 (i):]~~

~~[(i) the appointed or elected head of the local public procurement unit; or]~~

~~[(ii) any other person designated by the board, by rule;]~~

~~[(e)]~~ (d) as it relates to a local [public] government procurement unit [~~that is a municipality or a county~~]:

(i) the legislative body of the [~~municipality or county~~] local government procurement unit; or

(ii) any other person designated by the [~~municipality or county~~] local government procurement unit;

(e) as it relates to a local district, the board of trustees of the local district or a designee of the board of trustees;

(f) as it relates to a special service district, the governing body of the special service district or a designee of the governing body;

(g) as it relates to a local building authority, the board of directors of the local building authority or a designee of the board of directors;

(h) as it relates to a conservation district, the board of supervisors of the conservation district or a designee of the board of supervisors;

(i) as it relates to a public corporation, the board of directors of the public corporation or a designee of the board of directors;

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~~[(f)]~~ (j) 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)]~~ (k) 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;

~~[(h)]~~ (l) 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; or

~~[(i) as it relates to a local district or a special service district, the governing body of the local district or special service district.]~~

~~[(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:]~~

~~[(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;]~~

~~[(e) 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;]~~

~~[(g) as it relates to a non-executive state procurement unit, a person designated by the applicable rulemaking authority; or]~~

~~[(h) as it relates to a local district or a special service district, the governing body of the local district or special service district.]~~

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(m) as it relates to a public transit district, the board of trustees or a designee of the board of trustees.

(~~f21~~22) "Indefinite quantity contract" means a fixed price contract that:

(a) is for an indefinite amount of procurement items to be supplied as ordered by a procurement unit; and

(b) (i) does not require a minimum purchase amount; or

(ii) provides a maximum purchase limit.

(~~f22~~23) "Independent procurement authority" means authority granted to a procurement unit, under Subsection 63G-6a-108(2), to engage in a procurement without oversight or control of the division.

(~~f23~~1)(24) "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.

(~~f24~~25) "Issuing procurement unit" means:

(a) the division, if the division issues the invitation for bids or the request for proposals; or

(b) the procurement unit, with independent procurement authority, that issues the invitation for bids or the request for proposals.

(~~f25~~26) "Labor hour contract" is a contract where:

(a) the supplies and materials are not provided by, or through, the contractor; and

(b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and profit for a specified number of labor hours or days.

(~~f24~~) (~~f26~~27) "Multiple award contracts" means the award of a contract for an indefinite quantity of a procurement item to more than one bidder or offeror.

(~~f25~~) (~~f27~~28) "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.

(~~f26~~) (~~f28~~29) "Municipality" means a city or a town.

(~~f27~~) (~~f29~~30) "Offeror" means a person who responds to a request for proposals.

(~~f28~~) (~~f30~~31) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference under the requirements of this chapter.

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~~[(29)]~~ ~~(~~31~~~~32~~)~~ (a) "Procure" or "procurement" means buying, purchasing, renting, leasing, leasing with an option to purchase, or otherwise acquiring a procurement item.

(b) "Procure" or "procurement" includes all functions that pertain to the obtaining of a procurement item, including:

- (i) the description of requirements;
- (ii) the selection process;
- (iii) solicitation of sources;
- (iv) the preparation for soliciting a procurement item;
- (v) the award of a contract; and
- (vi) all phases of contract administration.

~~[(30)]~~ ~~(~~32~~~~33~~)~~ "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 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.]~~

~~(~~33~~~~34~~)~~ "Procurement officer" means:

(a) as it relates to a procurement unit with independent procurement authority:

(i) the head of the procurement unit;

(ii) a designee of the head of the procurement unit; or

(iii) a person designated by rule made by the applicable rulemaking authority; or

(b) as it relates to the division or a procurement unit without independent procurement authority, the chief procurement officer.



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~~[(32)]~~ ~~(~~34~~35)~~ "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) "Protest officer" means:]~~

~~[(a) 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;]~~

~~[(b) as it relates to a local public procurement unit, the purchasing officer or the governing body of the local public procurement unit, or a designee of either; or]~~

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

- ~~(j) medical services;~~
- ~~(k) psychiatric services; or~~
- ~~(l) counseling services.~~

~~(~~35~~36) "Protest officer" means:~~

~~(a) as it relates to the division or a procurement unit with independent procurement authority:~~

- ~~(i) the head of the procurement unit;~~
- ~~(ii) a designee of the head of the procurement unit; or~~
- ~~(iii) a person designated by rule made by the applicable rulemaking authority; or~~

~~(b) as it relates to a procurement unit without independent procurement authority, the chief procurement officer or the chief procurement officer's designee.~~

~~[(34)]~~ ~~(~~36~~37)~~ "Request for information" means a nonbinding process where a

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[public] procurement unit requests information relating to a procurement item.

~~(35)~~ ~~(37;38)~~ "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.

~~(38;39)~~ "Requirements contract" means a contract:

(a) where a contractor agrees to provide a procurement unit's entire requirements for certain procurement items at prices specified in the contract during the contract period; and

(b) that:

(i) does not require a minimum purchase amount; or

(ii) provides a maximum purchase limit.

~~(36)~~ ~~(39;40)~~ "Responsible" means that a bidder or offeror:

(a) is capable, in all respects, to fully perform the contract requirements solicited in an invitation for bids or a request for proposals; and

(b) has the integrity and reliability to ensure good faith performance.

~~(37)~~ ~~(40;41)~~ "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.

~~(38)~~ ~~(41;42)~~ "Sealed" means manually or electronically sealed and submitted bids or proposals.

~~(39)~~ ~~(42;43)~~ (a) "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than a report that is incidental to the required performance.

(b) "Services" does not include an employment agreement or a collective bargaining agreement.

~~(40)~~ ~~(43;44)~~ "Specification" means any description of the physical or functional characteristics, or nature of a 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:

(a) a requirement for inspecting or testing a procurement item; or

(b) preparing a procurement item for delivery.

~~(41)~~ ~~(44;45)~~ "Standard procurement process" means one of the following methods

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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.

~~(45)~~46 "State cooperative contract" means a contract awarded by the division.

~~(42)~~ ~~(46)~~47 (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.

~~(43)~~ ~~(47)~~48 "Supplies" means all property, including equipment, materials, and printing.

~~(44)~~ ~~(48)~~49 "Tie bid" means that the lowest responsive and responsible bids are identical in price.

~~(49)~~50 "Time and materials contract" means a contract where the contractor is paid:

(a) the actual cost of direct labor at specified hourly rates;

(b) the actual cost of materials and equipment usage; and

(c) an additional amount, expressly described in the contract, to cover overhead and profit, that is not based on a percentage of the cost to the contractor.

Section 21. Section **63G-6a-104 (Effective 05/01/13)** is repealed and reenacted to read:

### **63G-6a-104 (Effective 05/01/13). Definitions of government entities.**

As used in this chapter:

(1) "Applicable rulemaking authority" means:

(a) as it relates to a legislative procurement unit, the Legislative Management Committee, which shall adopt a policy establishing requirements applicable to a legislative procurement unit;

(b) as it relates to a judicial procurement unit, the Judicial Council;

(c) as it relates to an executive branch procurement unit, except to the extent provided in Subsections (1)(d) through (g), the board;

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(d) as it relates to the State Building Board, created in Section 63A-5-101, the State Building Board, but only to the extent that the rules relate to procurement authority expressly granted to the State Building Board by statute;

(e) 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, but only to the extent that the rules relate to procurement authority expressly granted to the Division of Facilities Construction and Management by statute;

(f) as it relates to the Office of the Attorney General, the attorney general, but only to the extent that the rules relate to procurement authority expressly granted to the attorney general by statute;

(g) as it relates to the Department of Transportation, created in Section 72-1-201, the executive director of the Department of Transportation, but only to the extent that the rules relate to procurement authority expressly granted to the Department of Transportation by statute;

(h) as it relates to a local government procurement unit, the legislative body of the local government procurement unit, not as a delegation of authority from the Legislature, but under the local government procurement unit's own legislative authority;

(i) as it relates to a school district or a public school, the Utah State Procurement Policy Board, except to the extent that a school district makes its own nonadministrative rules, with respect to a particular subject, that do not conflict with the provisions of this chapter;

(j) as it relates to a state institution of higher education, the State Board of Regents;

(k) as it relates to a public transit district, the chief executive of the public transit district;

(l) as it relates to a local district or a special service district:

(i) before May 13, 2014, the **board of trustees of the** local district or **the governing body of the** special service district; or

(ii) on or after May 13, 2014, the board, except to the extent that the **board of trustees of the** local district or **the governing body of the** special service district makes its own rules:

(A) with respect to a subject addressed by board rules; or

(B) that are in addition to board rules; or

(m) as it relates to a procurement unit, other than a procurement unit described in

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Subsections (1)(a) through (l), the board.

(2) "Board" means the Utah State Procurement Policy Board, created in Section 63G-6a-202.

(3) "Building board" means the State Building Board created in Section 63A-5-101.

(4) "Conservation district" is as defined in Section 17D-3-102.

(5) "Division" means the Division of Purchasing and General Services.

(6) "Educational procurement unit" means:

(a) a school district;

(b) a public school, including a local school board or a charter school;

(c) Utah Schools for the Deaf and Blind;

(d) the Utah Education Network; or

(e) an institution of higher education of the state.

(7) "Executive branch procurement unit" means each department, division, office, bureau, agency, or other organization within the state executive branch, including the division and the attorney general's office.

(8) "External procurement unit" means:

(a) a buying organization not located in this state which, if located in this state, would qualify as a procurement unit; or

(b) an agency of the United States.

(9) "Judicial procurement unit" means:

(a) the Utah Supreme Court;

(b) the Utah Court of Appeals;

(c) the Judicial Council;

(d) a state judicial district; or

(e) each office, committee, subcommittee, or other organization within the state judicial branch.

(10) "Legislative procurement unit" means:

(a) the Legislature;

(b) the Senate;

(c) the House of Representatives;

(d) a staff office of an entity described in Subsection (10)(a), (b), or (c); or

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(e) each office, committee, subcommittee, or other organization within the state legislative branch.

(11) "Local building authority" is as defined in Section 17D-2-102.

(12) "Local district" is as defined in Section 17B-1-102.

(13) "Local government procurement unit" means:

(a) 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;

(b) a county or municipality, and each office or agency of the county or municipality, that has adopted this entire chapter by ordinance; or

(c) 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};~~

~~{ — (d) two or more of the entities described in this Subsection (13), acting under legislation that authorizes intergovernmental cooperation.~~

~~};~~ (14) (a) "Procurement unit" means:

(i) a legislative procurement unit;

(ii) an executive branch procurement unit;

(iii) a judicial procurement unit;

(iv) an educational procurement unit;

(v) a local government procurement unit;

(vi) a local district;

(vii) a special service district;

(viii) a local building authority;

(ix) a conservation district;

(x) a public corporation; or

(xi) a public transit district.

(b) "Procurement unit" does not include a political subdivision created ~~by counties or municipalities~~ under Title 11, Chapter 13, Interlocal Cooperation Act.

(15) "Public corporation" is as defined in Section 63E-1-102.

(16) "Public entity" means any state government entity or a political subdivision of the state, including:

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(a) a procurement unit;

(b) a municipality or county, regardless of whether the municipality or county has adopted this chapter or any part of this chapter; and

(c) any other government entity located in Utah that expends public funds.

(17) "Public transit district" means a public transit district organized under Title 17B, Chapter 2a, Part 8, Public Transit District Act.

(18) "Special service district" is as defined in Section 17D-1-102.

Section 22. Section **63G-6a-105 (Effective 05/01/13)** is amended to read:

### **63G-6a-105 (Effective 05/01/13). Application of chapter.**

(1) The provisions of this chapter that are enacted on [~~July 1, 2012~~] May 1, 2013, apply only to a procurement advertised, or begun on or after [~~July 1, 2012~~] May 1, 2013, unless the parties agree to have the provisions apply with respect to a procurement that was advertised or begun before [~~July 1, 2012~~] May 1, 2013, but is not completed before [~~July 1, 2012~~] May 1, 2013.

(2) (a) Except as provided in Section 63G-6a-107, this chapter shall apply to every expenditure of public funds irrespective of the source of the funds, including federal assistance, by any [~~public~~] procurement unit, under any contract.

(b) The provisions of this chapter do not apply to a public entity that is not a [~~public~~] procurement unit.

(3) Except as provided in Subsection 17B-1-108(3) relating to local districts, [~~each local public procurement unit~~] the following procurement units shall adopt ordinances or resolutions relating to the procurement of architect-engineer services not inconsistent with the provisions of Part 15, Architect-Engineer Services[-]:

(a) an educational procurement unit;

(b) a conservation district;

(c) a local building authority;

(d) a local district;

(e) a public corporation;

(f) a special service district; or

(g) two or more of the entities described in Subsections (3)(a) through (f), acting under legislation that authorizes intergovernmental cooperation.

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(4) Any section of this chapter, or its implementing regulations, may be adopted by [any local government unit.]:

(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)~~ (c) the Utah Housing Corporation.

(5) Rules adopted under this chapter shall be consistent with the provisions of this chapter.

(6) ~~[A state purchasing unit]~~ An applicable rulemaking authority or a [public] procurement unit may not adopt rules, policies, or regulations that are inconsistent with this chapter.

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

Section 23. Section **63G-6a-106 (Effective 05/01/13)** is amended to read:

**63G-6a-106 (Effective 05/01/13). Specific statutory authority -- Limitations on authority of chief procurement officer and division.**

(1) The procurement authority given to a [public] procurement unit 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) Except as otherwise provided in Sections 63G-6a-105 and 63G-6a-107, 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) The applicable rulemaking authority for a public transit district may make rules



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governing the procurement of a transit construction project or a transit improvement project.

~~[(b)]~~ (c) This Subsection (3) supersedes Subsections (1) and (2).

(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 procurement unit with independent procurement authority.

~~[(a) a non-executive state procurement unit;]~~

~~[(b) a local government unit; or]~~

~~[(c) a state purchasing unit, other than the division.]~~

(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 standard procurement process;

(b) procure an item under an exception, as provided in this chapter, to the requirement to use a standard 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;]~~ An entity described in Subsection (4) 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.

(9) The state treasurer may, in accordance with the provisions of this chapter, but without involvement by the division or the chief procurement officer, procure:

(a) deposit and investment services; and

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(b) services related to issuing bonds.

