

PROCUREMENT REVISIONS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott K. Jenkins

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Utah Procurement Code and related provisions.

Highlighted Provisions:

This bill:

- ▶ modifies, repeals, enacts, repeals and reenacts, and renumbers and amends provisions of the Utah Procurement Code and related provisions;
- ▶ modifies procurement provisions applicable to local entity building improvement and public works projects;
- ▶ modifies the Open and Public Meetings Act relating to the procurement process;
- ▶ modifies a provision relating to exemptions from the Utah Procurement Code;
- ▶ modifies a provision relating to limitations on certain procurement units;
- ▶ enacts language differentiating between an issuing procurement unit and a conducting procurement unit and clarifying the role of each;
- ▶ modifies deadlines for when applicable rulemaking authorities are required to initiate rulemaking proceedings;
- ▶ modifies duties of the chief procurement officer;
- ▶ modifies provisions relating to the prequalification of potential vendors;
- ▶ modifies provisions relating to the public notice of solicitations;
- ▶ modifies requirements for the content of a request for proposals;
- ▶ authorizes an issuing procurement unit to reject a proposal under certain



28 circumstances;

- 29 ▶ modifies provisions relating to the evaluation of proposals;
- 30 ▶ modifies provisions relating to the process of obtaining best and final offers;
- 31 ▶ provides for a justification statement and modifies provisions relating to a
- 32 cost-benefit analysis;
- 33 ▶ modifies provisions relating to the awarding of a contract;
- 34 ▶ modifies provisions relating to the award of a contract without competition;
- 35 ▶ repeals language relating to required standard provisions in a contract and replaces
- 36 it with language encouraging the establishment of standard contract clauses;
- 37 ▶ modifies provisions relating to contracts and the auditing of books and records;
- 38 ▶ modifies a provision relating to the selection committee for architect-engineer
- 39 services;
- 40 ▶ modifies provisions relating to protests and appeals of protests, including the
- 41 amount of security deposits or bonds;
- 42 ▶ modifies a provision relating to supplies and services that one procurement unit may
- 43 provide to another;
- 44 ▶ modifies a provision relating to cooperative purchasing;
- 45 ▶ rewrites and modifies provisions relating to unlawful conduct and penalties for
- 46 unlawful conduct in the context of procurement activities and makes those
- 47 provisions applicable to all public entities; and
- 48 ▶ makes technical, conforming, and clarifying changes.

49 **Money Appropriated in this Bill:**

50 None

51 **Other Special Clauses:**

52 This bill provides an immediate effective date.

53 **Utah Code Sections Affected:**

54 AMENDS:

- 55 **11-13-315**, as enacted by Laws of Utah 2013, Chapter 230
- 56 **11-39-103**, as last amended by Laws of Utah 2011, Chapter 387
- 57 **11-39-107**, as last amended by Laws of Utah 2013, Chapter 448
- 58 **52-4-205**, as last amended by Laws of Utah 2013, Chapters 238 and 426

- 59 **63B-2-102**, as last amended by Laws of Utah 2012, Chapter 347
- 60 **63B-3-102**, as last amended by Laws of Utah 2012, Chapter 347
- 61 **63B-4-102**, as last amended by Laws of Utah 2012, Chapter 347
- 62 **63B-5-102**, as last amended by Laws of Utah 2013, Chapter 465
- 63 **63B-6-102**, as last amended by Laws of Utah 2012, Chapter 347
- 64 **63B-6-402**, as last amended by Laws of Utah 2012, Chapter 347
- 65 **63B-7-102**, as last amended by Laws of Utah 2012, Chapter 347
- 66 **63B-7-402**, as last amended by Laws of Utah 2012, Chapter 347
- 67 **63B-8-102**, as last amended by Laws of Utah 2012, Chapter 347
- 68 **63B-8-402**, as last amended by Laws of Utah 2012, Chapter 347
- 69 **63B-9-103**, as last amended by Laws of Utah 2012, Chapter 347
- 70 **63B-11-202**, as last amended by Laws of Utah 2012, Chapter 347
- 71 **63F-1-205**, as last amended by Laws of Utah 2012, Chapter 347
- 72 **63G-6a-103**, as last amended by Laws of Utah 2013, Chapter 445
- 73 **63G-6a-104**, as repealed and reenacted by Laws of Utah 2013, Chapter 445
- 74 **63G-6a-106**, as last amended by Laws of Utah 2013, Chapter 445
- 75 **63G-6a-107**, as last amended by Laws of Utah 2013, Chapter 445
- 76 **63G-6a-108**, as last amended by Laws of Utah 2013, Chapter 445
- 77 **63G-6a-204**, as last amended by Laws of Utah 2013, Chapter 445
- 78 **63G-6a-303**, as last amended by Laws of Utah 2013, Chapter 445
- 79 **63G-6a-402**, as last amended by Laws of Utah 2013, Chapter 445
- 80 **63G-6a-403**, as last amended by Laws of Utah 2013, Chapter 445
- 81 **63G-6a-404**, as last amended by Laws of Utah 2013, Chapter 445
- 82 **63G-6a-406**, as last amended by Laws of Utah 2013, Chapter 445
- 83 **63G-6a-408**, as last amended by Laws of Utah 2013, Chapter 445
- 84 **63G-6a-603**, as last amended by Laws of Utah 2013, Chapter 445
- 85 **63G-6a-606**, as last amended by Laws of Utah 2013, Chapter 445
- 86 **63G-6a-607**, as last amended by Laws of Utah 2013, Chapter 445
- 87 **63G-6a-609**, as last amended by Laws of Utah 2013, Chapter 445
- 88 **63G-6a-611**, as last amended by Laws of Utah 2013, Chapter 445
- 89 **63G-6a-612**, as last amended by Laws of Utah 2013, Chapter 445

- 90 **63G-6a-703**, as last amended by Laws of Utah 2013, Chapter 445
- 91 **63G-6a-704**, as last amended by Laws of Utah 2013, Chapter 445
- 92 **63G-6a-707**, as last amended by Laws of Utah 2013, Chapter 445
- 93 **63G-6a-708**, as last amended by Laws of Utah 2013, Chapter 445
- 94 **63G-6a-709**, as last amended by Laws of Utah 2013, Chapter 445
- 95 **63G-6a-709.5**, as enacted by Laws of Utah 2013, Chapter 445
- 96 **63G-6a-802**, as last amended by Laws of Utah 2013, Chapter 445
- 97 **63G-6a-1204**, as last amended by Laws of Utah 2013, Chapter 445
- 98 **63G-6a-1206**, as last amended by Laws of Utah 2013, Chapter 445
- 99 **63G-6a-1503**, as last amended by Laws of Utah 2013, Chapter 445
- 100 **63G-6a-1602**, as last amended by Laws of Utah 2012, Chapter 91 and renumbered and
- 101 amended by Laws of Utah 2012, Chapter 347 and last amended by Coordination
- 102 Clause, Laws of Utah 2012, Chapter 347
- 103 **63G-6a-1603**, as last amended by Laws of Utah 2013, Chapter 445
- 104 **63G-6a-1702**, as last amended by Laws of Utah 2013, Chapter 445
- 105 **63G-6a-1703**, as last amended by Laws of Utah 2013, Chapter 445
- 106 **63G-6a-1706**, as enacted by Laws of Utah 2012, Chapter 347 and last amended by
- 107 Coordination Clause, Laws of Utah 2012, Chapter 347
- 108 **63G-6a-1802**, as last amended by Laws of Utah 2013, Chapter 445
- 109 **63G-6a-1903**, as last amended by Laws of Utah 2013, Chapter 445
- 110 **63G-6a-2103**, as last amended by Laws of Utah 2013, Chapter 445
- 111 **63G-6a-2105**, as last amended by Laws of Utah 2013, Chapter 445
- 112 **67-16-4**, as last amended by Laws of Utah 2013, Chapter 445
- 113 **67-16-5**, as last amended by Laws of Utah 2013, Chapter 445
- 114 **67-16-5.3**, as last amended by Laws of Utah 2013, Chapter 445
- 115 **67-16-5.6**, as last amended by Laws of Utah 2013, Chapter 445
- 116 **67-16-6**, as last amended by Laws of Utah 2013, Chapter 445
- 117 ENACTS:
- 118 **63G-6a-109**, Utah Code Annotated 1953
- 119 **63G-6a-2401**, Utah Code Annotated 1953
- 120 **63G-6a-2402**, Utah Code Annotated 1953

- 121 **63G-6a-2403**, Utah Code Annotated 1953
- 122 **63G-6a-2404**, Utah Code Annotated 1953
- 123 **63G-6a-2405**, Utah Code Annotated 1953
- 124 **63G-6a-2406**, Utah Code Annotated 1953
- 125 **63G-6a-2407**, Utah Code Annotated 1953
- 126 **63G-6a-2408**, Utah Code Annotated 1953

127 REPEALS AND REENACTS:

128 **63G-6a-1202**, as last amended by Laws of Utah 2013, Chapter 445

129 RENUMBERS AND AMENDS:

130 **63G-6a-707.5**, (Renumbered from 63G-6a-705, as last amended by Laws of Utah 2013,
131 Chapter 445)

132 REPEALS:

- 133 **63G-6a-2301**, as enacted by Laws of Utah 2012, Chapter 347
- 134 **63G-6a-2302**, as last amended by Laws of Utah 2013, Chapter 445
- 135 **63G-6a-2304.5**, as enacted by Laws of Utah 2013, Chapter 445
- 136 **63G-6a-2305**, as last amended by Laws of Utah 2013, Chapter 445
- 137 **63G-6a-2306**, as last amended by Laws of Utah 2013, Chapter 445
- 138 **63G-6a-2307**, as last amended by Laws of Utah 2013, Chapter 445
- 139 **63G-6a-2308**, as enacted by Laws of Utah 2013, Chapter 445



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

142 Section 1. Section **11-13-315** is amended to read:

143 **11-13-315. Taxed interlocal entity.**

144 (1) As used in this section:

145 (a) "Asset" means funds, money, an account, real or personal property, or personnel.

146 (b) "Public asset" means:

147 (i) an asset used by a public entity;

148 (ii) tax revenue;

149 (iii) state funds; or

150 (iv) public funds.

151 (c) (i) "Taxed interlocal entity" means a project entity that:

152 (A) is not exempt from a tax or fee in lieu of taxes imposed in accordance with Part 3,
153 Project Entity Provisions;

154 (B) does not receive a payment of funds from a federal agency or office, state agency or
155 office, political subdivision, or other public agency or office other than a payment that does not
156 materially exceed the greater of the fair market value and the cost of a service provided or
157 property conveyed by the project entity; and

158 (C) does not receive, expend, or have the authority to compel payment from tax
159 revenue.

160 (ii) Before and on May 1, 2014, "taxed interlocal entity" includes an interlocal entity
161 that:

162 (A) (I) was created before 1981 for the purpose of providing power supply at wholesale
163 to its members; or

164 (II) is described in Subsection 11-13-204(7);

165 (B) does not receive a payment of funds from a federal agency or office, state agency or
166 office, political subdivision, or other public agency or office other than a payment that does not
167 materially exceed the greater of the fair market value and the cost of a service provided or
168 property conveyed by the interlocal entity; and

169 (C) does not receive, expend, or have the authority to compel payment from tax
170 revenue.

171 (d) (i) "Use" means to use, own, manage, hold, keep safe, maintain, invest, deposit,
172 administer, receive, expend, appropriate, disburse, or have custody.

173 (ii) "Use" includes, when constituting a noun, the corresponding nominal form of each
174 term in Subsection (1)(d)(i), individually.

175 (2) Notwithstanding any other provision of law, the use of an asset by a taxed interlocal
176 entity does not constitute the use of a public asset.

177 (3) Notwithstanding any other provision of law, a taxed interlocal entity's use of an
178 asset that was a public asset prior to the taxed interlocal entity's use of the asset does not
179 constitute a taxed interlocal entity's use of a public asset.

180 (4) Notwithstanding any other provision of law, an official of a project entity is not a
181 public treasurer.

182 (5) Notwithstanding any other provision of law, a taxed interlocal entity's governing

183 body, as described in Section 11-13-206, shall determine and direct the use of an asset by the
184 taxed interlocal entity.

185 (6) [(a)] A taxed interlocal entity is not subject to the provisions of Title 63G, Chapter
186 6a, Utah Procurement Code.

187 [~~(b) An agent of a taxed interlocal entity is not an external procurement unit as defined~~
188 ~~in Section 63G-6a-104.~~]

189 (7) (a) A taxed interlocal entity is not a participating local entity as defined in Section
190 63A-3-401.

191 (b) For each fiscal year of a taxed interlocal entity, the taxed interlocal entity shall
192 provide:

193 (i) the taxed interlocal entity's financial statements for and as of the end of the fiscal
194 year and the prior fiscal year, including the taxed interlocal entity's balance sheet as of the end
195 of the fiscal year and the prior fiscal year, and the related statements of revenues and expenses
196 and of cash flows for the fiscal year; and

197 (ii) the accompanying auditor's report and management's discussion and analysis with
198 respect to the taxed interlocal entity's financial statements for and as of the end of the fiscal
199 year.

200 (c) The taxed interlocal entity shall provide the information described in Subsections
201 (7)(b)(i) and (b)(ii):

202 (i) in a manner described in Subsection 63A-3-405(3); and

203 (ii) within a reasonable time after the taxed interlocal entity's independent auditor
204 delivers to the taxed interlocal entity's governing body the auditor's report with respect to the
205 financial statements for and as of the end of the fiscal year.

206 (d) Notwithstanding Subsections (7)(b) and (c) or a taxed interlocal entity's compliance
207 with one or more of the requirements of Title 63A, Chapter 3, Division of Finance:

208 (i) the taxed interlocal entity is not subject to Title 63A, Chapter 3, Division of
209 Finance; and

210 (ii) the information described in Subsection (7)(b)(i) or (ii) does not constitute public
211 financial information as defined in Section 63A-3-401.

212 (8) (a) A taxed interlocal entity's governing body is not a governing board as defined in
213 Section 51-2a-102.

214 (b) A taxed interlocal entity is not subject to the provisions of Title 51, Chapter 2a,
215 Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local
216 Entities Act.

217 Section 2. Section **11-39-103** is amended to read:

218 **11-39-103. Requirements for undertaking a building improvement or public**
219 **works project -- Request for bids -- Authority to reject bids.**

220 (1) If the estimated cost of the building improvement or public works project exceeds
221 the bid limit, the local entity shall, if it determines to proceed with the building improvement or
222 public works project:

223 (a) request bids for completion of the building improvement or public works project
224 by:

225 (i) (A) publishing notice at least twice in a newspaper published or of general
226 circulation in the local entity at least five days before opening the bids; or

227 (B) if there is no newspaper published or of general circulation in the local entity as
228 described in Subsection (1)(a)(i)(A), posting notice at least five days before opening the bids in
229 at least five public places in the local entity and leaving the notice posted for at least three days;
230 and

231 (ii) publishing notice in accordance with Section [45-1-101](#), at least five days before
232 opening the bids; and

233 (b) except as provided in Subsection (3), enter into a contract for the completion of the
234 building improvement or public works project with:

235 (i) the lowest responsive responsible bidder; or

236 (ii) for a design-build project formulated by a local entity, [~~except as provided in~~
237 ~~Section [11-39-107](#),~~] a responsible bidder that:

238 (A) offers design-build services; and

239 (B) satisfies the local entity's criteria relating to financial strength, past performance,
240 integrity, reliability, and other factors that the local entity uses to assess the ability of a bidder
241 to perform fully and in good faith the contract requirements for a design-build project.

242 (2) (a) Each notice under Subsection (1)(a) shall indicate that the local entity may reject
243 any or all bids submitted.

244 (b) (i) The cost of a building improvement or public works project may not be divided

245 to avoid:

246 (A) exceeding the bid limit; and

247 (B) subjecting the local entity to the requirements of this section.

248 (ii) Notwithstanding Subsection (2)(b)(i), a local entity may divide the cost of a
249 building improvement or public works project that would, without dividing, exceed the bid
250 limit if the local entity complies with the requirements of this section with respect to each part
251 of the building improvement or public works project that results from dividing the cost.

252 (3) (a) The local entity may reject any or all bids submitted.

253 (b) If the local entity rejects all bids submitted but still intends to undertake the
254 building improvement or public works project, the local entity shall again request bids by
255 following the procedure provided in Subsection (1)(a).

256 (c) If, after twice requesting bids by following the procedure provided in Subsection
257 (1)(a), the local entity determines that no satisfactory bid has been submitted, the governing
258 body may undertake the building improvement or public works project as it considers
259 appropriate.

260 Section 3. Section 11-39-107 is amended to read:

261 **11-39-107. Procurement code.**

262 (1) This chapter may not be construed to:

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

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

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

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

270 (b) a method that requires that the local entity draft a plan, specifications, and an
271 estimate for the building improvement or public works project~~[-]; or~~

272 (c) design-build, as defined in Section 63G-6a-103.

273 ~~[(3) For a public works project only and that costs \$1,000,000 or more, in consultation~~
274 ~~with a professional engineer licensed under Title 58, Chapter 22, Professional Engineers and~~
275 ~~Professional Land Surveyors Licensing Act, who has design-build experience and is employed~~

276 by or is under contract with the owner, the following may enter into a contract for design-build,
277 as defined in Section ~~63G-6a-103~~, and adopt the procedures and follow the provisions of the
278 procurement code for the procurement of and as the procedures and provisions relate to a
279 design-build:]

280 [~~(a) a city of the first class;~~]

281 [~~(b) a local district; or~~]

282 [~~(c) a special service district.~~]

283 [(4)] (3) (a) In seeking bids and awarding a contract for a building improvement or
284 public works project, a county or a municipal legislative body may elect to follow the
285 provisions of the procurement code, as the county or municipal legislative body considers
286 appropriate under the circumstances, for specification preparation, source selection, or contract
287 formation.

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

292 (c) An election under Subsection [(4)] (3)(a) may be made on a case-by-case basis,
293 unless the county or municipality has previously adopted the [~~provisions of Title 63G, Chapter~~
294 ~~6a, Utah Procurement Code~~] procurement code.

295 (d) The county or municipal legislative body shall:

296 (i) make each election under Subsection [(4)] (3)(a) in an open meeting; and

297 (ii) specify in its action the portions of the procurement code to be followed.

298 [(5)] (4) If the estimated cost of the building improvement or public works project
299 proposed by a local district or special service district exceeds the bid limit, the governing body
300 of the local district or special service district may, if it determines to proceed with the building
301 improvement or public works project, use the competitive procurement procedures of the
302 procurement code in place of the comparable provisions of this chapter.