Section 24. Section **63G-6a-107 (Effective 05/01/13)** is amended to read:

**63G-6a-107 (Effective 05/01/13). Exemptions from chapter -- Compliance with federal law.**

(1) 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;

(b) grants awarded by the state or contracts between the state and ~~[a local public procurement unit, except as provided in Part 21, Intergovernmental Relations; or]~~ any of the following:

(i) an educational procurement unit;

(ii) a conservation district;

(iii) a local building authority;

(iv) a local district;

(v) a public corporation;

(vi) a special service district;

(vii) a public transit district; or

(viii) two or more of the entities described in Subsections (1)(b)(i) through (vii), acting under legislation that authorizes intergovernmental cooperation;

(c) medical supplies or medical equipment, including service agreements for medical equipment, obtained through a purchasing consortium by the Utah State Hospital, the Utah State Developmental Center, the University of Utah Hospital, or any other hospital owned by the state or a political subdivision of the state, if:

(i) the consortium uses a competitive procurement process; and

(ii) the chief administrative officer of the hospital makes a written finding that the prices for purchasing medical supplies and medical equipment through the consortium are competitive with market prices;

(d) goods purchased for resale; or

~~[(e)]~~ (e) any action taken by a majority of both houses of the Legislature.

(2) This chapter does not prevent ~~[the state or a local]~~ a public procurement unit from

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complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

(3) Notwithstanding any conflicting provision of this chapter, when a procurement involves the expenditure of federal assistance, federal contract funds, local matching funds, or federal financial participation funds, the ~~[public]~~ procurement unit ~~[or state purchasing unit]~~ shall comply with mandatory applicable federal law and regulations not reflected in this chapter.

(4) This chapter 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 25. Section **63G-6a-108 (Effective 05/01/13)** is amended to read:

**63G-6a-108 (Effective 05/01/13). Procurements under direction and control of division -- Exception for procurement unit with independent procurement authority.**

(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.]~~

(2) Subsection (1) does not apply to the following procurement units, all of which have independent procurement authority:

(a) a legislative procurement unit;

(b) a judicial procurement unit;

(c) an educational procurement unit;

(d) a local government procurement unit;

~~{~~ (e) a political subdivision created by counties or municipalities under Title 11, Chapter 13, Interlocal Cooperation Act;

~~†~~ (f) a conservation district;

(g) a local building authority;

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~~(f)(g)~~ a local district;

~~(f)(h)~~ a public corporation;

~~(f)(i)~~ a special service district;

~~(f)(j)~~ the Utah Housing Corporation; or

~~(f)(k)~~ a public transit district ~~;~~ or.

~~{~~ (m) two or more of the entities described in Subsections (2)(a) through (l), acting under legislation that authorizes intergovernmental cooperation.

~~}~~ (3) A procurement unit with independent procurement authority is not exempt from complying with the requirements of this chapter.

Section 26. Section **63G-6a-201 (Effective 05/01/13)** is amended to read:

### **Part 2. Utah State Procurement Policy Board**

**63G-6a-201 (Effective 05/01/13). Title.**

This part is known as "Utah State Procurement Policy Board."

Section 27. Section **63G-6a-203 (Effective 05/01/13)** is amended to read:

**63G-6a-203 (Effective 05/01/13). Powers and duties of board.**

(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 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]~~ a procurement unit with an applicable rulemaking authority other than the board, review the 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 processes.

(b) Except as provided in Section 63G-6a-1702, the board may not exercise authority over the award or administration of:

(i) any particular contract; or

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

~~[(3) The board does not have authority over a matter involving:]~~

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~~[(a) a non-executive state procurement unit;]~~

~~[(b) a local government unit; or]~~

~~[(c) except as otherwise expressly provided in this chapter, a local public procurement unit.]~~

(3) Except as otherwise expressly provided in this chapter, the board does not have authority over a matter involving a procurement unit with independent procurement authority.

Section 28. Section **63G-6a-204 (Effective 05/01/13)** is amended to read:

**63G-6a-204 (Effective 05/01/13). Applicability of rules and regulations of Utah State Procurement Policy Board and State Building Board -- Report to interim committee.**

(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 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) An applicable rulemaking authority may make its own rules, consistent with this chapter, governing procurement by a person over which the applicable rulemaking authority has rulemaking authority.

(4) The 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 under Section 63G-6a-203.

(5) Notwithstanding Subsection 63G-3-301(13)(b), an applicable rulemaking authority is, on or before May 13, 2014, required to initiate rulemaking proceedings for rules required to be made under this chapter.

Section 29. Section **63G-6a-302 (Effective 05/01/13)** is amended to read:

**63G-6a-302 (Effective 05/01/13). 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

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recommendations from the 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.

(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.]~~

(4) The chief procurement officer has authority over a procurement by a procurement unit, except:

(a) a procurement unit with independent procurement authority; or

(b) as otherwise expressly provided in this chapter.

Section 30. Section **63G-6a-303 (Effective 05/01/13)** is amended to read:

**63G-6a-303 (Effective 05/01/13). 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;

(2) procure or supervise each procurement over which the chief procurement officer has authority;

(3) establish and maintain programs for the inspection, testing, and acceptance of each procurement item over which the chief procurement officer has authority;

(4) prepare statistical data concerning each procurement and procurement usage of a state procurement unit;

(5) ensure that:

(a) before approving a procurement not covered by an existing statewide contract for

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information technology or telecommunications supplies or services, the chief information officer and the agency have stated in writing to the division that the needs analysis required in Section 63F-1-205 was completed, unless the 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(5)(a) is not delegated outside the division; and

(6) provide training to [public] procurement units and to persons who do business with [public] procurement units.

Section 31. Section **63G-6a-305 (Effective 05/01/13)** is amended to read:

**63G-6a-305 (Effective 05/01/13). Duty of chief procurement officer in maintaining specifications.**

(1) The chief procurement officer may prepare, issue, revise, maintain, and monitor the use of specifications for each procurement over which the chief procurement officer has authority.

(2) The chief procurement officer shall obtain expert advice and assistance from personnel of [public] procurement units in the development of specifications and may delegate in writing to a [public] procurement unit the authority to prepare and utilize its own specifications.

(3) For a procurement 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 32. Section **63G-6a-402 (Effective 05/01/13)** is amended to read:

**63G-6a-402 (Effective 05/01/13). Procurement unit required to comply with Utah Procurement Code and applicable rules -- Rulemaking authority -- Reporting.**

(1) Except as otherwise provided in Section 63G-6a-107, 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:

(a) if the [public] procurement unit is [~~an authorized purchasing entity~~] the division or a procurement unit with independent procurement authority, the [public] procurement unit:

(i) uses a standard procurement process or an exception to a standard procurement process, described in Part 8, Exceptions to Procurement Requirements; and

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(ii) complies with:

(A) the requirements of this chapter; and

(B) the rules made pursuant to this chapter by the applicable rulemaking authority;

(b) ~~except as provided in Subsection (2)(a), if~~ If the [public] procurement unit is a ~~[local government unit] county, a municipality,~~ a political subdivision created by counties or municipalities under Title 11, Chapter 13, Interlocal Cooperation Act, or the Utah Housing Corporation, the [public] procurement unit complies with:

(i) the requirements of this chapter that are adopted by the ~~[local government unit] procurement unit~~; and

(ii) all other procurement requirements that the ~~[local government unit] procurement 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 standard 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)(a) Subsection (1)(b) does not apply to a political subdivision created by counties or municipalities under Title 11, Chapter 13, Interlocal Cooperation Act, if the political subdivision does not receive or expend tax revenue.]~~

~~(b)~~ (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



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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 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 33. Section **63G-6a-403 (Effective 05/01/13)** is amended to read:

**63G-6a-403 (Effective 05/01/13). Prequalification of potential vendors.**

(1) (a) As used in this section, "vendor" means:

(i) a bidder;

(ii) an offeror; or

(iii) a contractor, including an architect or an engineer.

~~(1)~~ (b) A ~~[public]~~ procurement unit may, in accordance with this section:

~~(a)~~ (i) prequalify potential ~~[bidders or offerors]~~ vendors to provide any type of procurement item specified by the ~~[public]~~ procurement unit; and

~~(b)~~ (ii) limit participation in an invitation for bids ~~[or]~~, a request for proposals, or an approved vendor list to the prequalified potential ~~[bidders or offerors]~~ vendors for the specified type of procurement item.

(2) To prequalify potential ~~[bidders or offerors]~~ vendors 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;

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(v) the period of time during which the list of prequalified potential [~~bidders or offerors~~] vendors will remain in effect, which may not be longer than 18 months after the list of prequalified potential [~~bidders or offerors~~] vendors 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 offerors~~] vendors 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;

(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~~] vendors, request additional information to clarify responses made to the request for [~~prequalifications~~] qualifications.

(6) A potential [~~bidder or offeror~~] vendor shall be included on the list of prequalified potential [~~bidders or offerors~~] vendors if the [~~bidder or offeror~~] vendor:

(a) submits a timely, responsive response to the request for [~~prequalifications~~] qualifications; 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~~] vendor being placed on the list of prequalified potential [~~bidders or offerors~~] vendors:

(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~~] vendors available to the public, provide each potential [~~bidder or offeror~~] vendor 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~~] vendor 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),

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make the list of prequalified potential ~~[bidders or offerors]~~ vendors available to the public.

Section 34. Section **63G-6a-404 (Effective 05/01/13)** is amended to read:

**63G-6a-404 (Effective 05/01/13). Approved vendor list.**

~~[(1) An authorized purchasing entity]~~

(1) (a) As used in this section, "vendor" is as defined in Subsection 63G-6a-403(1)(a).

(b) The process described in this section may not be used for construction projects that cost more than an amount specified by the applicable rulemaking authority.

~~[(1) An]~~ (c) The division or ~~{an authorized purchasing entity}~~ a procurement unit with independent procurement authority may compile a list of approved ~~[contractors]~~ vendors from which procurement items may be obtained.

(2) An approved ~~[contractor]~~ vendor 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]~~ under Section 63G-6a-403[;] or ~~[(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]~~ vendors on an approved vendor list, for services other than the services described in Subsection (4) or (5) the procurement unit shall use one of the following methods in an unbiased manner:

(a) a rotation system, organized alphabetically, numerically, or randomly;  
(b) assigning ~~[contractors]~~ vendors to a specified geographical area; or  
(c) classifying each ~~[contractor]~~ vendor based on each ~~[contractor's]~~ vendor's particular expertise, qualifications, or field.

(4) (a) For a construction project that costs less than the amount established by the applicable rulemaking authority, under Subsection (1)(b), a procurement unit shall select a potential construction contractor from an approved potential contractor list, using an invitation for bids or a request for proposals.

(b) For architectural or engineering services for a construction project described in Subsection (4)(a), a procurement unit shall select a potential contractor from an approved potential contractor list:

(i) using a rotation system, organized alphabetically, numerically, or randomly;

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(ii) assigning a potential contractor to a specified geographical area; or

(iii) classifying each potential contractor based on the potential contractor's field or area or expertise.

(5) A procurement unit may not use an approved vendor list described in this section for a construction project with a cost that is equal to or greater than the amount established by the applicable rulemaking authority under Subsection (1)(b).

Section 35. Section **63G-6a-406 (Effective 05/01/13)** is amended to read:

**63G-6a-406 (Effective 05/01/13). Public notice of procurement process or sole source procurement.**

(1) ~~[An authorized purchasing entity]~~ The division or a procurement unit with independent procurement authority that issues an invitation for bids, a request for proposals, or ~~[another document]~~ a notice of sole source procurement required ~~[by this chapter]~~ to be published in accordance with this section, shall provide public notice that includes:

(a) for an invitation for bids or a request for proposals, the name of the ~~[authorized purchasing entity and]~~ issuing procurement unit;

(b) the name of the ~~[public]~~ procurement unit acquiring the procurement item;

~~[(b)]~~ (c) for an invitation for bids or a request for proposals, information on how to contact the ~~[authorized purchasing entity]~~ issuing procurement unit in relation to the invitation for bids[; or request for proposals[; or other document];

(d) for a notice of sole source procurement, contact information and other information relating to contesting, or obtaining additional information in relation to, the sole source procurement;

~~[(e)]~~ (e) 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;

(f) for a notice of sole source procurement, the earliest date that the procurement unit may make the sole source procurement;

~~[(d)]~~ (g) information on how to obtain a copy of the invitation for bids, request for proposals, or ~~[other document]~~ further information related to the sole source procurement; and

~~[(e)]~~ (h) a general description of the procurement items that will be obtained through the standard procurement process or sole source procurement.

(2) Except as provided in Subsection ~~[(3)]~~ (4), for an invitation for bids or a request for

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proposals, the ~~[authorized purchasing entity]~~ issuing procurement unit shall publish the notice described in Subsection (1), using at least one of the following methods:

(a) at least ~~[10]~~ seven 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]~~ seven consecutive days before the day of the deadline for submission of a bid or other response, publish the notice:

(i) on the main website for the ~~[authorized purchasing entity or public]~~ issuing procurement unit or the procurement unit acquiring the procurement item; 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) Except as provided in Subsection (4), for a sole source procurement for which notice is required to be published in accordance with this section, the procurement unit making the sole source procurement shall publish the notice described in Subsection (1), using at least one of the following methods:

(a) at least seven days before the day on which the procurement unit makes the sole source procurement, 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 procurement unit has jurisdiction; or

(b) at least seven consecutive days before the day on which the procurement unit makes the sole source procurement, publish the notice:

(i) on the main website for the procurement unit acquiring the procurement item; or  
(ii) on a state website that is owned by, managed by, or provided under contract with, the division for posting a procurement notice.

~~[(3)]~~ (4) [An authorized purchasing entity] An issuing procurement unit, or the procurement unit making a sole source procurement may reduce the [10-day] seven-day period

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described in Subsection (2) or (3), 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)] (5) (a)~~ An ~~[authorized purchasing entity]~~ issuing procurement unit shall make a copy of an invitation for bids~~[-]~~ or 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]~~ issuing procurement unit or on the website described in Subsection (2)(b).

(b) A procurement unit making a sole source procurement shall make a copy of information related to the sole source procurement available for public inspection at the main office of the procurement unit or on the website described in Subsection (3)(b).

Section 36. Section **63G-6a-407 (Effective 05/01/13)** is amended to read:

### **63G-6a-407 (Effective 05/01/13). 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 needs of the ~~[public]~~ procurement unit, and may not be unduly restrictive.

(2) The requirements of this part regarding the purposes and nonrestrictiveness of specifications shall apply to all specifications, including those prepared by architects, engineers, designers, and draftsmen for public contracts.

Section 37. Section **63G-6a-408 (Effective 05/01/13)** is amended to read:

### **63G-6a-408 (Effective 05/01/13). Small purchases.**

(1) As used in this section:

(a) "Annual cumulative threshold" means the maximum total annual amount, established by the applicable rulemaking authority under Subsection (2)(a)(i), that a procurement unit may expend to obtain procurement items from the same source under this section.

(b) "Individual procurement threshold" means the maximum amount, established by the applicable rulemaking authority under Subsection (2)(a)(ii), for which a procurement unit may purchase a procurement item under this section.

(c) "Single procurement aggregate threshold" means the maximum total amount,

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established by the applicable rulemaking authority under Subsection (2)(a)(iii), that a procurement unit may expend to obtain multiple procurement items from one source at one time under this section.

~~[(+) (2) 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) (a) establishing expenditure thresholds [and procurement requirements related to those thresholds; and], including:~~

~~(i) an annual cumulative threshold;~~

~~(ii) an individual procurement threshold; and~~

~~(iii) a single procurement aggregate threshold;~~

~~(b) establishing procurement requirements relating to the thresholds described in Subsection (2)(a); and~~

~~(c) the use of electronic, telephone, or written quotes.~~

(3) Expenditures made under this section by a procurement unit may not exceed a threshold established by the applicable rulemaking authority, unless the chief procurement officer or the head of a procurement unit with independent procurement authority gives written authorization to exceed the threshold that includes the reasons for exceeding the threshold.

~~[(2)(a)] (4) Except as provided in Subsection ~~[(2)(b), a public]~~ (5), an executive branch procurement unit may not obtain a procurement item through a small purchase standard procurement process if the procurement item may be obtained through a state cooperative contract or a contract awarded by the chief procurement officer under Subsection 63G-6a-2105(1).~~

~~[(b)] (5) Subsection ~~[(2)(a)] (4)~~ does not apply if:~~

~~[(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; or]~~

~~[(iii) to a local public procurement unit.]~~

~~[(c) An entity that is exempt from the requirements of Subsection (2)(a) is encouraged, but not required, to comply with Subsection (2)(a).]~~

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(a) the procurement item is obtained for an unanticipated, urgent or unanticipated, emergency condition, including:

(i) an item needed to avoid stopping a public construction project;

(ii) an immediate repair to a facility or equipment; or

(iii) another emergency condition; or

(b) the chief procurement officer or the head of a procurement unit that is an executive branch procurement unit with independent procurement authority:

(i) determines in writing that it is in the best interest of the procurement unit to obtain an individual procurement item outside of the state contract, comparing:

(A) the contract terms and conditions applicable to the procurement item under the state contract with the contract terms and conditions applicable to the procurement item if the procurement item is obtained outside of the state contract;

(B) the maintenance and service applicable to the procurement item under the state contract with the maintenance and service applicable to the procurement item if the procurement item is obtained outside of the state contract;

(C) the warranties applicable to the procurement item under the state contract with the warranties applicable to the procurement item if the procurement item is obtained outside of the state contract;

(D) the quality of the procurement item under the state contract with the quality of the procurement item if the procurement item is obtained outside of the state contract; and

(E) the cost of the procurement item under the state contract with the cost of the procurement item if the procurement item is obtained outside of the state contract;

(ii) for a procurement item that, if defective in its manufacture, installation, or performance, may result in serious physical injury, death, or substantial property damage, determines in writing that the terms and conditions, relating to liability for injury, death, or property damage, available from the source other than the contractor who holds the state contract, are similar to, or better than, the terms and conditions available under the state contract; and

(iii) grants an exception, in writing, to the requirement described in Subsection (4).

[~~(3)~~] (6) [~~(a) Except as provided in Subsection (3)(b), a public] Except as otherwise expressly provided in this section, a procurement unit:~~



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~~[(+)]~~ (a) may not use the small purchase standard procurement process described in this section for ongoing, continuous, and regularly scheduled procurements that exceed the annual cumulative threshold; and

~~[(+)]~~ (b) shall make its ongoing, continuous, and regularly scheduled procurements that exceed the annual cumulative threshold through a contract awarded through [a] another standard procurement process described in this chapter or an applicable exception to [a] another standard procurement process, described in Part 8, Exceptions to Procurement Requirements.

~~[(b) Subsection (3)(a) does not apply to an ongoing, continuous, or regularly scheduled procurement to the extent that the total expenditures for the procurement during a fiscal year do not exceed the maximum expenditure that the public procurement unit is permitted to make under this section, as established by rule made by the applicable rulemaking authority.]~~

(7) This section does not prohibit regularly scheduled payments for a procurement item obtained under another provision of this chapter.

~~[(4)]~~ (8) 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)]~~ (9) A division of a procurement that is prohibited under Subsection ~~[(4)]~~ (8) includes doing any of the following with the intent or knowledge described in Subsection ~~[(4)]~~ (8):

(a) making two or more separate purchases;

(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)]~~ (10) A person who violates Subsection ~~[(4)]~~ (8) is subject to the criminal penalties described in Section 63G-6a-2305.

~~[(7)]~~ (11) The Division of Finance within the Department of Administrative Services may conduct an audit of [~~a public procurement unit in the state~~] an executive branch

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procurement unit to verify compliance with the requirements of this section.

~~[(8)] (12) [A public procurement unit in the state]~~ An executive branch procurement unit may not make a small purchase after January 1, ~~[2013]~~ 2014, 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 38. Section **63G-6a-503 (Effective 05/01/13)** is amended to read:

**63G-6a-503 (Effective 05/01/13). Request for information and response nonbinding.**

(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 standard procurement process, or comply with an exception to the requirement to use a standard procurement process described in Part 8, Exceptions to Procurement Requirements, 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 39. Section **63G-6a-505** is enacted to read:

**63G-6a-505. Protected information.**

Information submitted to or by a governmental entity in response to a request for information is protected under Section 63G-2-305.

Section 40. Section **63G-6a-602 (Effective 05/01/13)** is amended to read:

**63G-6a-602 (Effective 05/01/13). Contracts awarded by bidding.**

(1) Except as otherwise provided in this chapter, ~~[an authorized purchasing entity]~~ the division or a procurement unit with independent procurement authority shall award a contract for a procurement by bidding, in accordance with the rules of the applicable rulemaking authority.

(2) The bidding standard procurement process is appropriate to use when cost is the major factor in determining the award of a procurement.

Section 41. Section **63G-6a-603 (Effective 05/01/13)** is amended to read:

**63G-6a-603 (Effective 05/01/13). Invitation for bids -- Contents -- Notice.**

(1) The bidding standard procurement process begins when ~~[the authorized purchasing entity]~~ the division or a procurement unit with independent procurement authority issues an

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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~~] issuing procurement unit shall publish an

invitation for bids in accordance with the requirements of Section 63G-6a-406.

Section 42. Section **63G-6a-604 (Effective 05/01/13)** is amended to read:

### **63G-6a-604 (Effective 05/01/13). 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~~] issuing procurement unit 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 43. Section **63G-6a-605 (Effective 05/01/13)** is amended to read:

**63G-6a-605 (Effective 05/01/13). 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 chief procurement officer, the procurement officer, or the head of the [~~authorized purchasing entity~~] procurement unit with independent procurement authority.

Section 44. Section **63G-6a-606 (Effective 05/01/13)** is amended to read:

**63G-6a-606 (Effective 05/01/13). Evaluation of bids -- Award -- Cancellation -- Disqualification.**

(1) [~~An authorized purchasing entity~~] The division or a procurement unit with independent procurement authority 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;

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- (f) workmanship;
- (g) time and manner of delivery;
- (h) references;
- (i) financial stability;
- (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~~] procurement unit 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~~] procurement unit 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~~] procurement unit 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~~] a procurement unit 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~~] a procurement unit cancels an invitation for bids without awarding a contract, the [~~authorized purchasing entity~~] procurement unit shall

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make available for public inspection a written justification for the cancellation.

Section 45. Section **63G-6a-607 (Effective 05/01/13)** is amended to read:

### **63G-6a-607 (Effective 05/01/13). Action when all bids are over budget.**

(1) Except as provided in Subsection (2) or (3), if the fiscal officer for the [public] 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 46. Section **63G-6a-608 (Effective 05/01/13)** is amended to read:

### **63G-6a-608 (Effective 05/01/13). 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 a 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;

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- (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 procurement to the attorney general if an award of a contract to a tie bidder exceeds \$100,000 in expenditures.

Section 47. Section **63G-6a-609 (Effective 05/01/13)** is amended to read:

### **63G-6a-609 (Effective 05/01/13). Multiple stage bidding process.**

(1) ~~[An authorized purchasing entity]~~ The division or a procurement unit with independent procurement authority 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]~~ procurement unit 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]~~ procurement unit:

(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

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(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~~] The division or a procurement unit with independent procurement authority 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 entity~~] the division or a procurement unit with independent procurement authority 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 48. Section **63G-6a-610 (Effective 05/01/13)** is amended to read:

**63G-6a-610 (Effective 05/01/13). 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 49. Section **63G-6a-611 (Effective 05/01/13)** is amended to read:

**63G-6a-611 (Effective 05/01/13). 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~~] the division or a procurement unit with independent procurement authority 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



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(f) describe the procedure that the ~~[authorized purchasing entity]~~ division or the procurement unit with independent procurement authority 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]~~ division or the procurement unit with independent procurement authority will follow in conducting the reverse auction.

(4) ~~[An authorized purchasing entity]~~ The division or a procurement unit with independent procurement authority shall publish an invitation for bids for a reverse auction in accordance with the requirements of Section 63G-6a-406.

Section 50. Section **63G-6a-612 (Effective 05/01/13)** is amended to read:

### **63G-6a-612 (Effective 05/01/13). Conduct of reverse auction.**

(1) When conducting a reverse auction, ~~[an authorized purchasing entity]~~ the division or a procurement unit with independent procurement authority:

(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]~~ procurement unit 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:

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(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 51. Section **63G-6a-702 (Effective 05/01/13)** is amended to read:

### **63G-6a-702 (Effective 05/01/13). Contracts awarded by request for proposals.**

(1) A request for proposals standard procurement process may be used instead of bidding if the procurement officer determines, in writing, that the request for proposals standard procurement process will provide the best value to the [public] procurement unit.

(2) The request for proposals standard procurement process is appropriate to use for:

(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 52. Section **63G-6a-703 (Effective 05/01/13)** is amended to read:

### **63G-6a-703 (Effective 05/01/13). Request for proposals -- Notice -- Contents.**

(1) The request for proposals standard procurement process begins when [the ~~authorized purchasing entity~~] the division or a procurement unit with independent procurement authority 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

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(iii) the 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.

(3) [~~An authorized purchasing entity~~] The division or a procurement unit with independent procurement authority shall publish a request for proposals in accordance with the requirements of Section 63G-6a-406.

Section 53. Section **63G-6a-704 (Effective 05/01/13)** is amended to read:

### **63G-6a-704 (Effective 05/01/13). Opening of proposals and acceptance.**

(1) An [~~authorized purchasing entity~~] issuing procurement unit 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~~] issuing procurement unit 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 54. Section **63G-6a-705 (Effective 05/01/13)** is amended to read:

### **63G-6a-705 (Effective 05/01/13). Discussions -- Best and final offers.**

(1) After proposals are received and opened, the [~~authorized purchasing entity~~] issuing procurement unit may conduct discussions with the offerors and allow the offerors to make best and final offers after the discussions.

(2) The [~~authorized purchasing entity~~] issuing procurement unit shall:

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(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 55. Section **63G-6a-707 (Effective 05/01/13)** is amended to read:

**63G-6a-707 (Effective 05/01/13). 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.

## **SB0190S02 compared with SB0190S01**

(3) The [~~authorized purchasing entity~~] issuing procurement unit shall:

(a) appoint an evaluation committee consisting of at least three individuals [~~at least one of which is a representative of the user agency~~]; 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 standard procurement process; and

(iv) conducts the evaluation in a manner that ensures a fair and competitive process 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~~] issuing procurement unit.

(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.

(b) When selecting a construction manager/general contractor for a construction project, the evaluation committee:

(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

(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~~] issuing procurement unit.

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(7) An ~~[authorized purchasing entity]~~ issuing procurement unit 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]~~ issuing procurement unit 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]~~ procurement unit 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.

(8) The evaluation committee shall award scores to each responsive and responsible proposal that has not been disqualified from consideration under the provisions of this chapter.

Section 56. Section **63G-6a-708 (Effective 05/01/13)** is amended to read:

**63G-6a-708 (Effective 05/01/13). Cost-benefit analysis.**

~~[(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)]~~ (1) If the ~~[contract is]~~ highest score awarded by the evaluation committee, including the score for cost, is awarded to [an offeror] a proposal other than the lowest cost ~~[offeror]~~ proposal, and the difference between the cost of the ~~[accepted]~~ highest scored proposal and the lowest cost proposal exceeds the greater of \$10,000 or 5% of the lowest cost ~~[offer, an authorized purchasing entity]~~ proposal, the issuing procurement unit shall [include, with the statement described in Subsection (1), an] make 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)]~~ (1)(c), the estimated added

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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] proposal and the cost of the lower cost [offerors] proposals; and

(e) includes any other information required by rule made by the applicable rulemaking authority.

(2) If the informal cost-benefit analysis described in Subsection (1) does not justify award of the contract to the offeror that received the highest score, the issuing procurement unit:

(a) may not award the contract to the offeror that received the highest score; and

(b) may award the contract to the offeror that received the next highest score, unless:

(i) an informal cost-benefit analysis is required, because the difference between the cost proposed by the offeror that received the next highest score and the lowest cost proposal exceeds the greater of \$10,000 or 5% of the lowest cost proposal; and

(ii) the informal cost-benefit analysis does not justify award of the contract to the offeror that received the next highest score.

(3) If the informal cost-benefit analysis described in Subsection (1) does not justify award of the contract to the offeror, described in Subsection (2), that received the next highest score, the issuing procurement unit:

(a) may not award the contract to the offeror that received the next highest score; and

(b) shall continue with the process described in Subsection (2) for each offeror that received the next highest score, until the issuing procurement unit:

(i) awards the contract in accordance with the provisions of this section; or

(ii) cancels the request for proposals.