303 Section 4. Section **52-4-205** is amended to read:

304 **52-4-205. Purposes of closed meetings -- Certain issues prohibited in closed**
305 **meetings.**

306 (1) A closed meeting described under Section ~~52-4-204~~ may only be held for:

- 307 (a) except as provided in Subsection (3), discussion of the character, professional
308 competence, or physical or mental health of an individual;
- 309 (b) strategy sessions to discuss collective bargaining;
- 310 (c) strategy sessions to discuss pending or reasonably imminent litigation;
- 311 (d) strategy sessions to discuss the purchase, exchange, or lease of real property,
312 including any form of a water right or water shares, if public discussion of the transaction
313 would:
- 314 (i) disclose the appraisal or estimated value of the property under consideration; or
315 (ii) prevent the public body from completing the transaction on the best possible terms;
- 316 (e) strategy sessions to discuss the sale of real property, including any form of a water
317 right or water shares, if:
- 318 (i) public discussion of the transaction would:
- 319 (A) disclose the appraisal or estimated value of the property under consideration; or
320 (B) prevent the public body from completing the transaction on the best possible terms;
- 321 (ii) the public body previously gave public notice that the property would be offered for
322 sale; and
- 323 (iii) the terms of the sale are publicly disclosed before the public body approves the
324 sale;
- 325 (f) discussion regarding deployment of security personnel, devices, or systems;
- 326 (g) investigative proceedings regarding allegations of criminal misconduct;
- 327 (h) as relates to the Independent Legislative Ethics Commission, conducting business
328 relating to the receipt or review of ethics complaints;
- 329 (i) as relates to an ethics committee of the Legislature, a purpose permitted under
330 Subsection [52-4-204\(1\)\(a\)\(iii\)\(C\)](#);
- 331 (j) as relates to the Independent Executive Branch Ethics Commission created in
332 Section [63A-14-202](#), conducting business relating to an ethics complaint;
- 333 (k) as relates to a county legislative body, discussing commercial information as
334 defined in Section [59-1-404](#);
- 335 (l) as relates to the Utah Higher Education Assistance Authority and its appointed
336 board of directors, discussing fiduciary or commercial information as defined in Section
337 [53B-12-102](#); [or]

338 (m) deliberations of a procurement appeals panel under Section 63G-6a-1702;
339 (n) the purpose of considering information that is designated as a trade secret, as
340 defined in Section 13-24-2, or that, if disclosed publicly, could reasonably be expected to result
341 in an unfair competitive injury to the person who submitted the information or impair the
342 public body's ability to obtain similar necessary information in the future, if:
343 (i) the meeting is held to discuss a procurement, as defined in Section 63G-6a-103;
344 (ii) the public body is acting as the head of a procurement unit, as defined in Section
345 63G-6a-103; and
346 (iii) the public body needs to review or discuss the information in order to properly
347 conduct a procurement under Title 63G, Chapter 6a, Utah Procurement Code; or
348 ~~[(m)]~~ (o) a purpose for which a meeting is required to be closed under Subsection (2).
349 (2) The following meetings shall be closed:
350 (a) a meeting of the Health and Human Services Interim Committee to review a fatality
351 review report described in Subsection 62A-16-301(1)(a), and the responses to the report
352 described in Subsections 62A-16-301(2) and (4);
353 (b) a meeting of the Child Welfare Legislative Oversight Panel to:
354 (i) review a fatality review report described in Subsection 62A-16-301(1)(a), and the
355 responses to the report described in Subsections 62A-16-301(2) and (4); or
356 (ii) review and discuss an individual case, as described in Subsection 62A-4a-207(5);
357 and
358 (c) a meeting of a conservation district as defined in Section 17D-3-102 for the purpose
359 of advising the Natural Resource Conservation Service of the United States Department of
360 Agriculture on a farm improvement project if the discussed information is protected
361 information under federal law.
362 (3) In a closed meeting, a public body may not:
363 (a) interview a person applying to fill an elected position;
364 (b) discuss filling a midterm vacancy or temporary absence governed by Title 20A,
365 Chapter 1, Part 5, Candidate Vacancy and Vacancy and Temporary Absence in Elected Office;
366 or
367 (c) discuss the character, professional competence, or physical or mental health of the
368 person whose name was submitted for consideration to fill a midterm vacancy or temporary

369 absence governed by Title 20A, Chapter 1, Part 5, Candidate Vacancy and Vacancy and
 370 Temporary Absence in Elected Office.

371 Section 5. Section **63B-2-102** is amended to read:

372 **63B-2-102. Maximum amount -- Projects authorized.**

373 (1) The total amount of bonds issued under this part may not exceed \$80,000,000.

374 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
 375 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
 376 Subsection (2).

377 (b) These costs may include the cost of acquiring land, interests in land, easements and
 378 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
 379 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
 380 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
 381 covered by construction of the projects plus a period of six months after the end of the
 382 construction period and all related engineering, architectural, and legal fees.

383 (c) For the division, proceeds shall be provided for the following:

384 CAPITAL IMPROVEMENTS

385	1	Alterations, Repairs, and Improvements	\$8,413,900
386		TOTAL IMPROVEMENTS	\$8,413,900

387 CAPITAL FACILITIES CONSTRUCTION

388

			ESTIMATED OPERATIONS AND MAINTENANCE COSTS
PROJECT PRIORITY	PROJECT DESCRIPTION	AMOUNT FUNDED	
389	1	Corrections - Northern Utah Community Corrections Center Phase II	\$2,729,700 \$158,000
390	2	University of Utah Marriot Library Phase II	\$10,200,000 \$881,600
391	3	Ogden Courts Building Phase II	\$12,096,000 \$340,000

392	4	Utah National Guard - Southeast Utah Armory Phase II	\$397,800	\$70,500
393	5	Southern Utah University Library Phase II	\$7,004,400	\$427,000
394	6	Utah Valley Special Events Center Phase II	\$11,845,300	\$536,900
395	7	Salt Lake Community College - Land	\$1,300,000	\$0
396	8	Tax Commission Building	\$14,224,000	\$812,000
397	9	Dixie College Business Building	\$2,823,300	\$187,800
398	10	Salt Lake Community College South City 3rd Floor and Boiler	\$4,009,500	\$257,600
399	11	Public Education - Deaf and Blind Classrooms	\$3,456,100	\$124,800
400		TOTAL CONSTRUCTION	\$70,086,100	
401		TOTAL IMPROVEMENTS AND CONSTRUCTION	\$78,500,000	

- 402 (d) For purposes of this section, operations and maintenance costs:
- 403 (i) are estimates only;
- 404 (ii) may include any operations and maintenance costs already funded in existing
- 405 agency budgets; and
- 406 (iii) are not commitments by this Legislature or future Legislatures to fund those
- 407 operations and maintenance costs.
- 408 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
- 409 constitute a limitation on the amount that may be expended for any project.
- 410 (b) The board may revise these estimates and redistribute the amount estimated for a
- 411 project among the projects authorized.
- 412 (c) The commission, by resolution and in consultation with the board, may delete one
- 413 or more projects from this list if the inclusion of that project or those projects in the list could
- 414 be construed to violate state law or federal law or regulation.
- 415 (4) (a) The division may enter into agreements related to these projects before the

416 receipt of proceeds of bonds issued under this chapter.

417 (b) The division shall make those expenditures from unexpended and unencumbered
418 building funds already appropriated to the Capital Projects Fund.

419 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
420 of bonds issued under this chapter.

421 (d) The commission may, by resolution, make any statement of intent relating to that
422 reimbursement that is necessary or desirable to comply with federal tax law.

423 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
424 it is the intent of the Legislature that the balance necessary to complete the projects be
425 addressed by future Legislatures, either through appropriations or through the issuance or sale
426 of bonds.

427 (b) For those phased projects, the division may enter into contracts for amounts not to
428 exceed the anticipated full project funding but may not allow work to be performed on those
429 contracts in excess of the funding already authorized by the Legislature.

430 (c) Those contracts shall contain a provision for termination of the contract for the
431 convenience of the state [~~as required by Section 63G-6a-1202~~].

432 (d) It is also the intent of the Legislature that this authorization to the division does not
433 bind future Legislatures to fund projects initiated from this authorization.

434 Section 6. Section **63B-3-102** is amended to read:

435 **63B-3-102. Maximum amount -- Projects authorized.**

436 (1) The total amount of bonds issued under this part may not exceed \$64,600,000.

437 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
438 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
439 Subsection (2).

440 (b) These costs may include the cost of acquiring land, interests in land, easements and
441 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
442 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
443 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
444 covered by construction of the projects plus a period of six months after the end of the
445 construction period and all related engineering, architectural, and legal fees.

446 (c) For the division, proceeds shall be provided for the following:

447	CAPITAL IMPROVEMENTS		
448	1	Alterations, Repairs, and Improvements	\$5,000,000
449	TOTAL IMPROVEMENTS		\$5,000,000

450 CAPITAL AND ECONOMIC DEVELOPMENT

451	PRIORITY PROJECT	PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATIONS AND MAINTENANCE COSTS
452	1	University of Utah Marriott Library Phase III (Final)	\$13,811,500	\$881,600
453	2	Bridgerland Applied Technology Center Utah State University Space	\$2,400,000	\$0
454	3	Weber State University - Heat Plant	\$2,332,100	\$9,600
455	4	Department of Human Services - Division of Youth Corrections renamed in 2003 to the Division of Juvenile Justice Services	\$4,180,000	\$400,000
456	5	Snow College - Administrative Services/Student Center	\$3,885,100	\$224,500
457	6	Ogden Weber Applied Technology Center - Metal Trades Building Design and Equipment Purchase	\$750,000	\$0
458	7	Department of Corrections B-Block Remodel	\$1,237,100	\$72,000
459	8	Utah State University - Old Main Phase III Design	\$550,000	\$0

460	9	Department of Corrections - 144 bed Uintah Expansion	\$6,700,000	\$168,800
461	10	Southern Utah University Administrative Services/Student Center	\$5,630,400	\$314,200
462	11	Anasazi Museum	\$760,200	\$8,500
463	12	Hill Air Force Base - Easements Purchase	\$9,500,000	\$0
464	13	Signetics Building Remodel	\$2,000,000	\$0
465	14	Antelope Island Visitors Center	\$750,000	\$30,000
466	15	State Fair Park - Master Study	\$150,000	\$0
467	16	Utah National Guard - Draper Land	\$380,800	\$0
468	17	Davis Applied Technology Center - Design	\$325,000	\$0
469	18	Palisade State Park - Land and Park Development	\$800,000	\$0
470	19	Department of Human Services - Cedar City Land	\$80,000	\$0
471	20	Department of Human Services - Clearfield Land	\$163,400	\$0
472	21	Electronic technology, equipment, and hardware	\$2,500,000	\$0
473		TOTAL CAPITAL AND ECONOMIC DEVELOPMENT	\$58,885,600	
474		TOTAL IMPROVEMENTS AND CAPITAL AND ECONOMIC DEVELOPMENT	\$63,885,600	

- 475 (d) For purposes of this section, operations and maintenance costs:
- 476 (i) are estimates only;
- 477 (ii) may include any operations and maintenance costs already funded in existing
- 478 agency budgets; and
- 479 (iii) are not commitments by this Legislature or future Legislatures to fund those
- 480 operations and maintenance costs.

481 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
482 constitute a limitation on the amount that may be expended for any project.