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(4) (a) An issuing procurement unit is not required to make the cost-benefit analysis described in this section for a contract with a construction manager/general contractor if the contract is awarded based solely on the qualifications of the construction manager/general contractor and the management fee described in Subsection 63G-6a-706(6).

(b) The applicable rulemaking authority shall make rules that establish procedures and criteria for awarding a contract described in Subsection (4)(a) to ensure that:

- (i) a competitive process is maintained; and
- (ii) the contract awarded is in the best interest of the procurement unit.

Section 57. Section **63G-6a-709 (Effective 05/01/13)** is amended to read:

**63G-6a-709 (Effective 05/01/13). Award of contract -- Cancellation --**

### **Disqualification.**

(1) After the evaluation and scoring of proposals is completed, the [~~authorized purchasing entity~~] issuing procurement unit shall:

(a) except as provided in Section 63G-6a-708, award the contract as soon as practicable to:

- (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~~] issuing procurement unit 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~~] issuing procurement unit 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~~] issuing procurement unit 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.



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(4) If an [~~authorized purchasing entity~~] issuing procurement unit cancels a request for proposals without awarding a contract, the [~~authorized purchasing entity~~] issuing procurement unit shall make available for public inspection a written justification for the cancellation.

Section 58. Section **63G-6a-709.5** is enacted to read:

### **63G-6a-709.5. Publication of award and scores.**

The issuing procurement unit shall, on the day on which the award of a contract is announced, make available to each offeror and to the public a written statement that includes:

(1) the name of the offeror to which the contract is awarded and the total score awarded by the evaluation committee to that offeror;

(2) the total score awarded by the evaluation committee to each offeror to which the contract is not awarded, without identifying which offeror received which score; and

(3) any cost-benefit analysis made, under Section 63G-6a-708, in relation to the request for proposals.

Section 59. Section **63G-6a-710 (Effective 05/01/13)** is amended to read:

### **63G-6a-710 (Effective 05/01/13). Multiple stage process.**

(1) [~~An authorized purchasing entity~~] The division or a procurement unit with independent procurement authority 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~~] the division or a procurement unit with independent procurement authority shall conduct a multiple stage process in accordance with this part.

Section 60. Section **63G-6a-711 (Effective 05/01/13)** is amended to read:

### **63G-6a-711 (Effective 05/01/13). Procurement for submitted proposal.**

(1) As used in this section:

(a) "Committee" is as defined in Section 63M-1-2602.

(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

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standard procurement process in compliance with 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 unit~~] a procurement unit with independent procurement authority for a procurement [~~process~~] under Title 63M, Chapter 1, Part 26, Government Procurement Private Proposal Program.

Section 61. Section **63G-6a-802 (Effective 05/01/13)** is amended to read:

**63G-6a-802 (Effective 05/01/13). 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;

(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.

(2) [~~A~~] The division or a procurement unit with independent procurement authority may award a contract [~~may be awarded~~] for a procurement item without competition if the procurement officer, the head of [~~an authorized purchasing entity~~] the procurement unit, or a

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designee of either who is senior to the procurement officer or the head of the ~~[authorized purchasing entity]~~ procurement unit, determines in writing that:

(a) there is only one source for the procurement item; or

(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.

(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 transitional costs are unreasonable or cost prohibitive; or

(d) procurement of public utility services.

(4) The applicable rulemaking authority 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.

(5) ~~[An authorized purchasing entity]~~ The division or a procurement unit with independent procurement authority who awards a sole source contract on behalf of ~~[a public]~~ another procurement unit shall negotiate with the contractor to ensure that the terms of the contract, including price and delivery, are in the best interest of the ~~[state]~~ procurement unit.

(6) ~~[A public procurement unit]~~ The division or a procurement unit with independent procurement authority may extend a contract for a reasonable period of time without engaging in a standard procurement process, if:

(a) the award of a new contract for the procurement item is delayed due to a protest or appeal;

(b) the standard 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

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(f) the extension covers the period of time during which contract negotiations with a new provider are being conducted.

Section 62. Section **63G-6a-804 (Effective 05/01/13)** is amended to read:

### **63G-6a-804 (Effective 05/01/13). Purchase of prison industry goods.**

(1) (a) A [~~public~~] procurement unit that is not a political subdivision shall purchase goods and services produced by the Utah Correctional Industries Division as provided in this section.

(b) A political subdivision of the state may, and is encouraged to, purchase goods and services under this section.

(c) A [~~public~~] procurement unit is not required to use a standard procurement process to purchase goods or services under this section.

(2) On or before July 1 of each year, the director of the Utah Correctional Industries shall:

(a) publish and distribute to all [~~public~~] procurement units and other interested public entities a catalog of goods and services provided by the Correctional Industries Division, including a description and price of each item offered for sale; and

(b) update and revise the catalog described in Subsection (2)(a) during the year as the director considers necessary.

(3) (a) 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 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 [~~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):

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- (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 of the board;
- (ii) in the case of an institution of higher education of the state, the president of the institution, or the president's designee, shall make the final decision; or
- (iii) in the case of [~~a non-executive state procurement unit~~] any of the following entities, a person designated by the applicable rulemaking authority shall make the final decision[-]:

- (A) a legislative procurement unit;
- (B) a judicial procurement unit; or
- (C) a public transit district.

Section 63. Section **63G-6a-805 (Effective 05/01/13)** is amended to read:

**63G-6a-805 (Effective 05/01/13). Purchase from community rehabilitation programs.**

- (1) As used in this section:
  - (a) "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

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(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.

(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) There is created within the division the Purchasing from Persons with Disabilities Advisory Board.

(3) The advisory board shall consist of three members, as follows:

(a) the director of the division or the director's designee;

(b) the executive director of the Utah State Office of Rehabilitation, created under Section 53A-24-103, or the executive director's designee; and

(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.

(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:

(a) identifying goods and services that are available from community rehabilitation programs in accordance with the requirements of Subsection (7);

(b) approving prices in accordance with Subsection (7)(c) for goods and services that are identified under Subsection (4)(a);

(c) developing, maintaining, and approving a preferred procurement contract list of goods and services identified and priced under Subsections (4)(a) and (b);

(d) reviewing bids received by a community rehabilitation program; and

(e) awarding and renewing specified contracts for set contract times, without competitive bidding, for the purchase of goods and services under Subsection (7).

(5) The provisions of Subsections (4) and (7)(a) are an exception to the procurement provisions under this chapter.

(6) (a) The advisory board may designate a central not-for-profit association, appoint

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its members, and establish guidelines for its duties.

(b) The designated central not-for-profit association serves at the pleasure of the advisory board. 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 advisory 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) review bids and recommend the award of contracts under the advisory board's direction;

(v) collect and report program data to the advisory board and to the division; and

(vi) other duties specified by the advisory board.

(7) Except as provided under Subsection (9), notwithstanding any provision 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 (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.

(8) Each community rehabilitation program:

(a) may submit a bid to the advisory board at any time and not necessarily in response to 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.

(9) During a fiscal year, the requirement for a [public] procurement unit to purchase

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goods and services produced by a community rehabilitation program under the preferred procurement list under Subsection (7) does not apply if the division determines that the total amount of procurement contracts with community rehabilitation programs has reached \$5 million for that fiscal year.

(10) In the case of conflict between a purchase under this section and a purchase under Section 63G-6a-804, this section prevails.

Section 64. Section **63G-6a-806** is enacted to read:

**63G-6a-806. Exception for public transit district contracting with a county or municipality.**

A public transit district, organized under Title 17B, Chapter 2a, Part 8, Public Transit District Act, may, without going through a standard procurement process or an exception to a standard procurement process described in Part 8, Exception to Procurement Requirements:

(1) contract with a county or municipality to receive money from the county or municipality; and

(2) use the money described in Subsection (1) to fund a transportation project or a transit-related program in accordance with rules made by the applicable rulemaking authority.

Section 65. Section **63G-6a-902 (Effective 05/01/13)** is amended to read:

**63G-6a-902 (Effective 05/01/13). Cancellation and rejection of bids and proposals.**

(1) An [~~authorized purchasing entity~~] issuing procurement unit may cancel an invitation for bids, a request for proposals, or other solicitation 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 [~~public~~] procurement unit in accordance with 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 66. Section **63G-6a-903 (Effective 05/01/13)** is amended to read:

**63G-6a-903 (Effective 05/01/13). Determination of nonresponsibility of bidder or offeror.**

(1) A determination of nonresponsibility of a bidder or offeror made by an [~~authorized purchasing entity~~] issuing procurement unit shall be made in writing, in accordance with the



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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.

(3) Subject to Title 63G, Chapter 2, Government Records Access and Management Act, information furnished by a bidder or offeror pursuant to this section may not be disclosed outside of [~~the public~~] a procurement unit [~~or authorized purchasing entity~~] without prior written consent by the bidder or offeror.

Section 67. Section **63G-6a-904 (Effective 05/01/13)** is amended to read:

**63G-6a-904 (Effective 05/01/13). 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, a procurement officer, or the head of [~~an authorized purchasing entity~~] a procurement unit with independent procurement authority may, after consultation with the [~~public~~] procurement unit involved in the matter for which debarment is sought and, if the [~~public~~] procurement unit is in the state executive branch, the attorney general:

(a) debar a person for cause from consideration for award of contracts 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 that might lead to debarment.

(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 (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.

(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 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

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a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a state contractor;

- (c) conviction under state or federal antitrust statutes;
- (d) failure without good cause to perform in accordance with the terms of the contract;
- (e) a violation of this chapter~~[, including Part 22, Ethical Requirements]~~; or
- (f) any other cause that the chief procurement officer, the procurement officer, or the

head of ~~[an authorized purchasing entity]~~ a procurement unit with independent procurement authority determines to be so serious and compelling as to affect responsibility as a state contractor, including debarment by another governmental entity.

Section 68. Section **63G-6a-905** is enacted to read:

**63G-6a-905. Quote, bid, offer, or contract prohibited by person with outstanding tax lien -- Exceptions -- Rejection of quote, bid, or offer.**

(1) Except as provided in Subsection (2), a person with an outstanding tax lien in the state may not:

- (a) submit a quote, bid, or offer to a procurement unit; or
- (b) contract to provide a procurement item to a procurement unit.

(2) Subsection (1) does not apply to the extent that a procurement officer determines it is in the public interest to grant an exception to the requirements of Subsection (1) for a particular quote, bid, offer, or contract specified by the procurement officer.

(3) A procurement unit may reject a quote, bid, or offer submitted in violation of Subsection (1).

Section 69. Section **63G-6a-1002 (Effective 05/01/13)** is amended to read:

**63G-6a-1002 (Effective 05/01/13). Reciprocal preference for providers of state products.**

(1) (a) An ~~[authorized purchasing entity]~~ issuing procurement unit shall, for all procurements, give a reciprocal preference to those bidders offering procurement items that are produced, manufactured, mined, grown, or performed in Utah over those bidders offering procurement items that are produced, manufactured, mined, grown, or performed in any state that gives or requires a preference to 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

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applied by the other state for that particular procurement item.

(c) In order to receive a reciprocal preference under this section, the bidder shall certify on the bid that the procurement items offered are produced, manufactured, mined, grown, or performed in Utah.

(d) The reciprocal preference is waived if 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 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 procurement items that are produced, manufactured, mined, grown, or performed in Utah, and with the benefit of the reciprocal preference, the bid of the other bidder is equal to or less than the original lowest bid, the ~~[authorized purchasing entity]~~ issuing procurement unit shall:

(i) give notice to the bidder offering 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 ~~[authorized purchasing entity]~~ issuing procurement unit shall include the exact price submitted by the lowest bidder in the notice the ~~[authorized purchasing entity]~~ issuing procurement unit submits to the preferred bidder.

(c) The ~~[authorized purchasing entity]~~ issuing procurement unit 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 ~~[authorized purchasing entity]~~ issuing procurement unit 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 ~~[authorized purchasing entity]~~ issuing procurement unit shall comply with the rules 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

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jeopardize the receipt of federal funds.

Section 70. Section **63G-6a-1003 (Effective 05/01/13)** is amended to read:

### **63G-6a-1003 (Effective 05/01/13). 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, an ~~[authorized purchasing entity]~~ issuing procurement unit shall grant a resident contractor a reciprocal preference 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) 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 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 whose principal place of business 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 ~~[authorized purchasing entity]~~ issuing procurement unit 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 ~~[authorized purchasing entity]~~ issuing procurement unit shall include the exact

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price submitted by the lowest bidder in the notice that the ~~[authorized purchasing entity]~~ issuing procurement unit submits to the preferred resident contractor.

(c) The ~~[authorized purchasing entity]~~ issuing procurement unit 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 ~~[authorized purchasing entity]~~ issuing procurement unit 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 ~~[authorized purchasing entity]~~ issuing procurement unit shall comply with the rules 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 71. Section **63G-6a-1102 (Effective 05/01/13)** is amended to read:

**63G-6a-1102 (Effective 05/01/13). 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 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 described in the invitation for bids, the bid shall be rejected unless, pursuant to rules of the applicable rulemaking authority, the ~~[authorized purchasing entity]~~ issuing procurement unit 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 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 procurement officer or the head of an ~~[authorized purchasing entity]~~ issuing procurement unit 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 described in Subsection (1) from a specific insurance or

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surety company, producer, agent, or broker.

(b) A person who violates Subsection (4)(a) is guilty of an infraction.

Section 72. Section **63G-6a-1103 (Effective 05/01/13)** is amended to read:

**63G-6a-1103 (Effective 05/01/13). 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 procurement officer or the head of the [~~authorized purchasing entity~~] issuing procurement unit responsible for carrying out the construction project may not require a contractor to whom a 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 procurement officer considers any or all of the bonds to be unnecessary to protect the [~~public~~] procurement unit.

(4) A person shall have a right of action on a payment bond under this section for any unpaid amount due 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 day on which the

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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 may only be brought in a court of competent jurisdiction in a county where the construction contract was to be performed. 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 73. Section **63G-6a-1202 (Effective 05/01/13)** is amended to read:

### **63G-6a-1202 (Effective 05/01/13). Required contract clauses -- Computation of price adjustments -- Use of rules and regulations.**

(1) The rules of the applicable rulemaking authority shall require for state construction contracts, and may permit or require for 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 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 procurement officer; and

(d) site conditions differing from those indicated in the construction contract, or ordinarily encountered, except that differing site conditions clauses required by the rules need not be included in a construction contract when:

(i) the contract is negotiated;

(ii) the contractor provides the site or design; or

(iii) the parties have otherwise agreed with respect to the risk of differing site conditions.