483 (b) The board may revise these estimates and redistribute the amount estimated for a
484 project among the projects authorized.

485 (c) The commission, by resolution and in consultation with the board, may delete one
486 or more projects from this list if the inclusion of that project or those projects in the list could
487 be construed to violate state law or federal law or regulation.

488 (4) (a) The division may enter into agreements related to these projects before the
489 receipt of proceeds of bonds issued under this chapter.

490 (b) The division shall make those expenditures from unexpended and unencumbered
491 building funds already appropriated to the Capital Projects Fund.

492 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
493 of bonds issued under this chapter.

494 (d) The commission may, by resolution, make any statement of intent relating to that
495 reimbursement that is necessary or desirable to comply with federal tax law.

496 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
497 it is the intent of the Legislature that the balance necessary to complete the projects be
498 addressed by future Legislatures, either through appropriations or through the issuance or sale
499 of bonds.

500 (b) For those phased projects, the division may enter into contracts for amounts not to
501 exceed the anticipated full project funding but may not allow work to be performed on those
502 contracts in excess of the funding already authorized by the Legislature.

503 (c) Those contracts shall contain a provision for termination of the contract for the
504 convenience of the state [~~as required by Section 63G-6a-1202~~].

505 (d) It is also the intent of the Legislature that this authorization to the division does not
506 bind future Legislatures to fund projects initiated from this authorization.

507 Section 7. Section **63B-4-102** is amended to read:

508 **63B-4-102. Maximum amount -- Projects authorized.**

509 (1) The total amount of bonds issued under this part may not exceed \$45,300,000.

510 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
511 funds to pay all or part of the cost of acquiring and constructing the projects listed in this

512 Subsection (2).

513 (b) These costs may include the cost of acquiring land, interests in land, easements and
 514 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
 515 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
 516 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
 517 covered by construction of the projects plus a period of six months after the end of the
 518 construction period, and all related engineering, architectural, and legal fees.

519 (c) For the division, proceeds shall be provided for the following:

520 CAPITAL IMPROVEMENTS

521	Alterations, Repairs, and Improvements	\$7,200,000
522	TOTAL IMPROVEMENTS	\$7,200,000

523 CAPITAL AND ECONOMIC DEVELOPMENT

524			ESTIMATED OPERATIONS AND MAINTENANCE COSTS
	PROJECT DESCRIPTION	AMOUNT FUNDED	
525	Corrections - Uinta IVA	\$11,300,000	\$212,800
526	Utah County Youth Correctional Facility	\$6,650,000	\$245,000
527	Ogden Weber Applied Technology Center - Metal Trades	\$5,161,000	\$176,000
528	Project Reserve Fund	\$3,500,000	None
529	Weber State University - Browning Center Remodel	\$3,300,000	None
530	Heber Wells Building Remodel	\$2,000,000	None
531	Higher Education Davis County - Land Purchase	\$1,600,000	None
532	National Guard -- Provo Armory	\$1,500,000	\$128,000
533	Department of Natural Resources - Pioneer Trails Visitor Center	\$900,000	\$65,000

534	Higher Education Design Projects	\$800,000	Varies depending upon projects selected
535	Salt Lake Community College - South Valley Planning	\$300,000	None
536	Division of Youth Corrections renamed in 2003 to the Division of Juvenile Justice Services - Logan Land Purchase	\$120,000	None
537	TOTAL CAPITAL AND ECONOMIC DEVELOPMENT		\$37,131,000
538	TOTAL IMPROVEMENTS AND CAPITAL AND ECONOMIC DEVELOPMENT		\$44,331,000

- 539 (d) For purposes of this section, operations and maintenance costs:
- 540 (i) are estimates only;
- 541 (ii) may include any operations and maintenance costs already funded in existing
- 542 agency budgets; and
- 543 (iii) are not commitments by this Legislature or future Legislatures to fund those
- 544 operations and maintenance costs.
- 545 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
- 546 constitute a limitation on the amount that may be expended for any project.
- 547 (b) The board may revise these estimates and redistribute the amount estimated for a
- 548 project among the projects authorized.
- 549 (c) The commission, by resolution and in consultation with the board, may delete one
- 550 or more projects from this list if the inclusion of that project or those projects in the list could
- 551 be construed to violate state law or federal law or regulation.
- 552 (4) (a) The division may enter into agreements related to these projects before the
- 553 receipt of proceeds of bonds issued under this chapter.
- 554 (b) The division shall make those expenditures from unexpended and unencumbered
- 555 building funds already appropriated to the Capital Projects Fund.
- 556 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
- 557 of bonds issued under this chapter.

558 (d) The commission may, by resolution, make any statement of intent relating to that
559 reimbursement that is necessary or desirable to comply with federal tax law.

560 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
561 it is the intent of the Legislature that the balance necessary to complete the projects be
562 addressed by future Legislatures, either through appropriations or through the issuance or sale
563 of bonds.

564 (b) For those phased projects, the division may enter into contracts for amounts not to
565 exceed the anticipated full project funding but may not allow work to be performed on those
566 contracts in excess of the funding already authorized by the Legislature.

567 (c) Those contracts shall contain a provision for termination of the contract for the
568 convenience of the state [~~as required by Section 63G-6a-1202~~].

569 (d) It is also the intent of the Legislature that this authorization to the division does not
570 bind future Legislatures to fund projects initiated from this authorization.

571 Section 8. Section **63B-5-102** is amended to read:

572 **63B-5-102. Maximum amount -- Projects authorized.**

573 (1) The total amount of bonds issued under this part may not exceed \$32,000,000.

574 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
575 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
576 Subsection (2).

577 (b) These costs may include the cost of acquiring land, interests in land, easements and
578 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
579 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
580 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
581 covered by construction of the projects plus a period of six months after the end of the
582 construction period, and all related engineering, architectural, and legal fees.

583 (c) For the division, proceeds shall be provided for the following:

584 CAPITAL IMPROVEMENTS	
585 Alterations, Repairs, and Improvements	\$7,600,000
586 TOTAL IMPROVEMENTS	\$7,600,000

587 CAPITAL AND ECONOMIC DEVELOPMENT

588			ESTIMATED OPERATIONS AND MAINTENANCE COSTS
	PROJECT DESCRIPTION	AMOUNT FUNDED	
589	Corrections - Gunnison (192 Beds)	\$13,970,000	\$210,000
590	University of Utah -- Gardner Hall	\$7,361,000	\$203,900
591	Weber State University Davis Campus -- Land Purchase	\$771,000	None
592	Department of Workforce Services Cedar City -- Land Purchase	\$148,000	None
593	Utah State University Eastern Durrant School -- Land Purchase	\$400,000	None
594	State Hospital - Forensic Design (200 beds)	\$750,000	\$575,000
595	TOTAL CAPITAL AND ECONOMIC DEVELOPMENT	\$23,400,000	
596	TOTAL IMPROVEMENTS AND CAPITAL AND ECONOMIC DEVELOPMENT	\$31,000,000	

- 597 (d) For purposes of this section, operations and maintenance costs:
- 598 (i) are estimates only;
- 599 (ii) may include any operations and maintenance costs already funded in existing
- 600 agency budgets; and
- 601 (iii) are not commitments by this Legislature or future Legislatures to fund those
- 602 operations and maintenance costs.
- 603 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
- 604 constitute a limitation on the amount that may be expended for any project.
- 605 (b) The board may revise these estimates and redistribute the amount estimated for a
- 606 project among the projects authorized.
- 607 (c) The commission, by resolution and in consultation with the board, may delete one

608 or more projects from this list if the inclusion of that project or those projects in the list could
609 be construed to violate state law or federal law or regulation.

610 (4) (a) The division may enter into agreements related to these projects before the
611 receipt of proceeds of bonds issued under this chapter.

612 (b) The division shall make those expenditures from unexpended and unencumbered
613 building funds already appropriated to the Capital Projects Fund.

614 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
615 of bonds issued under this chapter.

616 (d) The commission may, by resolution, make any statement of intent relating to that
617 reimbursement that is necessary or desirable to comply with federal tax law.

618 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
619 it is the intent of the Legislature that the balance necessary to complete the projects be
620 addressed by future Legislatures, either through appropriations or through the issuance or sale
621 of bonds.

622 (b) For those phased projects, the division may enter into contracts for amounts not to
623 exceed the anticipated full project funding but may not allow work to be performed on those
624 contracts in excess of the funding already authorized by the Legislature.

625 (c) Those contracts shall contain a provision for termination of the contract for the
626 convenience of the state [~~as required by Section 63G-6a-1202~~].

627 (d) It is also the intent of the Legislature that this authorization to the division does not
628 bind future Legislatures to fund projects initiated from this authorization.

629 Section 9. Section **63B-6-102** is amended to read:

630 **63B-6-102. Maximum amount -- Projects authorized.**

631 (1) The total amount of bonds issued under this part may not exceed \$57,000,000.

632 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
633 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
634 Subsection (2).

635 (b) These costs may include the cost of acquiring land, interests in land, easements and
636 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
637 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
638 convenient to the facilities, interest estimated to accrue on these bonds during the period to be

639 covered by construction of the projects plus a period of six months after the end of the
 640 construction period, and all related engineering, architectural, and legal fees.

641 (c) For the division, proceeds shall be provided for the following:

642 CAPITAL AND ECONOMIC DEVELOPMENT

643		AMOUNT	ESTIMATED
	PROJECT DESCRIPTION	FUNDED	OPERATIONS
			AND
			MAINTENANCE
644	Youth Corrections - Carbon / Emery (18 beds)	\$2,298,100	\$70,000
645	State Hospital - 100 bed Forensic Facility	\$13,800,700	\$320,600
646	Utah State University - Widtsoe Hall	\$23,986,700	\$750,200
647	Davis Applied Technology Center - Medical/Health Tech Addition	\$6,344,900	\$144,000
648	Southern Utah University -- Physical Education Building (Design)	\$1,100,000	\$456,100
649	Salt Lake Community College -- High Technology Building, 90th So. Campus (Design)	\$1,165,000	\$718,500
650	Department of Natural Resources - Antelope Island Road	\$3,600,000	None
651	Youth Corrections - Region 1 72 Secured Bed Facility	\$1,500,000	None
652	Department of Natural Resources - Dead Horse Point Visitors Center	\$1,350,000	\$5,700
653	TOTAL CAPITAL AND ECONOMIC DEVELOPMENT	\$55,145,400	

654 (d) For purposes of this section, operations and maintenance costs:

655 (i) are estimates only;

656 (ii) may include any operations and maintenance costs already funded in existing
 657 agency budgets; and

658 (iii) are not commitments by this Legislature or future Legislatures to fund those

659 operations and maintenance costs.