(2) Adjustments in price pursuant to clauses described in Subsection (1) shall be computed in one or more of the following ways:

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(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 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 procurement officer in accordance with applicable rules and subject to the provisions of Part 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-6a-1206.

(4) The rules of the applicable rulemaking authority shall require for construction contracts, and may permit or require for 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 [public] procurement unit.

(5) The contract clauses described in this section shall be established by rule.

However, the procurement officer or the head of an [~~authorized purchasing entity~~] issuing procurement unit may modify the clauses for inclusion in any particular contract. The applicable rulemaking authority may, by rule, require that:

(a) variations 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.

(6) A contract for construction entered into by a [public] procurement unit shall contain a clause that addresses the rights of the parties when, after the contract is executed, site



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conditions are discovered that:

(a) the contractor did not know existed, and should not have known existed, at the time that the contract was executed; and

(b) materially impacts the costs of construction.

Section 74. Section **63G-6a-1203 (Effective 05/01/13)** is amended to read:

**63G-6a-1203 (Effective 05/01/13). 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~~ or

(c) a professional engineer or professional land surveyor, licensed under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

(2) (a) A contract, including an amendment to an existing contract, entered into under 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 75. Section **63G-6a-1204 (Effective 05/01/13)** is amended to read:

**63G-6a-1204 (Effective 05/01/13). Multiyear contracts.**

(1) Except as provided in Subsection (7), a ~~public~~ procurement unit may enter into a 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;

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(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 or otherwise available 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 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

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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 standard 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, a road, [or] a public transit project, or a contract for the financing of equipment.

Section 76. Section **63G-6a-1204.5 (Effective 05/01/13)**, which is renumbered from Section 63G-6a-405 (Effective 05/01/13) is renumbered and amended to read:

~~[63G-6a-405 (Effective 05/01/13)].~~

**63G-6a-1204.5 (Effective**

**05/01/13). Multiple award contracts.**

(1) (a) ~~[An authorized purchasing entity]~~ The division or a procurement unit with independent procurement authority may enter into multiple award contracts with bidders or offerors.

(b) The applicable rulemaking authority may make rules, consistent with this section,

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regulating the use of multiple award contracts.

(2) Multiple award contracts may be in ~~[an authorized purchasing entity's]~~ a procurement unit'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]~~ A procurement unit that enters into multiple award contracts under this section 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]~~ procurement unit 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]~~ procurement unit may enter into multiple award contracts at the end of the procurement process.

(4) ~~[An authorized purchasing entity]~~ A procurement unit that enters into multiple award contracts under this section shall:

(a) obtain, under the multiple award contracts, 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 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.]~~

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~~[(6)] (5)~~ An applicable rulemaking authority may make rules to further regulate a procurement under this section.

Section 77. Section **63G-6a-1205 (Effective 05/01/13)** is amended to read:

**63G-6a-1205 (Effective 05/01/13). Regulation of contract types -- Permitted and prohibited contract types.**

(1) Except as otherwise provided in this section, and subject to rules made under this section by the applicable rulemaking authority, a [public] procurement unit may use any type of contract that will promote the best interests of the [state] procurement unit.

(2) An applicable rulemaking authority:

(a) may make rules governing, placing restrictions on, or prohibiting the use of any type of contract; and

(b) may not make rules that permit the use of a contract:

(i) that is prohibited under this section; or

(ii) in a manner that is prohibited under this section.

~~[(2) A public procurement unit may not use a cost-plus-a-percentage-of-cost contract.]~~

~~[(3) A public procurement unit may not use a cost-reimbursement contract unless the procurement officer makes a written determination that:]~~

~~[(a) the contract is likely to be less costly to the public procurement unit than any other type of contract; or]~~

~~[(b) it is impracticable to obtain the procurement item under another type of contract.]~~

~~[(4)] (3)~~ A procurement officer, the head of an [authorized procurement entity] issuing procurement unit, 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[-]; and

(c) the use of a specified type of contract, other than a firm fixed price contract, is in the best interest of the procurement unit, taking into consideration the following criteria:

(i) the type and complexity of the procurement item;

(ii) the difficulty of estimating performance costs at the time the contract is entered

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into, due to factors that may include:

(A) the difficulty of determining definitive specifications;

(B) the difficulty of determining the risks, to the contractor, that are inherent in the nature of the work to be performed; or

(C) the difficulty to clearly determine other factors necessary to enter into an accurate firm fixed price contract;

(iii) the administrative costs to the procurement unit and the contractor;

(iv) the degree to which the procurement unit is required to provide technical coordination during performance of the contract;

(v) the impact that the choice of contract type may have upon the level of competition for award of the contract;

(vi) the stability of material prices, commodity prices, and wage rates in the applicable market;

(vii) the impact of the contract type on the level of urgency related to obtaining the procurement item;

(viii) the impact of any applicable governmental regulation relating to the contract; and

(ix) other criteria that the procurement officer determines may relate to determining the contract type that is in the best interest of the procurement unit.

(4) Contract types that, subject to the provisions of this section and rules made under this section, may be used by a procurement unit include the following:

(a) a fixed price contract;

(b) a fixed price contract with price adjustment;

(c) a time and materials contract;

(d) a labor hour contract;

(e) a definite quantity contract;

(f) an indefinite quantity contract;

(g) a requirements contract; or

(h) a contract that includes one of the following construction delivery methods:

(i) design-build;

(ii) design-bid-build; or

(iii) construction manager/general contractor.

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(5) Except as it applies to a change order, a procurement unit may not enter into a cost-plus-percentage-of-cost contract, unless:

(a) use of a cost-plus-percentage-of-cost contract is approved by the procurement officer;

(b) it is standard practice in the industry to obtain the procurement item through a cost-plus-percentage-of-cost contract; and

(c) the percentage and the method of calculating costs in the contract are in accordance with industry standards.

(6) A procurement unit may not enter into a cost-reimbursement contract, unless the procurement officer makes a written determination that:

(a) (i) a cost-reimbursement contract is likely to cost less than any other type of permitted contract; or

(ii) it is impracticable to obtain the procurement item under any other type of permitted contract; and

(b) the proposed contractor's accounting system:

(i) will timely develop the cost data in the form necessary for the procurement unit to timely and accurately make payments under the contract; and

(ii) will allocate costs in accordance with generally accepted accounting principles.

Section 78. Section **63G-6a-1206 (Effective 05/01/13)** is amended to read:

**63G-6a-1206 (Effective 05/01/13). Rules and regulations to determine allowable incurred costs -- Required information -- Auditing of books.**

(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~~] issuing procurement unit 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

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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 a standard procurement process or pursuant to a sole source procurement, if the total contract price is expected to exceed an amount established by rule made by the applicable rulemaking authority; or

(b) the pricing of any change order that is expected to exceed an amount established by rule made by the applicable rulemaking authority.

(4) A contract or change order that requires a certification described in Subsection (2) shall include a provision that the price to the [public] procurement unit, including profit or fee, shall be adjusted to exclude any significant sums by which the [public] procurement unit finds that the price was increased because the contractor provided cost or pricing data that was inaccurate, incomplete, or not current as of the date specified by the procurement officer.

(5) A [public] procurement unit is not required to comply with Subsection (2) if:

(a) the contract price is based on adequate price competition;

(b) the contract price is based on established catalogue prices or market prices;

(c) the contract price is set by law or rule; or

(d) the procurement states, in writing:

(i) that, in accordance with rules made by the applicable rulemaking authority, the requirements of Subsection (2) may be waived; and

(ii) the reasons for the waiver.

(6) The 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:

(a) a person who has submitted cost or pricing data pursuant to this section; or

(b) a contractor or subcontractor under a contract or subcontract other than a firm fixed price contract.

(7) Unless a shorter time is provided for by contract:

(a) a person described in Subsection (6)(a) shall maintain the books and records described in Subsection (6) for three years after the day on which the fiscal year in which final



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payment is made under 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 ends.

Section 79. Section **63G-6a-1208** is enacted to read:

### **63G-6a-1208. Installment payments -- Contract prepayments.**

(1) A contract entered into by a procurement unit may provide for installment payments, including interest charges, over a period of time, if the procurement officer makes a written finding that:

(a) the use of installment payments are in the interest of the procurement unit;

(b) installment payments are not used as a method of avoiding budgetary constraints;

(c) the procurement unit has obtained all budgetary approvals and other approvals required for making the installment payments;

(d) all aspects of the installment payments required in the contract are in accordance with the requirements of law; and

(e) for a contract awarded through an invitation for bids or a request for proposals, the invitation for bids or request for proposals indicates that installment payments are required or permitted.

(2) A procurement unit may not pay for a procurement item before the procurement item is received by the procurement unit, unless the procurement officer makes a written finding that it is necessary or beneficial for the procurement unit to pay for the procurement item before the procurement item is received by the procurement unit.

(3) Circumstances where prepayment may be necessary for, or beneficial to, the procurement unit include:

(a) when it is customary in the industry to prepay for the procurement item;

(b) if the procurement unit will receive an identifiable benefit by prepaying, including reduced costs, additional procurement items, early delivery, better service, or better contract terms; or

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(c) other circumstances permitted by rule made by the applicable rulemaking authority.

(4) The applicable rulemaking authority may make rules governing prepayments.

(5) A prepaid expenditure shall be supported by documentation indicating:

(a) the amount of the prepayment;

(b) the prepayment schedule;

(c) the procurement items to which each prepayment relates;

(d) the remedies for a contractor's noncompliance with requirements relating to the provision of the procurement items; and

(e) all other terms and conditions relating to the payments and the procurement items.

(6) The procurement officer or the procurement officer's designee may require a performance bond, of up to 100% of the prepayment amount, from the person to whom the prepayments are made.

Section 80. Section **63G-6a-1209** is enacted to read:

### **63G-6a-1209. Leases.**

(1) As used in this section, "lease" means for a procurement unit to lease or lease-purchase a procurement item from a person.

(2) This section does not apply to the lease of real property.

(3) A procurement unit may not lease a procurement item unless the procurement unit complies with the requirements of this section.

(4) A procurement unit may lease a procurement item if:

(a) the procurement officer determines that it is in the best interest of the procurement unit to lease the procurement item, after the procurement officer:

(i) investigates alternative means of obtaining the procurement item; and

(ii) considers the costs and benefits of the alternative means of obtaining the procurement item;

(b) all conditions for renewal and cost are included in the lease;

(c) the lease is awarded through a standard procurement process, or an exception to a standard procurement process described in Part 8, Exceptions to Procurement Requirements;

(d) for a standard procurement process, the invitation for bids, request for proposals, or request for quotes states:

(i) that the procurement unit is seeking, or willing to consider, a lease; and

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(ii) for a lease purchase, that the procurement unit is seeking, or willing to consider, a lease-purchase;

(e) the lease is not used to avoid competition; and

(f) the lease complies to all other provisions of law or rule applicable to the lease.

Section 81. Section **63G-6a-1210** is enacted to read:

### **63G-6a-1210. Contract provisions for incentives, damages, and penalties.**

A procurement unit may include in a contract terms that provide for:

(1) incentives, including bonuses;

(2) payment of damages, including liquidated damages; or

(3) penalties.

Section 82. Section **63G-6a-1302 (Effective 05/01/13)** is amended to read:

### **63G-6a-1302 (Effective 05/01/13). Alternative methods of construction contracting management.**

(1) The applicable rulemaking authority shall, by rule provide as many alternative methods of construction contracting management as determined to be feasible.

(2) The rules described in Subsection (1) shall:

(a) grant to the procurement officer or the head of the ~~[state purchasing unit]~~ issuing procurement unit responsible for carrying out the construction project the discretion to select the appropriate method of construction contracting management for a particular project; and

(b) require the procurement officer to execute and include in the contract file a written statement describing the facts that led to the selection of a particular method of construction contracting management for each project.

(3) Before choosing a construction contracting management method, the procurement officer or the head of the ~~[state purchasing unit]~~ issuing procurement unit responsible for carrying out the construction project shall consider the following factors:

(a) when the project must be ready to be occupied;

(b) the type of project;

(c) the extent to which the requirements of the ~~[public]~~ procurement unit, and the way they are to be met are known;

(d) the location of the project;

(e) the size, scope, complexity, and economics of the project;

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(f) the source of funding and any resulting constraints necessitated by the funding source;

(g) the availability, qualification, and experience of public personnel to be assigned to the project and the amount of time that the public personnel can devote to the project; and

(h) the availability, qualifications, and experience of outside consultants and contractors to complete the project under the various methods being considered.

(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 standard procurement process; or

(ii) an exception to the requirement to use a standard procurement process, described in Part 8, Exceptions to Procurement Requirements; 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 standard procurement process, or an exception to the requirement to use a standard procurement process, described in Part 8, Exceptions to Procurement Requirements, in the same manner as if the subcontract work was procured directly by the [public] procurement unit.

(6) Procurement rules adopted by the State Building Board under 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 83. Section **63G-6a-1303 (Effective 05/01/13)** is amended to read:

**63G-6a-1303 (Effective 05/01/13). Drug and alcohol testing required for state construction contracts.**

(1) As used in this section:

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(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 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) "State executive entity" means:

(i) a state executive branch:

(A) department;

(B) division;

(C) agency;

(D) board;

(E) commission;

(F) council;

(G) committee; or

(H) institution; 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 executive entity.

(2) Except as provided in Subsection (7), a state executive entity may not enter into a

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state construction contract unless the public construction contract requires that the contractor demonstrate to the state executive entity that the contractor:

(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;

(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);

(c) subjects the covered individuals to random testing under the drug and alcohol testing policy described in Subsection (2)(a) 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

(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)(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)(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) A state executive entity shall include in a state construction contract:

(i) a reference to the rules described in Subsection (4)(b); or

(ii) if the 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

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comply with Subsection (2).

(ii) A subcontractor is not subject to penalties for the failure of a contractor to comply with Subsection (2).

(4) An [~~authorized~~] applicable rulemaking authority:

(a) may make rules that establish the requirements and procedures a contractor 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 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~~] executive entity, 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 executive entity enters into a state construction contract in compliance with this section, the state is not required to audit, monitor, 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:

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- (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 executive entity determines that the application of this section would severely disrupt the operation of a [public] procurement unit to the detriment of the [public] procurement unit or the general public, including:

- (a) jeopardizing the receipt of federal funds;
- (b) causing the state construction contract to be a sole source contract; or
- (c) causing the state construction contract 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 84. Section **63G-6a-1502 (Effective 05/01/13)** is amended to read:

### **63G-6a-1502 (Effective 05/01/13). 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-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 the [public] procurement unit.

Section 85. Section **63G-6a-1503 (Effective 05/01/13)** is amended to read:

### **63G-6a-1503 (Effective 05/01/13). Selection committee for architect-engineer services.**

(1) In the procurement of architect-engineer services, the procurement officer or the



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head of ~~[a state purchasing unit]~~ an issuing procurement 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 evaluation committee for architect-engineer services contracts under its authority.

(3) An evaluation committee for architect-engineer services contracts not under the authority of the Building Board shall be established in accordance with rules 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;

(b) consider no less than three firms; and

(c) based upon criteria established and published by the ~~[authorized purchasing entity]~~ issuing procurement unit, select no less than three of the firms considered to be the most highly qualified to provide the services required.

Section 86. Section **63G-6a-1506 (Effective 05/01/13)** is amended to read:

**63G-6a-1506 (Effective 05/01/13). Restrictions on procurement of architect-engineer services.**

(1) Except as provided in Subsection (2), when ~~[an authorized purchasing entity]~~ the division or a procurement unit with independent procurement authority, in accordance with Section 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 ~~[authorized purchasing entity's]~~ procurement unit's competitive procurement process; and

(b) the ~~[authorized purchasing entity]~~ procurement unit 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) Subsection (1) does not apply when the ~~[authorized purchasing entity]~~ procurement unit is procuring architect or engineer services for contracts related to research activities and technology transfer.

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Section 87. Section **63G-6a-1603 (Effective 05/01/13)** is amended to read:

**63G-6a-1603 (Effective 05/01/13). Decisions of protest officer to be in writing --**

### **Effect of no writing.**

(1) After a timely protest is filed in accordance with Section 63G-6a-1602, the protest officer:

- (a) shall consider the protest; and
- (b) may hold a hearing on the protest.

(2) (a) The protest officer may:

- (i) subpoena witnesses and compel their attendance at a protest hearing; or
- (ii) subpoena documents for production at a protest hearing.

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

(c) The [~~Procurement Policy Board~~] applicable rulemaking authority shall make rules relating to intervention in a protest, including designating:

- (i) who may intervene; and
- (ii) the time and manner of intervention.

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

- (i) record the hearing;
- (ii) preserve all evidence presented at the hearing; and
- (iii) preserve all records and other evidence relied upon in reaching the written decision

described in this section.

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

(f) The records described in Subsections (2)(d) and (e) may not be destroyed until the decision, and any appeal of the decision, becomes final.

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

(3) A protest officer, or the protest officer's designee, shall promptly issue a written decision regarding any protest, debarment, suspension, or contract controversy if it is not settled by mutual agreement. The decision shall state the reasons for the action taken and

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inform the protestor, contractor, or prospective contractor of the right to judicial or administrative review as provided in this chapter.

(4) (a) A decision described in this section is effective until stayed or reversed on appeal, except to the extent provided in Section 63G-6a-1903. A person who issues a decision described in Subsection (1) shall mail, email, or otherwise immediately furnish a copy of the decision to the protestor, prospective contractor, or contractor. [~~The decision~~]

(b) A decision described in Subsection (4)(a) that is issued in relation to a procurement unit other than a legislative procurement unit or a judicial procurement unit shall be final and conclusive unless the protestor, prospective contractor, or contractor:

~~[(a)]~~ (i) for a controversy described in Section 63G-6a-1905, commences an action in district court in accordance with Subsection 63G-6a-1802(5);

~~[(b)]~~ (ii) for a controversy related to a solicitation or the award of a contract, files an appeal under Section 63G-6a-1702; or

~~[(c)]~~ (iii) for a debarment or suspension, files an appeal under Section 63G-6a-1702.

(c) A decision described in Subsection (4)(a) that is issued in relation to a legislative procurement unit or a judicial procurement unit shall be final and conclusive unless the protestor, prospective contractor, or contractor:

(i) for a controversy described in Section 63G-6a-1905, commences an action in district court in accordance with Subsection 63G-6a-1802(5);

(ii) for a controversy related to a solicitation or the award of a contract, files an appeal under Subsection 63G-6a-1802(1)(b); or

(iii) for a debarment or suspension, files an appeal under Subsection 63G-6a-1802(1)(b).

(5) If the protest officer does not issue the written decision regarding a protest or a contract controversy within 30 calendar days after the day on which a written request for a final decision is filed with the protest officer, or within a longer period as may be agreed upon by the parties, the protestor, prospective contractor, or contractor may proceed as if an adverse decision had been received.

(6) Except for a controversy described in Section 63G-6a-1905, a determination under this section by the protest officer regarding an issue of fact may not be overturned on appeal unless the decision is arbitrary and capricious or clearly erroneous.

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Section 88. Section **63G-6a-1702 (Effective 05/01/13)** is amended to read:

**63G-6a-1702 (Effective 05/01/13). Appeal to Utah State Procurement Policy**

**Board -- Appointment of procurement appeals panel -- Proceedings.**

(1) This part applies to all procurement units other than:

(a) a legislative procurement unit;

(b) a judicial procurement unit;

(c) a ~~focal government procurement unit~~; county or municipality;

(d) a political subdivision created by counties or municipalities under Title 11, Chapter 13, Interlocal Cooperation Act; or

~~(d)e~~ a public transit district.

[~~(+)~~] (2) A party to a protest involving a procurement unit other than a procurement described in Subsection (1) may appeal the protest decision to the [~~procurement policy~~] board by:

(a) filing a written notice of appeal with the chair of the [~~procurement policy~~] board within seven days after:

(i) the day on which the written decision described in Section 63G-6a-1603 is:

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

(B) emailed or mailed to the address or email address of record provided by the party under Subsection 63G-6a-1602(3); or

(ii) the day on which the 30-day period described in Subsection 63G-6a-1603(5) ends, if a written decision is not issued before the end of the 30-day period;

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

(c) at the time that the notice of appeal described in Subsection [~~(+)~~] (2)(a) is filed, complying with the requirements of Section 63G-6a-1703 regarding the posting of a security deposit or a bond.

[~~(2)~~] (3) A person may not appeal from a protest described in Section 63G-6a-1602, unless:

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

(b) a decision is not issued and the 30-day period described in Subsection 63G-6a-1603(5), or a longer period agreed to by the parties, has passed.

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~~(3)~~ (4) The chair of the ~~[procurement policy]~~ board or a designee of the chair who is not employed by the ~~[public]~~ procurement unit responsible for the solicitation, contract award, or other action complained of:

(a) shall, within seven days after the day on which the chair receives a timely written notice of appeal under Subsection ~~(1)~~ (2), appoint:

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

(A) a member of the ~~[Procurement Policy Board]~~ board; or

(B) a designee of a member appointed under Subsection ~~(3)~~ (4)(a)(i)(A), if the designee is approved by the chair; and

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

(b) may:

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

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

(c) may not appoint a person to a procurement appeals panel if the person is employed by the ~~[public]~~ procurement unit responsible for the solicitation, contract award, or other action complained of.

~~(4)~~ (5) A procurement appeals panel described in Subsection ~~(3)~~ (4) shall:

(a) consist of an odd number of members;

(b) except as provided in Subsection ~~(5)~~ (6), conduct an informal proceeding on the appeal within 60 days after the day on which the procurement appeals panel is appointed, unless all parties stipulate to a later date;

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

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

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

(ii) mail, email, or hand-deliver the written decision on the appeal to the parties to the appeal and to the protest officer.

~~(5)~~ (6) A procurement appeals panel may continue a procurement appeals proceeding beyond the 60-day period described in Subsection ~~(4)~~ (5)(b) if the procurement appeals panel determines that the continuance is in the interests of justice.

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~~[(6)]~~ (7) A procurement appeals panel:

(a) shall consider the appeal based solely on:

(i) the protest decision;

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

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

(b) may not take additional evidence; and

(c) shall uphold the decision of the protest officer, unless the decision is arbitrary and capricious or clearly erroneous.

~~[(7)]~~ (8) If a procurement appeals panel determines that the decision of the protest officer is arbitrary and ~~[a]~~ capricious or clearly erroneous, the procurement appeals panel:

(a) shall remand the matter to the protest officer, to cure the problem or render a new decision;

(b) may recommend action that the protest officer should take; and

(c) may not order that:

(i) a contract be awarded to a certain person;

(ii) a contract or solicitation be cancelled; or

(iii) any other action be taken other than the action described in Subsection ~~[(7)]~~ (8)(a).

~~[(8)]~~ (9) The ~~[Procurement Policy Board]~~ board shall make rules relating to the conduct of an appeals proceeding, including rules that provide for:

(a) expedited proceedings; and

(b) electronic participation in the proceedings by panel members and participants.

~~[(9)]~~ (10) The Rules of Evidence do not apply to an appeals proceeding.

Section 89. Section **63G-6a-1703 (Effective 05/01/13)** is amended to read:

**63G-6a-1703 (Effective 05/01/13). Requirement to post a security deposit or bond**

**-- Exceptions -- Forfeiture of security deposit or bond.**

(1) Except as provided by rule made under Subsection (2)(a), a person who files an appeal under Section 63G-6a-1702 shall, at the time that the appeal is filed, pay a security deposit or post a bond with the protest officer in an amount that is the greater of:

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

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

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

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- (i) the lowest bid amount, if the bid opening has occurred; or
- (ii) the estimated contract cost, established in accordance with Subsection (2)(b), if the bid opening has not yet occurred;
- (d) for a request for proposals, 5% of:
  - (i) the lowest cost proposed in a response to a request for proposals, if the opening of proposals has occurred; or
  - (ii) the estimated contract cost, established in accordance with Subsection (2)(b), if the opening of proposals has not occurred; or
- (e) for a type of procurement other than an invitation for bids or a request for proposals, the amount established in accordance with Subsection (2).

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

- (a) circumstances and procedures under which the requirement for paying a security deposit or posting a bond may be waived or reduced on grounds, including:
  - (i) that the person filing the appeal is impecunious;
  - (ii) circumstances where certain small purchases are involved; or
  - (iii) other grounds determined by the Division of Purchasing and General Services to be appropriate; and
- (b) the method used to determine:
  - (i) the estimated contract cost described in Subsections (1)(c)(ii) and (1)(d)(ii); and
  - (ii) the amount described in Subsection (1)(e).

(3) The chair of the [~~Procurement Policy Board~~] board shall [~~a~~] dismiss a protest filed under Section 63G-6a-1702 if the actual or prospective bidder, offeror, or contractor fails to timely pay the security deposit or post the bond required under Subsection (1).

- (4) The chair of the [~~Procurement Policy Board~~] board shall:
  - (a) retain the security deposit or bond until the protest and any appeal of the protest decision is final;
  - (b) as it relates to a security deposit:
    - (i) deposit the security deposit into an interest-bearing account; and
    - (ii) after any appeal of the protest decision becomes final, return the security deposit and the interest it accrues to the person who paid the security deposit, unless the security

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deposit is forfeited to the General Fund under Subsection (5); and

(c) as it relates to a bond:

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

(ii) after the protest and any appeal of the protest decision becomes final, return the bond to the person who posted the bond, unless the bond is forfeited to the General Fund under Subsection (5).

(5) A security deposit that is paid, or a bond that is posted, under this section shall forfeit to the General Fund if:

(a) the person who paid the security deposit or posted the bond fails to ultimately prevail on appeal; and

(b) the procurement appeals panel finds that the protest or appeal is frivolous or that its primary purpose is to harass or cause a delay.

Section 90. Section **63G-6a-1704 (Effective 05/01/13)** is amended to read:

**63G-6a-1704 (Effective 05/01/13). Discontinued appeal with prejudice, except as authorized.**

After notice of an appeal to the [~~procurement policy~~] board is filed under Section 63G-6a-1702, no party may discontinue the appeal without prejudice, except as authorized by the procurement appeals panel appointed for the appeal.

Section 91. Section **63G-6a-1802 (Effective 05/01/13)** is amended to read:

**63G-6a-1802 (Effective 05/01/13). Appeal to Utah Court of Appeals -- Jurisdiction of district court.**

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

(b) A person who receives an adverse decision in a protest relating to a legislative procurement unit, a judicial procurement unit, or a local government procurement unit may appeal the decision to the Utah Court of Appeals within seven days after the day on which the decision is issued.

(2) [~~An agency in the state executive branch or a local public~~] A procurement unit may not appeal the decision of a procurement appeals panel, unless the appeal is:



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(a) recommended by the protest officer involved; and  
(b) except for a [~~local public~~] procurement unit that is not represented by the attorney general's office, approved by the attorney general.

(3) The Utah Court of Appeals:

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

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

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

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

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

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

(5) The district court shall have original jurisdiction in a cause of action between a contractor and [~~the state~~] a procurement unit for any cause of action that arises under, or in relation to, an existing contract between the contractor and [~~the state~~] a procurement unit.

Section 92. Section **63G-6a-1902 (Effective 05/01/13)** is amended to read:

**63G-6a-1902 (Effective 05/01/13). Requirement to exhaust administrative remedies -- Protests and appeals.**

(1) A person may not challenge a procurement, a procurement process, the award of a contract relating to a procurement, a debarment, or a suspension, in a court, before an administrative officer or body, or in any other forum other than the forum permitted in this chapter.

(2) A person who desires to challenge a procurement, a procurement process, the award of a contract relating to a procurement, a debarment, or a suspension, shall bring the challenge, in accordance with the requirements of this chapter, by timely filing:

(a) a protest in accordance with Section 63G-6a-1602;

(b) any appeal of the protest decision involving a procurement unit, other than a legislative procurement unit, a judicial procurement unit, or a local government procurement unit, in accordance with Section 63G-6a-1702; and

(c) any appeal from a procurement appeals panel, or from a protest decision of a legislative procurement unit, a judicial procurement unit, or a local government procurement unit, in accordance with Section 63G-6a-1802.

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(3) A person who files a protest or appeal under this chapter is limited to protesting or appealing on the grounds specified in the filing document described in Subsection 63G-6a-1602.