660 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
661 constitute a limitation on the amount that may be expended for any project.

662 (b) The board may revise these estimates and redistribute the amount estimated for a
663 project among the projects authorized.

664 (c) The commission, by resolution and in consultation with the board, may delete one
665 or more projects from this list if the inclusion of that project or those projects in the list could
666 be construed to violate state law or federal law or regulation.

667 (4) (a) The division may enter into agreements related to these projects before the
668 receipt of proceeds of bonds issued under this chapter.

669 (b) The division shall make those expenditures from unexpended and unencumbered
670 building funds already appropriated to the Capital Projects Fund.

671 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
672 of bonds issued under this chapter.

673 (d) The commission may, by resolution, make any statement of intent relating to that
674 reimbursement that is necessary or desirable to comply with federal tax law.

675 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
676 it is the intent of the Legislature that the balance necessary to complete the projects be
677 addressed by future Legislatures, either through appropriations or through the issuance or sale
678 of bonds.

679 (b) For those phased projects, the division may enter into contracts for amounts not to
680 exceed the anticipated full project funding but may not allow work to be performed on those
681 contracts in excess of the funding already authorized by the Legislature.

682 (c) Those contracts shall contain a provision for termination of the contract for the
683 convenience of the state [~~as required by Section 63G-6a-1202~~].

684 (d) It is also the intent of the Legislature that this authorization to the division does not
685 bind future Legislatures to fund projects initiated from this authorization.

686 Section 10. Section **63B-6-402** is amended to read:

687 **63B-6-402. Maximum amount -- Projects authorized.**

688 (1) The total amount of bonds issued under this part may not exceed \$9,000,000.

689 (2) (a) Proceeds from the issuance of bonds shall be provided to the State Tax

690 Commission to provide funds to pay all or part of the cost of the project described in this
691 Subsection (2).

692 (b) These costs may include:

693 (i) the cost of acquisition, development, and conversion of computer hardware and
694 software for motor vehicle fee systems and tax collection and accounting systems of the state;

695 (ii) interest estimated to accrue on these bonds during the period to be covered by that
696 development and conversion, plus a period of six months following the completion of the
697 development and conversion; and

698 (iii) all related engineering, consulting, and legal fees.

699 (c) For the State Tax Commission, proceeds shall be provided for the following:

700	PROJECT	AMOUNT
	DESCRIPTION	FUNDED
701	UTAX SYSTEMS ACQUISITION AND DEVELOPMENT	\$8,500,000

702 (3) The commission, by resolution may decline to issue bonds if the project could be
703 construed to violate state law or federal law or regulation.

704 (4) (a) For this project, for which only partial funding is provided in Subsection (2), it
705 is the intent of the Legislature that the balance necessary to complete the project be addressed
706 by future Legislatures, either through appropriations or through the issuance or sale of bonds.

707 (b) The State Tax Commission may enter into contracts for amounts not to exceed the
708 anticipated full project funding but may not allow work to be performed on those contracts in
709 excess of the funding already authorized by the Legislature.

710 (c) Those contracts shall contain a provision for termination of the contract for the
711 convenience of the state [~~as required by Section 63G-6a-1202~~].

712 (d) It is also the intent of the Legislature that this authorization to the State Tax
713 Commission does not bind future Legislatures to fund projects initiated from this authorization.

714 Section 11. Section **63B-7-102** is amended to read:

715 **63B-7-102. Maximum amount -- Projects authorized.**

716 (1) The total amount of bonds issued under this part may not exceed \$33,600,000.

717 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
718 funds to pay all or part of the cost of acquiring and constructing the projects listed in this

719 Subsection (2).

720 (b) These costs may include the cost of acquiring land, interests in land, easements and
 721 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
 722 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
 723 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
 724 covered by construction of the projects plus a period of six months after the end of the
 725 construction period, and all related engineering, architectural, and legal fees.

726 (c) For the division, proceeds shall be provided for the following:

727			ESTIMATED OPERATIONS AND MAINTENANCE
	PROJECT DESCRIPTION	AMOUNT FUNDED	
728	Southern Utah University Land Purchase	\$4,600,000	\$0
729	Salt Lake Community College High Tech Center - Jordan Campus	\$3,980,700	\$507,900
730	Children's Special Health Care Needs Clinic	\$755,400	\$247,600
731	Youth Corrections - 2 @ 32 beds (Vernal / Logan)	\$419,500	\$276,000
732	Corrections - Gunnison 288 bed and Lagoon Expansion	\$8,425,600	\$0
733	University of Utah - Cowles Building	\$445,500	\$101,700
734	Utah Valley State College - Technical Building	\$1,166,300	\$391,000
735	Sevier Valley Applied Technology Center - Shop Expansion	\$3,014,300	\$443,300
736	Division of Parks and Recreation Statewide Restrooms	\$1,000,000	\$22,700
737	Murray Highway Patrol Office	\$2,300,000	\$81,000
738	Department of Workforce Services - Davis County Employment Center	\$2,780,000	\$128,100
739	State Hospital - Rampton II	\$1,600,000	\$462,000

740	Courts - 4th District Land - Provo	\$1,368,000	\$0
741	Dixie College - Land	\$1,000,000	\$0
742	TOTAL CAPITAL AND ECONOMIC DEVELOPMENT	\$32,855,300	

- 743 (d) For purposes of this section, operations and maintenance costs:
- 744 (i) are estimates only;
- 745 (ii) may include any operations and maintenance costs already funded in existing
- 746 agency budgets; and
- 747 (iii) are not commitments by this Legislature or future Legislatures to fund those
- 748 operations and maintenance costs.
- 749 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
- 750 constitute a limitation on the amount that may be expended for any project.
- 751 (b) The board may revise these estimates and redistribute the amount estimated for a
- 752 project among the projects authorized.
- 753 (c) The commission, by resolution and in consultation with the board, may delete one
- 754 or more projects from this list if the inclusion of that project or those projects in the list could
- 755 be construed to violate state law or federal law or regulation.
- 756 (4) (a) The division may enter into agreements related to these projects before the
- 757 receipt of proceeds of bonds issued under this chapter.
- 758 (b) The division shall make those expenditures from unexpended and unencumbered
- 759 building funds already appropriated to the Capital Projects Fund.
- 760 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
- 761 of bonds issued under this chapter.
- 762 (d) The commission may, by resolution, make any statement of intent relating to that
- 763 reimbursement that is necessary or desirable to comply with federal tax law.
- 764 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
- 765 it is the intent of the Legislature that the balance necessary to complete the projects be
- 766 addressed by future Legislatures, either through appropriations or through the issuance or sale
- 767 of bonds.
- 768 (b) For those phased projects, the division may enter into contracts for amounts not to
- 769 exceed the anticipated full project funding but may not allow work to be performed on those

770 contracts in excess of the funding already authorized by the Legislature.

771 (c) Those contracts shall contain a provision for termination of the contract for the
772 convenience of the state [~~as required by Section 63G-6a-1202~~].

773 (d) It is also the intent of the Legislature that this authorization to the division does not
774 bind future Legislatures to fund projects initiated from this authorization.

775 Section 12. Section **63B-7-402** is amended to read:

776 **63B-7-402. Maximum amount -- Projects authorized.**

777 (1) The total amount of bonds issued under this part may not exceed \$16,500,000.

778 (2) (a) Proceeds from the issuance of bonds shall be provided to the State Tax
779 Commission to provide funds to pay all or part of the cost of the project described in this
780 Subsection (2).

781 (b) These costs may include:

782 (i) the cost of acquisition, development, and conversion of computer hardware and
783 software for motor vehicle fee systems and tax collection and accounting systems of the state;

784 (ii) interest estimated to accrue on these bonds during the period to be covered by that
785 development and conversion, plus a period of six months following the completion of the
786 development and conversion; and

787 (iii) all related engineering, consulting, and legal fees.

788 (c) For the State Tax Commission, proceeds shall be provided for the following:

789	PROJECT	AMOUNT
	DESCRIPTION	FUNDED
790	UTAX SYSTEMS ACQUISITION AND DEVELOPMENT	\$15,650,000

791 (3) The commission, by resolution may decline to issue bonds if the project could be
792 construed to violate state law or federal law or regulation.

793 (4) (a) For this project, for which only partial funding is provided in Subsection (2), it
794 is the intent of the Legislature that the balance necessary to complete the project be addressed
795 by future Legislatures, either through appropriations or through the issuance or sale of bonds.

796 (b) The State Tax Commission may enter into contracts for amounts not to exceed the
797 anticipated full project funding but may not allow work to be performed on those contracts in
798 excess of the funding already authorized by the Legislature.

799 (c) Those contracts shall contain a provision for termination of the contract for the
800 convenience of the state [as required by Section ~~63G-6a-1202~~].

801 (d) It is also the intent of the Legislature that this authorization to the State Tax
802 Commission does not bind future Legislatures to fund projects initiated from this authorization.

803 Section 13. Section **63B-8-102** is amended to read:

804 **63B-8-102. Maximum amount -- Projects authorized.**

805 (1) The total amount of bonds issued under this part may not exceed \$48,500,000.

806 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
807 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
808 Subsection (2).

809 (b) These costs may include the cost of acquiring land, interests in land, easements and
810 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
811 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
812 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
813 covered by construction of the projects plus a period of six months after the end of the
814 construction period, and all related engineering, architectural, and legal fees.