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

Section 93. Section **63G-6a-1903 (Effective 05/01/13)** is amended to read:

### **63G-6a-1903 (Effective 05/01/13). Effect of timely protest or appeal.**

In the event of a timely protest under Subsection 63G-6a-1602(1), or a timely appeal of the protest under Section 63G-6a-1702 or 63G-6a-1802, a [~~state executive branch agency or a local public~~] procurement unit, other than a legislative procurement unit, a judicial procurement unit, or a local government procurement unit, may not proceed further with the solicitation or with the award of the contract until:

(1) all administrative and judicial remedies are exhausted;

(2) for a protest under Section 63G-6a-1602 or an appeal under Section 63G-6a-1702:

(a) the chief procurement officer, after consultation with the attorney general's office and the head of the using agency, makes a written determination that award of the contract without delay is necessary to protect substantial interests of the state;

(b) the head of the purchasing agency, after consultation with the attorney general's office, makes a written determination that award of the contract without delay is necessary to protect substantial interests of the state; or

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

(3) for an appeal under Section 63G-6a-1802, or an appeal to a higher court than district court:

(a) the chief procurement officer, after consultation with the attorney general's office and the head of the using agency, makes a written determination that award of the contract without delay is in the best interest of the state;

(b) the head of the purchasing agency, after consultation with the attorney general's

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office, makes a written determination that award of the contract without delay is in the best interest of the state; or

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

Section 94. Section **63G-6a-1904 (Effective 05/01/13)** is amended to read:

### **63G-6a-1904 (Effective 05/01/13). Costs to or against protestor.**

(1) When a protest is sustained administratively or upon administrative or judicial 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 a procurement appeals panel, the protestor shall reimburse the [public] issuing procurement unit for expenses incurred in defending the appeal, including personnel costs, attorney fees, other legal costs, expenses incurred by the attorney general's office, the per diem and expenses paid by the [public] issuing procurement unit to witnesses or appeals panel members, and any additional expenses incurred by the staff of the [public] issuing procurement unit who have provided materials and administrative services to the procurement appeals panel for that case.

(3) 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 95. Section **63G-6a-1905 (Effective 05/01/13)** is amended to read:

### **63G-6a-1905 (Effective 05/01/13). Authority to resolve controversy between state and contractor.**

A protest officer, or the protest officer's designee, is authorized, before commencement

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of an action in court concerning a controversy that arises between [~~the state~~] a procurement unit and a contractor in relation to an existing contract between the [~~state~~] procurement unit and the contractor, including controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission, to settle and resolve the controversy.

Section 96. Section **63G-6a-1910 (Effective 05/01/13)** is amended to read:

### **63G-6a-1910 (Effective 05/01/13). Interest rates.**

(1) [~~Except as provided in Subsection (2), in~~] In controversies between the state and contractors under this chapter, interest on amounts ultimately determined to be due to a contractor or 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) Unless otherwise specified in a lawful contract between a procurement unit and the person making a bond claim against the procurement unit, the interest rate applicable to the bond claim is the rate described in Subsection 15-1-1(2).

~~[(2)]~~ (3) This section does not apply to public assistance benefits programs.

Section 97. Section **63G-6a-1911 (Effective 05/01/13)** is amended to read:

### **63G-6a-1911 (Effective 05/01/13). Determinations final except when arbitrary and capricious.**

The determinations required 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~~] Section 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 98. Section **63G-6a-2002 (Effective 05/01/13)** is amended to read:

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### **63G-6a-2002 (Effective 05/01/13). Records -- Retention.**

(1) All procurement records shall be retained and disposed of in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

(2) Written determinations required by this chapter shall be retained in the appropriate official contract file of:

(a) the division;

(b) the ~~[state purchasing unit]~~ procurement unit with independent procurement authority; or

(c) for a ~~[non-executive state procurement unit]~~ legislative procurement unit or a judicial 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]~~ records of 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 99. Section **63G-6a-2003 (Effective 05/01/13)** is amended to read:

### **63G-6a-2003 (Effective 05/01/13). Records of contracts made -- Audits --**

#### **Contract requirements.**

The ~~chief procurement officer, the~~ procurement officer, or the head of ~~[an authorized purchasing entity]~~ a procurement unit with independent procurement authority shall maintain a record ~~[listing]~~ of all contracts made under Section 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 procurement items to which the contract relates.

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Section 100. Section **63G-6a-2004 (Effective 05/01/13)** is amended to read:

**63G-6a-2004 (Effective 05/01/13). 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 procurement items procured or used by [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 101. Section **63G-6a-2101 (Effective 05/01/13)** is amended to read:

### **Part 21. Interaction Between Procurement Units**

**63G-6a-2101 (Effective 05/01/13). Title.**

This part is known as "Interaction Between [Public] Procurement Units."

Section 102. Section **63G-6a-2102 (Effective 05/01/13)** is amended to read:

**63G-6a-2102 (Effective 05/01/13). Agreements between procurement units.**

~~[(1) For purposes of this section only, "public procurement unit" includes an external procurement unit.]~~

~~[(2)]~~ A [public] procurement unit may enter into an agreement with one or more other [public] procurement units to:

~~[(a)]~~ (1) sponsor, conduct, or administer a cooperative agreement for:

~~[(a)]~~ (a) the procurement [or disposal] of a procurement item[;], in accordance with the requirements of Section 63G-6a-2105; or

~~[(b)]~~ (b) the disposal of a procurement item;

~~[(b)]~~ (2) cooperatively use a procurement item;

~~[(c)]~~ (3) commonly use or share warehousing facilities, capital equipment, and other facilities;

~~[(d)]~~ (4) provide personnel, if the receiving [public] procurement unit pays the [public] procurement unit providing the personnel the direct and indirect cost of providing the personnel, in accordance with the agreement; or

~~[(e)]~~ (5) make available informational, technical, and other services, if:

~~[(f)]~~ (a) the requirements of the [public] procurement unit tendering the services have precedence over the [public] procurement unit that receives the services; and

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~~[(ii)]~~ (b) the receiving ~~[public]~~ procurement unit pays the expenses of the services 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 103. Section **63G-6a-2103 (Effective 05/01/13)** is amended to read:

### **63G-6a-2103 (Effective 05/01/13). Services between procurement units.**

(1) Upon request, a ~~[public]~~ procurement unit may make services available to another ~~[public]~~ procurement 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 contract forms; or

(j) contracts or published summaries of contracts, including price and time of delivery information.

(2) A ~~[public]~~ procurement unit may provide technical services to another ~~[public]~~ procurement unit, including:

(a) development of specifications;

(b) development of quality assurance test methods, including receiving, inspection, and acceptance procedures;

(c) use of testing and inspection facilities; or

(d) use of personnel training programs.

(3) ~~[Public procurement]~~ Procurement units may enter into contractual arrangements

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and publish a schedule of fees for the services provided under Subsections (1) and (2).

Section 104. Section **63G-6a-2104 (Effective 05/01/13)** is amended to read:

**63G-6a-2104 (Effective 05/01/13). Compliance by one procurement unit pursuant to agreement considered compliance by others to agreement.**

(1) When a [public] procurement unit that administers a cooperative [purchase] procurement complies with the requirements of this chapter, any [public] procurement unit participating in the purchase is considered to have complied with this chapter.

(2) A [public] procurement unit may not enter into a cooperative [purchasing] procurement agreement for the purpose of circumventing this chapter.

Section 105. Section **63G-6a-2105 (Effective 05/01/13)** is amended to read:

**63G-6a-2105 (Effective 05/01/13). Participation of a public entity or a procurement unit in agreements or contracts of procurement units -- Cooperative purchasing -- State cooperative contracts.**

~~[(1) A Utah county or municipality may purchase under or otherwise participate in an agreement or contract of a Utah public procurement unit.]~~

(1) The chief procurement officer may, in accordance with the requirements of this chapter, enter into a cooperative procurement, and a contract that is awarded as a result of a cooperative procurement, with:

- (a) another state;
- (b) an external procurement unit; or
- (c) a public entity in Utah or outside of Utah.

(2) A public entity may obtain a procurement item from a state cooperative contract or a contract awarded by the chief procurement officer under Subsection (1), without signing a participating addendum if the quote, invitation for bids, or request for proposals used to obtain the contract includes a statement indicating that the resulting contract will be issued on behalf of a public entity in Utah.

(3) Except as provided in Section 63G-6a-408, or as otherwise provided in this chapter, an executive branch procurement unit may not obtain a procurement item from a source other than a state cooperative contract or a contract awarded by the chief procurement officer under Subsection (1), if the procurement item is available under a state cooperative contract or a contract awarded by the chief procurement officer under Subsection (1).



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~~[(2)]~~ (4) A ~~[state purchasing unit or a]~~ Utah ~~[public]~~ procurement unit may:

(a) contract with the federal government without going through a standard procurement process or an exception to a standard procurement process~~[-]~~, described in Part 8, Exceptions to Procurement Requirements, if the procurement item obtained under the contract is provided:

(i) directly by the federal government and not by a person contracting with the federal government; or

(ii) by a person under contract with the federal government that obtained the contract in a manner that substantially complies with the provisions of this chapter;

~~[(b) purchase under, or otherwise participate in, an agreement or contract of another Utah public procurement unit; or]~~

(b) participate in, sponsor, conduct, or administer a cooperative procurement with another Utah procurement unit or another public entity in Utah, if:

(i) each party unit involved in the cooperative procurement enters into an agreement describing the rights and duties of each party;

(ii) the procurement is conducted, and the contract awarded, in accordance with the requirements of this chapter;

(iii) the request for quotes, the invitation for bids, or the request for proposals:

(A) clearly indicates that the procurement is a cooperative procurement; and

(B) identifies each party that may purchase under the resulting contract; and

(iv) each party involved in the cooperative procurement signs a participating addendum describing its rights and obligations in relation to the resulting contract; or

(c) purchase under, or otherwise participate in, an agreement or contract of an external ~~[public]~~ procurement unit, if:

(i) each party involved in the cooperative procurement enters into an agreement describing the rights and duties of each party;

~~[(+)]~~ (ii) the procurement was conducted in accordance with the requirements of this chapter; [and]

~~[(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~~

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~~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.]~~

(iii) the request for quotes, the invitation for bids, or the request for proposals:

(A) clearly indicates that the procurement is a cooperative procurement; and

(B) identifies each party that may purchase under the resulting contract; and

(iv) each party involved in the cooperative procurement signs a participating addendum describing its rights and obligations in relation to the resulting contract.

(5) A procurement unit may not obtain a procurement item under a contract that results from a cooperative procurement described in Subsection (4), if the procurement unit:

(a) is not identified under Subsection (4)(b)(iii)(B) or (4)(c)(iii)(B); or

(b) does not sign a participating addendum to the contract as required by this section.

(6) A procurement unit, other than a legislative procurement unit or a judicial procurement unit, may not obtain a procurement item under a contract held by the United States General Services Administration, unless, based upon documentation provided by the procurement unit, the Director of the State Division of Purchasing and General Services determines in writing that the United States General Services Administration procured the contract in a manner that substantially complies with the provisions of this chapter.

Section 106. Section **63G-6a-2302 (Effective 05/01/13)** is amended to read:

**63G-6a-2302 (Effective 05/01/13).** ~~{Factual}~~ **Duty to report factual information to attorney general** ~~{if unlawful or anticompetitive practices suspected}~~.

If a [public] procurement unit [~~suspects~~] **has reason to believe that** a person ~~{of violating}~~ **has engaged in a violation of** Section 63G-6a-2304.5, collusion, or other anticompetitive practices [~~among bidders or offerors~~] relating to a procurement or a potential procurement, the [public] procurement unit shall transmit a notice of the relevant facts to the attorney general.

Section 107. Section **63G-6a-2304.5** is enacted to read:

**63G-6a-2304.5. Gratuities -- Kickbacks -- Unlawful use of position or influence.**

(1) As used in this section:

(a) "Contract administrator" means a person who administers a current contract, on behalf of a public entity, including:

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(i) making payments relating to the contract;

(ii) ensuring compliance with the contract;

(iii) auditing a contractor in relation to the contract; or

(iv) enforcing the contract.

(b) "Contribution" means:

(i) a voluntary gift or donation to a public entity for the public entity's use, and not for a particular person employed by a public entity, including:

(A) a philanthropic donation;

(B) services;

(C) money; or

(D) other items of value;

(ii) admission to a seminar, vendor fair, ~~charitable event, fundraising event,~~ or similar event that relates to the function of the public entity;

(iii) purchase of a booth at an event sponsored by the public entity or a group of which the public entity is a member; or

(iv) sponsorship of an event that is organized by the public entity.

(c) "Gratuity" means anything of value, including:

(i) money;

(ii) a loan at an interest rate below the market rate or with terms that are more advantageous to the person receiving the loan than terms offered generally on the market;

(iii) an award;

(iv) employment;

(v) admission to an event;

(vi) a meal;

(vii) lodging;

(viii) travel; or

(ix) entertainment for which a charge is normally made.

(d) "Family member" means a parent, stepparent, spouse, sibling, stepsibling, child, stepchild, ~~foster child, father-in-law, mother-in-law, brother-in-law, sister-in-law,~~ grandparent, great-grandparents, grandchild, ~~or~~ great-grandchild, ~~aunt, uncle, niece, nephew, or first cousin}.~~

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(e) (i) "Hospitality gift" means a promotional or hospitality item, including, a pen, pencil, stationery, toy, pin, trinket, snack, nonalcoholic beverage, or appetizer.

(ii) "Hospitality gift" does not include money, a meal, a ticket, admittance to an event, entertainment for which a charge is normally made, travel, or lodging.

(f) "Interested person" means a person who is interested in any way in the sale of a procurement item or insurance to a public entity.

(g) "Kickback" means a gratuity given in exchange for favorable treatment in a pending procurement or the administration of a contract.

(h) "Pending procurement" means a procurement at any stage, including:

(i) preparing to engage in a standard procurement process, including preparing documents that will be used in the standard procurement process;

(ii) engaging in a standard procurement process;

(iii) evaluating, or making a recommendation regarding, a quote, a bid, or a response;

and

(iv) awarding a contract or otherwise making a decision to obtain a procurement item from a particular person.

(i) "Procurement participant" means a person involved in:

(i) administering, conducting, or making decisions regarding a standard procurement process;

(ii) making a recommendation regarding award of a contract or regarding a decision to obtain a procurement item for a particular person;

(iii) evaluating a quote, a bid, or a response; or

(iv) awarding a contract or otherwise making a decision to obtain a procurement item from a particular person.