815 (c) For the division, proceeds shall be provided for the following:

PROJECT	AMOUNT	ESTIMATED OPERATIONS
DESCRIPTION	FUNDED	AND
		MAINTENANCE
817 Southern Utah University - Physical Education Building	\$2,493,200	\$447,744
818 Utah Valley State College - Information Sciences Building	\$29,000,000	\$721,875
819 University of Utah - Cowles Building Renovation	\$7,268,500	\$140,217
820 Vernal District Court	\$4,539,500	\$149,989
821 Salt Lake Community College - Applied Education Center	\$4,200,000	\$281,784

822 TOTAL CAPITAL AND ECONOMIC \$47,501,200
823 DEVELOPMENT

823 (d) For purposes of this section, operations and maintenance costs:

824 (i) are estimates only;

825 (ii) may include any operations and maintenance costs already funded in existing
826 agency budgets; and

827 (iii) are not commitments by this Legislature or future Legislatures to fund those
828 operations and maintenance costs.

829 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
830 constitute a limitation on the amount that may be expended for any project.

831 (b) The board may revise these estimates and redistribute the amount estimated for a
832 project among the projects authorized.

833 (c) The commission, by resolution and in consultation with the board, may delete one
834 or more projects from this list if the inclusion of that project or those projects in the list could
835 be construed to violate state law or federal law or regulation.

836 (4) (a) The division may enter into agreements related to these projects before the
837 receipt of proceeds of bonds issued under this chapter.

838 (b) The division shall make those expenditures from unexpended and unencumbered
839 building funds already appropriated to the Capital Projects Fund.

840 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
841 of bonds issued under this chapter.

842 (d) The commission may, by resolution, make any statement of intent relating to that
843 reimbursement that is necessary or desirable to comply with federal tax law.

844 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
845 it is the intent of the Legislature that the balance necessary to complete the projects be
846 addressed by future Legislatures, either through appropriations or through the issuance or sale
847 of bonds.

848 (b) For those phased projects, the division may enter into contracts for amounts not to
849 exceed the anticipated full project funding but may not allow work to be performed on those
850 contracts in excess of the funding already authorized by the Legislature.

851 (c) Those contracts shall contain a provision for termination of the contract for the

852 convenience of the state [~~as required by Section 63G-6a-1202~~].

853 (d) It is also the intent of the Legislature that this authorization to the division does not
854 bind future Legislatures to fund projects initiated from this authorization.

855 Section 14. Section **63B-8-402** is amended to read:

856 **63B-8-402. Maximum amount -- Projects authorized.**

857 (1) The total amount of bonds issued under this part may not exceed \$7,400,000.

858 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
859 funds to pay all or part of the cost of acquiring and constructing the project listed in this
860 Subsection (2).

861 (b) These costs may include the cost of acquiring land, interests in land, easements and
862 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
863 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
864 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
865 covered by construction of the projects plus a period of six months after the end of the
866 construction period, and all related engineering, architectural, and legal fees.

867 (c) For the division, proceeds shall be provided for the following:

PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATIONS AND MAINTENANCE
869 State Hospital - Rampton II	\$7,000,000	\$462,000

870 (d) For purposes of this section, operations and maintenance costs:

871 (i) are estimates only;

872 (ii) may include any operations and maintenance costs already funded in existing
873 agency budgets; and

874 (iii) are not commitments by this Legislature or future Legislatures to fund those
875 operations and maintenance costs.

876 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
877 constitute a limitation on the amount that may be expended for any project.

878 (b) The board may revise these estimates and redistribute the amount estimated for a
879 project among the projects authorized.

880 (c) The commission, by resolution and in consultation with the board, may delete one
881 or more projects from this list if the inclusion of that project or those projects in the list could
882 be construed to violate state law or federal law or regulation.

883 (4) (a) The division may enter into agreements related to these projects before the
884 receipt of proceeds of bonds issued under this chapter.

885 (b) The division shall make those expenditures from unexpended and unencumbered
886 building funds already appropriated to the Capital Projects Fund.

887 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
888 of bonds issued under this chapter.

889 (d) The commission may, by resolution, make any statement of intent relating to that
890 reimbursement that is necessary or desirable to comply with federal tax law.

891 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
892 it is the intent of the Legislature that the balance necessary to complete the projects be
893 addressed by future Legislatures, either through appropriations or through the issuance or sale
894 of bonds.

895 (b) For those phased projects, the division may enter into contracts for amounts not to
896 exceed the anticipated full project funding but may not allow work to be performed on those
897 contracts in excess of the funding already authorized by the Legislature.

898 (c) Those contracts shall contain a provision for termination of the contract for the
899 convenience of the state [~~as required by Section 63G-6a-1202~~].

900 (d) It is also the intent of the Legislature that this authorization to the division does not
901 bind future Legislatures to fund projects initiated from this authorization.

902 Section 15. Section **63B-9-103** is amended to read:

903 **63B-9-103. Other capital facility authorizations and intent language.**

904 (1) It is the intent of the Legislature that:

905 (a) Utah State University use institutional funds to plan, design, and construct a
906 renovation and expansion of the Edith Bowen School under the direction of the director of the
907 Division of Facilities Construction and Management unless supervisory authority has been
908 delegated;

909 (b) no state funds be used for any portion of this project; and

910 (c) the university may request state funds for operations and maintenance to the extent

911 that the university is able to demonstrate to the Board of Regents that the facility meets
912 approved academic and training purposes under Board of Regents policy R710.

913 (2) It is the intent of the Legislature that:

914 (a) the University of Utah use institutional funds to plan, design, and construct a
915 College of Science Math Center under the direction of the director of the Division of Facilities
916 Construction and Management unless supervisory authority has been delegated;

917 (b) no state funds be used for any portion of this project; and

918 (c) the university may request state funds for operations and maintenance to the extent
919 that the university is able to demonstrate to the Board of Regents that the facility meets
920 approved academic and training purposes under Board of Regents policy R710.

921 (3) It is the intent of the Legislature that:

922 (a) the University of Utah use institutional funds to plan, design, and construct a
923 Burbidge Athletics and Academics Building under the direction of the director of the Division
924 of Facilities Construction and Management unless supervisory authority has been delegated;

925 (b) no state funds be used for any portion of this project; and

926 (c) the university may not request state funds for operations and maintenance.

927 (4) It is the intent of the Legislature that:

928 (a) the University of Utah use institutional funds to plan, design, and construct an
929 expansion to the bookstore under the direction of the director of the Division of Facilities
930 Construction and Management unless supervisory authority has been delegated;

931 (b) no state funds be used for any portion of this project; and

932 (c) the university may not request state funds for operations and maintenance.

933 (5) It is the intent of the Legislature that:

934 (a) the University of Utah use institutional funds to plan, design, and construct a Health
935 Sciences/Basic Sciences Building under the direction of the director of the Division of
936 Facilities Construction and Management unless supervisory authority has been delegated;

937 (b) no state funds be used for any portion of this project; and

938 (c) the university may request state funds for operations and maintenance to the extent
939 that the university is able to demonstrate to the Board of Regents that the facility meets
940 approved academic and training purposes under Board of Regents policy R710.

941 (6) It is the intent of the Legislature that:

942 (a) Weber State University use institutional funds to plan, design, and construct an
943 expansion to the stadium under the direction of the director of the Division of Facilities
944 Construction and Management unless supervisory authority has been delegated;

945 (b) no state funds be used for any portion of this project; and

946 (c) the university may not request state funds for operations and maintenance.

947 (7) It is the intent of the Legislature that:

948 (a) Utah Valley State College use institutional funds to plan, design, and construct a
949 baseball stadium under the direction of the director of the Division of Facilities Construction
950 and Management unless supervisory authority has been delegated;

951 (b) no state funds be used for any portion of this project; and

952 (c) the college may not request state funds for operations and maintenance.

953 (8) It is the intent of the Legislature that:

954 (a) Southern Utah University use institutional funds to plan, design, and construct a
955 weight training room under the direction of the director of the Division of Facilities
956 Construction and Management unless supervisory authority has been delegated;

957 (b) no state funds be used for any portion of this project; and

958 (c) the university may not request state funds for operations and maintenance.

959 (9) It is the intent of the Legislature that:

960 (a) Snow College may lease land at the Snow College Richfield campus to a private
961 developer for the construction and operation of student housing;

962 (b) the oversight and inspection of the construction comply with Section [63A-5-206](#);

963 (c) no state funds be used for any portion of this project; and

964 (d) the college may not request state funds for operations and maintenance.

965 (10) It is the intent of the Legislature that:

966 (a) Salt Lake Community College may lease land at the Jordan campus to Jordan
967 School District for the construction and operation of an Applied Technology Education Center;

968 (b) the oversight and inspection of the construction comply with Section [63A-5-206](#);

969 (c) no state funds be used for any portion of this project; and

970 (d) the college may not request state funds for operations and maintenance.

971 (11) It is the intent of the Legislature that:

972 (a) the Department of Transportation exchange its maintenance station at Kimball

973 Junction for property located near Highway 40 in Summit County; and

974 (b) the Department of Transportation use federal funds, rent paid by the Salt Lake
975 Organizing Committee for the use of the maintenance station, and any net proceeds resulting
976 from the exchange of property to construct a replacement facility under the direction of the
977 director of the Division of Facilities Construction and Management unless supervisory
978 authority has been delegated.

979 (12) It is the intent of the Legislature that:

980 (a) the Department of Transportation sell surplus property in Utah County;

981 (b) the Department of Transportation use funds from that sale to remodel existing
982 space and add an addition to the Region 3 Complex; and

983 (c) the project cost not exceed the funds received through sale of property.

984 (13) It is the intent of the Legislature that the Department of Workforce Services use
985 proceeds from property sales to purchase additional property adjacent to its state-owned facility
986 in Logan.

987 (14) (a) It is the intent of the Legislature that, because only partial funding is provided
988 for the Heat Plant/Infrastructure Project at Utah State University, the balance necessary to
989 complete this project be addressed by future Legislatures, either through appropriations or
990 through the issuance of bonds.

991 (b) (i) In compliance with Section 63A-5-207, the division may enter into contracts for
992 amounts not to exceed the anticipated full project funding but may not allow work to be
993 performed on those contracts in excess of the funding already authorized by the Legislature.

994 (ii) Those contracts shall contain a provision for termination of the contract for the
995 convenience of the state [~~as required by Section 63G-6a-1202~~].

996 (c) It is also the intent of the Legislature that this authorization to the division does not
997 bind future Legislatures to fund the Heat Plant/Infrastructure Project at Utah State University.

998 Section 16. Section 63B-11-202 is amended to read:

999 **63B-11-202. Maximum amount -- Projects authorized.**

1000 (1) (a) The total amount of bonds issued under this part may not exceed \$21,250,000.

1001 (b) When Utah State University certifies to the commission that the university has
1002 obtained reliable commitments, convertible to cash, of \$5,000,000 or more in nonstate funds to
1003 construct an addition to the new engineering building and demolish the existing engineering

1004 classroom building, the commission may issue and sell general obligation bonds in a total
 1005 amount not to exceed \$6,100,000.

1006 (c) When the University of Utah certifies to the commission that the university has
 1007 obtained reliable commitments, convertible to cash, of \$13,000,000 or more in nonstate funds
 1008 to construct a new engineering building, the commission may issue and sell general obligation
 1009 bonds in a total amount not to exceed \$15,150,000.

1010 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
 1011 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
 1012 Subsection (2).

1013 (b) These costs may include the cost of acquiring land, interests in land, easements and
 1014 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
 1015 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
 1016 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
 1017 covered by construction of the projects plus a period of six months after the end of the
 1018 construction period, and all related engineering, architectural, and legal fees.

1019 (c) For the division, proceeds shall be provided for the following:

PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATING AND MAINTENANCE COSTS
1021 1. Utah State University Engineering Building Renovation	\$5,943,500	\$425,000
1022 2. University of Utah New Engineering Building	\$15,000,000	\$489,000
1023 COSTS OF ISSUANCE	\$306,500	
1024 TOTAL CAPITAL AND ECONOMIC DEVELOPMENT		\$21,250,000

1025 (d) For purposes of this section, operations and maintenance costs:

1026 (i) are estimates only;

1027 (ii) may include any operations and maintenance costs already funded in existing
 1028 agency budgets; and

1029 (iii) are not commitments by this Legislature or future Legislatures to fund those
1030 operations and maintenance costs.

1031 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
1032 constitute a limitation on the amount that may be expended for any project.

1033 (b) The board may revise these estimates and redistribute the amount estimated for a
1034 project among the projects authorized.

1035 (c) The commission, by resolution and in consultation with the board, may delete one
1036 or more projects from this list if the inclusion of that project or those projects in the list could
1037 be construed to violate state law or federal law or regulation.

1038 (4) (a) The division may enter into agreements related to these projects before the
1039 receipt of proceeds of bonds issued under this chapter.

1040 (b) The division shall make those expenditures from unexpended and unencumbered
1041 building funds already appropriated to the Capital Projects Fund.

1042 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
1043 of bonds issued under this chapter.

1044 (d) The commission may, by resolution, make any statement of intent relating to that
1045 reimbursement that is necessary or desirable to comply with federal tax law.

1046 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
1047 it is the intent of the Legislature that the balance necessary to complete the projects be
1048 addressed by future Legislatures, either through appropriations or through the issuance or sale
1049 of bonds.

1050 (b) For those phased projects, the division may enter into contracts for amounts not to
1051 exceed the anticipated full project funding but may not allow work to be performed on those
1052 contracts in excess of the funding already authorized by the Legislature.

1053 (c) Those contracts shall contain a provision for termination of the contract for the
1054 convenience of the state [~~as required by Section 63G-6a-1202~~].

1055 (d) It is also the intent of the Legislature that this authorization to the division does not
1056 bind future Legislatures to fund projects initiated from this authorization.

1057 Section 17. Section **63F-1-205** is amended to read:

1058 **63F-1-205. Approval of acquisitions of information technology.**

1059 (1) (a) Except as provided in Title 63M, Chapter 1, Part 26, Government Procurement

1060 Private Proposal Program, in accordance with Subsection (2), the chief information officer
1061 shall approve the acquisition by an executive branch agency of:

- 1062 (i) information technology equipment;
- 1063 (ii) telecommunications equipment;
- 1064 (iii) software;
- 1065 (iv) services related to the items listed in Subsections (1)(a)(i) through (iii); and
- 1066 (v) data acquisition.

1067 (b) The chief information officer may negotiate the purchase, lease, or rental of private
1068 or public information technology or telecommunication services or facilities in accordance with
1069 this section.

1070 (c) Where practical, efficient, and economically beneficial, the chief information
1071 officer shall use existing private and public information technology or telecommunication
1072 resources.

1073 (d) Notwithstanding another provision of this section, an acquisition authorized by this
1074 section shall comply with rules made by the applicable rulemaking authority under Title 63G,
1075 Chapter 6a, Utah Procurement Code.

1076 (2) Before negotiating a purchase, lease, or rental under Subsection (1) for an amount
1077 that exceeds the value established by the chief information officer by rule in accordance with
1078 Section 63F-1-206, the chief information officer shall:

1079 (a) conduct an analysis of the needs of executive branch agencies and subscribers of
1080 services and the ability of the proposed information technology or telecommunications services
1081 or supplies to meet those needs; and

1082 (b) for purchases, leases, or rentals not covered by an existing statewide contract,
1083 provide in writing to the chief procurement officer in the Division of Purchasing and General
1084 Services that:

- 1085 (i) the analysis required in Subsection (2)(a) was completed; and
- 1086 (ii) based on the analysis, the proposed purchase, lease, rental, or master contract of
1087 services, products, or supplies is practical, efficient, and economically beneficial to the state
1088 and the executive branch agency or subscriber of services.

1089 (3) In approving an acquisition described in Subsections (1) and (2), the chief
1090 information officer shall:

1091 (a) establish by administrative rule, in accordance with Section 63F-1-206, standards
1092 under which an agency must obtain approval from the chief information officer before
1093 acquiring the items listed in Subsections (1) and (2);

1094 (b) for those acquisitions requiring approval, determine whether the acquisition is in
1095 compliance with:

1096 (i) the executive branch strategic plan;

1097 (ii) the applicable agency information technology plan;

1098 (iii) the budget for the executive branch agency or department as adopted by the

1099 Legislature; and

1100 (iv) Title 63G, Chapter 6a, Utah Procurement Code; and

1101 (c) in accordance with Section 63F-1-207, require coordination of acquisitions between
1102 two or more executive branch agencies if it is in the best interests of the state.

1103 (4) (a) Each executive branch agency shall provide the chief information officer with
1104 complete access to all information technology records, documents, and reports:

1105 (i) at the request of the chief information officer; and

1106 (ii) related to the executive branch agency's acquisition of any item listed in Subsection

1107 (1).

1108 (b) Beginning July 1, 2006 and in accordance with administrative rules established by
1109 the department under Section 63F-1-206, no new technology projects may be initiated by an
1110 executive branch agency or the department unless the technology project is described in a
1111 formal project plan and the business case analysis has been approved by the chief information
1112 officer and agency head. The project plan and business case analysis required by this
1113 Subsection (4) shall be in the form required by the chief information officer, and shall include:

1114 (i) a statement of work to be done and existing work to be modified or displaced;

1115 (ii) total cost of system development and conversion effort, including system analysis
1116 and programming costs, establishment of master files, testing, documentation, special

1117 equipment cost and all other costs, including overhead;

1118 (iii) savings or added operating costs that will result after conversion;

1119 (iv) other advantages or reasons that justify the work;

1120 (v) source of funding of the work, including ongoing costs;

1121 (vi) consistency with budget submissions and planning components of budgets; and

1122 (vii) whether the work is within the scope of projects or initiatives envisioned when the
1123 current fiscal year budget was approved.

1124 (5) (a) The chief information officer and the Division of Purchasing and General
1125 Services shall work cooperatively to establish procedures under which the chief information
1126 officer shall monitor and approve acquisitions as provided in this section.

1127 (b) The procedures established under this section shall include at least the written
1128 certification required by Subsection ~~63G-6a-303~~(5)(1)(e).

1129 Section 18. Section **63G-6a-103** is amended to read:

1130 **63G-6a-103. Definitions.**

1131 As used in this chapter:

1132 (1) "Architect-engineer services" means:

1133 (a) professional services within the scope of the practice of architecture as defined in
1134 Section ~~58-3a-102~~; ~~[or]~~

1135 (b) professional engineering as defined in Section ~~58-22-102~~~~[-];~~ or

1136 (c) master planning and programming services.

1137 (2) "Bidder" means a person who responds to an invitation for bids.

1138 (3) "Change directive" means a written order signed by the procurement officer that
1139 directs the contractor to suspend work or make changes, as authorized by contract, without the
1140 consent of the contractor.

1141 (4) "Change order" means a written alteration in specifications, delivery point, rate of
1142 delivery, period of performance, price, quantity, or other provisions of a contract, upon mutual
1143 agreement of the parties to the contract.

1144 (5) "Chief procurement officer" means the chief procurement officer appointed under
1145 Subsection ~~63G-6a-302~~(1).