(2) Nothing in this section exempts a person subject to the provisions of Title 67, Chapter 16, Utah Public Officers' and Employees Ethics Act, from complying with the provisions of the Utah Public Officers' and Employees Ethics Act.

(3) (a) Except as provided in Subsection (6) or (7), it is unlawful for an interested person to give, offer, or promise to give a gratuity to:

(i) a procurement participant; or

(ii) an individual who the person knows, or should have known, is ~~an immediate~~ a

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family member of a procurement participant.

(b) Except as provided in Subsection (6) or (7), it is unlawful for a procurement participant to ask, receive, offer to receive, accept, or ask for a promise to receive a gratuity from an interested person.

(c) Except as provided in Subsection (6) or (7), it is unlawful for a contractor to give a gratuity to:

(i) a contract administrator of the contractor's contract; or

(ii) an individual who the contractor knows, or should have known, is ~~an immediate~~<sup>a</sup> family member of a contract administrator of the contractor's contract.

(d) Except as provided in Subsection (6) or (7), it is unlawful for a person who is a contract administrator of a contract to ask, receive, offer to receive, accept, or ask for a promise to receive, for the contract administrator or a family member of the contract administrator, a gratuity from the contractor for that contract.

(4) (a) It is unlawful for a person to give, offer, or promise to give a kickback to a procurement participant or to another person for the benefit of a procurement participant.

(b) It is unlawful for a procurement participant to ask, receive, offer to receive, accept, or ask for a promise to receive a kickback for the procurement participant or for another person.

(c) It is unlawful for a person to give a kickback to a contract administrator, or to another person for the benefit of a contract administrator.

(d) It is unlawful for a contract administrator to ask, receive, offer to receive, accept, or ask for a promise to receive a kickback for the contract administrator or for another person.

(5) It is unlawful for a procurement participant to use the procurement participant's position or influence to obtain a personal benefit for the procurement participant, or for a family member of the procurement participant, from an interested person.

(6) A person is not guilty of a violation of Subsection (3) for giving, offering, promising to give, receiving, or accepting a hospitality gift if:

~~(a)~~<sup>2</sup>, as it relates to a procurement participant or a contract administrator:

~~(i)~~<sup>a</sup> the total value of all hospitality gifts given, offered, or promised to, or received or accepted by, ~~the~~<sup>a</sup> procurement participant or contract administrator in relation to a particular procurement or contract is less than \$10; and

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~~(fii)b~~ the total value of all hospitality gifts given, offered, or promised to, or received or accepted by, ~~fa~~the procurement participant or contract administrator from any one person, vendor, bidder, ~~for~~responder, or contractor in a calendar year is less than \$50 ~~or~~.

~~(b) as it relates to a contract administrator, the total value of all hospitality gifts given, offered, or promised to, or received or accepted by, a contract administrator from any one person or contractor in a calendar year is less than \$50.~~

† (7) (a) A person is not guilty of a violation of this section for giving, offering, or promising a contribution to a public entity, unless the contribution is given, offered, or promised with the intent to induce a person to make a procurement decision, or to take action in relation to the administration of a contract, in reciprocation for the contribution.

(b) A person is not guilty of a violation of this section for receiving or accepting a contribution on behalf of a public entity, unless the person accepts or receives the contribution in exchange for making a procurement decision, or for taking action in relation to the administration of a contract, in reciprocation for the contribution.

(c) A person is not guilty of a violation of this section if the person gives, offers, or makes a pledge, in the form of a contribution to an organization to which a procurement participant or contract administrator belongs, unless the contribution is given, offered, or pledged with the intent to induce a person to make a procurement decision, or to take action in relation to the administration of a contract, in reciprocation for the contribution.

(8) A person who violates this section is guilty of:

(a) a felony of the second degree if the total value of the gratuity or kickback is \$1,000 or more;

(b) a felony of the third degree if the total value of the gratuity or kickback is \$250 or more, but less than \$1,000;

(c) a class A misdemeanor if the total value of the gratuity or kickback is \$100 or more, but less than \$250; or

(d) a class B misdemeanor if the total value of the gratuity or kickback is less than \$100.

Section 108. Section **63G-6a-2305 (Effective 05/01/13)** is amended to read:

**63G-6a-2305 (Effective 05/01/13). Penalties for artificially dividing a purchase.**

A person who violates Subsection 63G-6a-408~~[(4) or (5)]~~(8) or (9) is guilty of:

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(1) a felony of the second degree if the total value of the divided procurements is \$1,000,000 or more;

(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;

(3) a class A misdemeanor if the total value of the divided procurements is \$100,000 or more, but less than \$250,000; or

(4) a class B misdemeanor if the total value of the divided procurements is less than \$100,000.

Section 109. Section **63G-6a-2306 (Effective 05/01/13)** is amended to read:

### **63G-6a-2306 (Effective 05/01/13). 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~~] 63G-6a-2304.5, 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~~] 63G-6a-2304.5, 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 110. Section **63G-6a-2307 (Effective 05/01/13)** is amended to read:

### **63G-6a-2307 (Effective 05/01/13). 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~~] 63G-6a-2304.5 in relation to the contract, the contract

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is void and unenforceable.

Section 111. Section **63G-6a-2308** is enacted to read:

### **63G-6a-2308. Exemption.**

(1) This part does not apply to:

(a) a ~~{local government unit}~~ ~~county, a municipality,~~ a local district, a special service district, a conservation district, or a political subdivision created ~~{ by counties or municipalities }~~ under Title 11, Chapter 13, Interlocal Cooperation Act; or

(b) a procurement participant of a person described in Subsection (1)(a).

(2) A person described in Subsection (1) is required to comply with:

(a) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act;

(b) Section 76-8-105; and

(c) all other applicable provisions of law.

Section 112. Section **67-16-4 (Effective 05/01/13)** is amended to read:

**67-16-4 (Effective 05/01/13). 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 -- Exception.**

(1) [It] ~~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-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 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



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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) This section does not apply to a public officer, public employee, or legislator who engages in conduct that constitutes a violation of this section to the extent that the public officer, public employee, or legislator is chargeable, for the same conduct, under Section 63G-6a-2304.5 or Section 76-8-105.

Section 113. Section **67-16-5 (Effective 05/01/13)** is amended to read:

**67-16-5 (Effective 05/01/13). 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~~] Except as provided in Subsection (4), it is an offense for a public officer or public employee~~[- under circumstances not amounting to a violation of Section 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 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.

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(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.

(4) This section does not apply to a public officer or public employee who engages in conduct that constitutes a violation of this section to the extent that the public officer or public employee is chargeable, for the same conduct, under Section 63G-6a-2304.5 or Section 76-8-105.

Section 114. Section **67-16-5.3 (Effective 05/01/13)** is amended to read:

**67-16-5.3 (Effective 05/01/13). Requiring donation, payment, or service to government agency in exchange for approval -- When prohibited.**

(1) [H] 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-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:

- (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.

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(3) This section does not apply to a public officer, public employee, or legislator who engages in conduct that constitutes a violation of this section to the extent that the public officer, public employee, or legislator is chargeable, for the same conduct, under Section 63G-6a-2304.5 or Section 76-8-105.

Section 115. Section **67-16-5.6** is amended to read:

**67-16-5.6. Offering donation, payment, or service to government agency in exchange for approval -- When prohibited.**

(1) [~~H~~] Except as provided in Subsection (3), it is an offense for any person~~[, under circumstances not amounting to a violation of Section 76-8-103,]~~ to donate or offer to donate personal property, money, or services to any agency on the condition that the agency or any other agency approve any application or request for a permit, approval, or other authorization.

(2) (a) Subsection (1) does not apply to any donation of property, funds, or services to an agency that is:

(i) otherwise 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) 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; or

(iv) made without condition.

(b) The person making the donation of property, funds, or services shall include with the donation a signed written statement certifying that the donation is made without condition.

(c) The agency receiving the donation shall place the signed written statement in its files.

(3) This section does not apply to a person who engages in conduct that constitutes a violation of this section to the extent that the person is chargeable, for the same conduct, under Section 63G-6a-2304.5 or Section 76-8-105.

Section 116. Section **67-16-6 (Effective 05/01/13)** is amended to read:

**67-16-6 (Effective 05/01/13). Receiving compensation for assistance in transaction involving an agency -- Filing sworn statement.**

(1) [~~H~~] Except as provided in Subsection (5), it is an offense for a public officer or

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public employee[~~, under circumstances not amounting to a violation of Section 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.

(5) This section does not apply to a public officer or public employee who engages in conduct that constitutes a violation of this section to the extent that the public officer or public employee is chargeable, for the same conduct, under Section 63G-6a-2304.5 or Section 76-8-105.

Section 117. Section **77-38-3** is amended to read:

**77-38-3. Notification to victims -- Initial notice, election to receive subsequent notices -- Form of notice -- Protected victim information.**

(1) Within seven days of the filing of felony criminal charges against a defendant, the prosecuting agency shall provide an initial notice to reasonably identifiable and locatable victims of the crime contained in the charges, except as otherwise provided in this chapter.

(2) The initial notice to the victim of a crime shall provide information about electing to receive notice of subsequent important criminal justice hearings listed in Subsections

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77-38-2(5)(a) through (f) and rights under this chapter.

(3) The prosecuting agency shall provide notice to a victim of a crime for the important criminal justice hearings, provided in Subsections 77-38-2(5)(a) through (f) which the victim has requested.

(4) (a) The responsible prosecuting agency may provide initial and subsequent notices in any reasonable manner, including telephonically, electronically, orally, or by means of a letter or form prepared for this purpose.

(b) In the event of an unforeseen important criminal justice hearing, listed in Subsections 77-38-2(5)(a) through (f) for which a victim has requested notice, a good faith attempt to contact the victim by telephone shall be considered sufficient notice, provided that the prosecuting agency subsequently notifies the victim of the result of the proceeding.

(5) (a) The court shall take reasonable measures to ensure that its scheduling practices for the proceedings provided in Subsections 77-38-2(5)(a) through (f) permit an opportunity for victims of crimes to be notified.

(b) The court shall also consider whether any notification system it might use to provide notice of judicial proceedings to defendants could be used to provide notice of those same proceedings to victims of crimes.

(6) A defendant or, if it is the moving party, Adult Probation and Parole, shall give notice to the responsible prosecuting agency of any motion for modification of any determination made at any of the important criminal justice hearings provided in Subsections 77-38-2(5)(a) through (f) in advance of any requested court hearing or action so that the prosecuting agency may comply with its notification obligation.

(7) (a) Notice to a victim of a crime shall be provided by the Board of Pardons and Parole for the important criminal justice hearing provided in Subsection 77-38-2(5)(g).

(b) The board may provide notice in any reasonable manner, including telephonically, electronically, orally, or by means of a letter or form prepared for this purpose.

(8) Prosecuting agencies and the Board of Pardons and Parole are required to give notice to a victim of a crime for the proceedings provided in Subsections 77-38-2(5)(a) through (f) only where the victim has responded to the initial notice, requested notice of subsequent proceedings, and provided a current address and telephone number if applicable.

(9) (a) Law enforcement and criminal justice agencies shall refer any requests for

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notice or information about crime victim rights from victims to the responsible prosecuting agency.

(b) In a case in which the Board of Pardons and Parole is involved, the responsible prosecuting agency shall forward any request for notice it has received from a victim to the Board of Pardons and Parole.

(10) In all cases where the number of victims exceeds 10, the responsible prosecuting agency may send any notices required under this chapter in its discretion to a representative sample of the victims.

(11) (a) A victim's address, telephone number, and victim impact statement maintained by a peace officer, prosecuting agency, Youth Parole Authority, Division of Juvenile Justice Services, Department of Corrections, and Board of Pardons and Parole, for purposes of providing notice under this section, is classified as protected as provided in Subsection 63G-2-305[~~(10)~~](11).

(b) The victim's address, telephone number, and victim impact statement is available only to the following persons or entities in the performance of their duties:

- (i) a law enforcement agency, including the prosecuting agency;
- (ii) a victims' right committee as provided in Section 77-37-5;
- (iii) a governmentally sponsored victim or witness program;
- (iv) the Department of Corrections;
- (v) the Utah Office for Victims of Crime;
- (vi) the Commission on Criminal and Juvenile Justice; and
- (vii) the Board of Pardons and Parole.

(12) The notice provisions as provided in this section do not apply to misdemeanors as provided in Section 77-38-5 and to important juvenile justice hearings as provided in Section 77-38-2.

Section 118. Section **78A-4-106** is amended to read:

**78A-4-106. Appellate Mediation Office -- Protected records and information -- Governmental immunity.**

(1) Unless a more restrictive rule of court is adopted pursuant to Subsection 63G-2-201(3)(b), information and records relating to any matter on appeal received or generated by the Chief Appellate Mediator or other staff of the Appellate Mediation Office as a

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result of any party's participation or lack of participation in the settlement program shall be maintained as protected records pursuant to Subsections 63G-2-305[(16), (17), and (32)](17), (18), and (33).

(2) In addition to the access restrictions on protected records provided in Section 63G-2-202, the information and records may not be disclosed to judges, staff, or employees of any court of this state.

(3) The Chief Appellate Mediator may disclose statistical and other demographic information as may be necessary and useful to report on the status and to allow supervision and oversight of the Appellate Mediation Office.

(4) When acting as mediators, the Chief Appellate Mediator and other professional staff of the Appellate Mediation Office shall be immune from liability pursuant to Title 63G, Chapter 7, Governmental Immunity Act of Utah.

(5) Pursuant to Utah Constitution, Article VIII, Section 4, the Supreme Court may exercise overall supervision of the Appellate Mediation Office as part of the appellate process.

Section 119. **Repealer.**

This bill repeals:

Section **63G-6-506.5, Interest rate for bond claim.**

Section **63G-6a-1908 (Effective 05/01/13), Resolution of local public procurement controversies.**

Section **63G-6a-2201 (Effective 05/01/13), Title.**

Section **63G-6a-2202 (Effective 05/01/13), Ethical requirements for public procurement.**

Section **63G-6a-2303 (Effective 05/01/13), Offering a gratuity.**

Section **63G-6a-2304 (Effective 05/01/13), Accepting or requesting a gratuity.**

Section 120. **Effective date.**

If approved by two-thirds of all members elected to each house, this bill takes effect on May 1, 2013.