1146 (6) "Conducting procurement unit" means a procurement unit that conducts all aspects
1147 of a procurement:

1148 (a) except:

1149 (i) reviewing a solicitation to verify that it is in proper form; and

1150 (ii) causing the publication of a notice of a solicitation; and

1151 (b) including:

1152 (i) preparing any solicitation document;

- 1153 (ii) appointing an evaluation committee;
1154 (iii) conducting the evaluation process, except as provided in Subsection
1155 63G-6a-707(5)(b) relating to scores calculated for costs of proposals;
1156 (iv) selecting and recommending the person to be awarded a contract;
1157 (v) negotiating the terms and conditions of a contract, subject to the issuing
1158 procurement unit's approval; and
1159 (vi) administering a contract.
- 1160 ~~[(6)]~~ (7) (a) "Construction" means the process of building, renovating, altering,
1161 improving, or repairing a public building or public work.
1162 (b) "Construction" does not include the routine operation, routine repair, or routine
1163 maintenance of an existing structure, building, or real property.
- 1164 ~~[(7)]~~ (8) (a) "Construction manager/general contractor" means a contractor who enters
1165 into a contract for the management of a construction project when the contract allows the
1166 contractor to subcontract for additional labor and materials that are not included in the
1167 contractor's cost proposal submitted at the time of the procurement of the contractor's services.
1168 (b) "Construction manager/general contractor" does not include a contractor whose
1169 only subcontract work not included in the contractor's cost proposal submitted as part of the
1170 procurement of the contractor's services is to meet subcontracted portions of change orders
1171 approved within the scope of the project.
- 1172 ~~[(8)]~~ (9) "Contract" means an agreement for the procurement or disposal of a
1173 procurement item.
- 1174 ~~[(9)]~~ (10) "Contractor" means a person who is awarded a contract with a procurement
1175 unit.
- 1176 ~~[(10)]~~ (11) "Cooperative procurement" means procurement conducted by, or on behalf
1177 of[;];
1178 (a) more than one procurement unit[;]; or [by]
1179 (b) a procurement unit [~~and an external procurement unit.~~] and a cooperative
1180 purchasing organization.
- 1181 ~~[(11)]~~ (12) "Cost-plus-a-percentage-of-cost contract" means a contract where the
1182 contractor is paid a percentage over and above the contractor's actual expenses or costs.
1183 ~~[(12)]~~ (13) "Cost-reimbursement contract" means a contract under which a contractor

1184 is reimbursed for costs which are allowed and allocated in accordance with the contract terms
1185 and the provisions of this chapter, and a fee, if any.

1186 ~~[(13)]~~ (14) "Days" means calendar days, unless expressly provided otherwise.

1187 ~~[(14)]~~ (15) "Definite quantity contract" means a fixed price contract that provides for
1188 the supply of a specified amount of goods over a specified period, with deliveries scheduled
1189 according to a specified schedule.

1190 ~~[(15)]~~ (16) "Design-build" means the procurement of architect-engineer services and
1191 construction by the use of a single contract with the design-build provider.

1192 ~~[(16)]~~ (17) "Director" means the director of the division.

1193 ~~[(17)]~~ (18) "Established catalogue price" means the price included in a catalogue, price
1194 list, schedule, or other form that:

1195 (a) is regularly maintained by a manufacturer or contractor;

1196 (b) is either published or otherwise available for inspection by customers; and

1197 (c) states prices at which sales are currently or were last made to a significant number
1198 of any category of buyers or buyers constituting the general buying public for the supplies or
1199 services involved.

1200 ~~[(18)]~~ (19) "Fixed price contract" means a contract that provides a price, for each
1201 procurement item obtained under the contract, that is not subject to adjustment except to the
1202 extent that:

1203 (a) the contract provides, under circumstances specified in the contract, for an
1204 adjustment in price that is not based on cost to the contractor; or

1205 (b) an adjustment is required by law.

1206 ~~[(19)]~~ (20) "Fixed price contract with price adjustment" means a fixed price contract
1207 that provides for an upward or downward revision of price, precisely described in the contract,
1208 that:

1209 (a) is based on the consumer price index or another commercially acceptable index,
1210 source, or formula; and

1211 (b) is not based on a percentage of the cost to the contractor.

1212 ~~[(20)]~~ (21) (a) "Grant" means furnishing, by a public entity or by any other public or
1213 private source, financial or other assistance to a person to support a program authorized by law.

1214 (b) "Grant" does not include:

1215 (i) an award whose primary purpose is to procure an end product or procurement item;

1216 or

1217 (ii) a contract that is awarded as a result of a procurement or a procurement process.

1218 [~~(21)~~] (22) "Head of a procurement unit" means:

1219 (a) as it relates to a legislative procurement unit, any person designated by rule made
1220 by the applicable rulemaking authority;

1221 (b) as it relates to an executive branch procurement unit:

1222 (i) the director of a division; or

1223 (ii) any other person designated by the board, by rule;

1224 (c) as it relates to a judicial procurement unit:

1225 (i) the Judicial Council; or

1226 (ii) any other person designated by the Judicial Council, by rule;

1227 (d) as it relates to a local government procurement unit:

1228 (i) the legislative body of the local government procurement unit; or

1229 (ii) any other person designated by the local government procurement unit;

1230 (e) as it relates to a local district, the board of trustees of the local district or a designee
1231 of the board of trustees;

1232 (f) as it relates to a special service district, the governing body of the special service
1233 district or a designee of the governing body;

1234 (g) as it relates to a local building authority, the board of directors of the local building
1235 authority or a designee of the board of directors;

1236 (h) as it relates to a conservation district, the board of supervisors of the conservation
1237 district or a designee of the board of supervisors;

1238 (i) as it relates to a public corporation, the board of directors of the public corporation
1239 or a designee of the board of directors;

1240 (j) as it relates to a school district or any school or entity within a school district, the
1241 board of the school district, or the board's designee;

1242 (k) as it relates to a charter school, the individual or body with executive authority over
1243 the charter school, or the individual's or body's designee;

1244 (l) as it relates to an institution of higher education of the state, the president of the
1245 institution of higher education, or the president's designee; or

1246 (m) as it relates to a public transit district, the board of trustees or a designee of the
1247 board of trustees.

1248 [(22)] (23) "Indefinite quantity contract" means a fixed price contract that:

1249 (a) is for an indefinite amount of procurement items to be supplied as ordered by a
1250 procurement unit; and

1251 (b) (i) does not require a minimum purchase amount; or

1252 (ii) provides a maximum purchase limit.

1253 [(23)] (24) "Independent procurement authority" means authority granted to a
1254 procurement unit[~~under Subsection 63G-6a-108(2);~~] to engage in a procurement without
1255 oversight or control of the division.

1256 [(24)] (25) "Invitation for bids" includes all documents, including documents that are
1257 attached or incorporated by reference, used for soliciting bids to provide a procurement item to
1258 a procurement unit.

1259 [(25)] (26) "Issuing procurement unit" means a procurement unit that:

1260 [~~(a) the division, if the division issues the invitation for bids or the request for~~
1261 ~~proposals; or]~~

1262 [~~(b) the procurement unit, with independent procurement authority, that issues the~~
1263 ~~invitation for bids or the request for proposals;]~~

1264 (a) reviews a solicitation to verify that it is in proper form;

1265 (b) causes the notice of a solicitation to be published; and

1266 (c) negotiates the terms and conditions of a contract.

1267 [(26)] (27) "Labor hour contract" is a contract where:

1268 (a) the supplies and materials are not provided by, or through, the contractor; and

1269 (b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and
1270 profit for a specified number of labor hours or days.

1271 [(27)] (28) "Multiple award contracts" means the award of a contract for an indefinite
1272 quantity of a procurement item to more than one bidder or offeror.

1273 [(28)] (29) "Multiyear contract" means a contract that extends beyond a one-year
1274 period, including a contract that permits renewal of the contract, without competition, beyond
1275 the first year of the contract.

1276 [(29)] (30) "Municipality" means a city or a town.

- 1277 [~~(30)~~] (31) "Offeror" means a person who responds to a request for proposals.
- 1278 [~~(31)~~] (32) "Preferred bidder" means a bidder that is entitled to receive a reciprocal
- 1279 preference under the requirements of this chapter.
- 1280 [~~(32)~~] (33) (a) "Procure" or "procurement" means buying, purchasing, renting, leasing,
- 1281 leasing with an option to purchase, or otherwise acquiring a procurement item.
- 1282 (b) "Procure" or "procurement" includes all functions that pertain to the obtaining of a
- 1283 procurement item, including:
- 1284 (i) the description of requirements;
- 1285 (ii) the selection process;
- 1286 (iii) solicitation of sources;
- 1287 (iv) the preparation for soliciting a procurement item; and
- 1288 (v) the award of a contract~~[-and]~~.
- 1289 [~~(vi) all phases of contract administration.]~~
- 1290 [~~(33)~~] (34) "Procurement item" means a supply, a service, construction, or technology.
- 1291 [~~(34)~~] (35) "Procurement officer" means:
- 1292 (a) as it relates to a procurement unit with independent procurement authority:
- 1293 (i) the head of the procurement unit;
- 1294 (ii) a designee of the head of the procurement unit; or
- 1295 (iii) a person designated by rule made by the applicable rulemaking authority; or
- 1296 (b) as it relates to the division or a procurement unit without independent procurement
- 1297 authority, the chief procurement officer.
- 1298 [~~(35)~~] (36) "Professional service" means a service that requires a high degree of
- 1299 specialized knowledge and discretion in the performance of the service, including:
- 1300 (a) legal services;
- 1301 (b) consultation services;
- 1302 (c) architectural services;
- 1303 (d) engineering;
- 1304 (e) design;
- 1305 (f) underwriting;
- 1306 (g) bond counsel;
- 1307 (h) financial advice;

- 1308 (i) construction management;
- 1309 (j) medical services;
- 1310 (k) psychiatric services; or
- 1311 (l) counseling services.
- 1312 ~~[(36)]~~ (37) "Protest officer" means:
- 1313 (a) as it relates to the division or a procurement unit with independent procurement
- 1314 authority:
- 1315 (i) the head of the procurement unit;
- 1316 (ii) a designee of the head of the procurement unit; or
- 1317 (iii) a person designated by rule made by the applicable rulemaking authority; or
- 1318 (b) as it relates to a procurement unit without independent procurement authority, the
- 1319 chief procurement officer or the chief procurement officer's designee.
- 1320 ~~[(37)]~~ (38) "Request for information" means a nonbinding process where a
- 1321 procurement unit requests information relating to a procurement item.
- 1322 ~~[(38)]~~ (39) "Request for proposals" includes all documents, including documents that
- 1323 are attached or incorporated by reference, used for soliciting proposals to provide a
- 1324 procurement item to a procurement unit.
- 1325 (40) "Request for statement of qualifications" means all documents used to solicit
- 1326 information about the qualifications of the person interested in responding to a potential
- 1327 procurement, including documents attached or incorporated by reference.
- 1328 ~~[(39)]~~ (41) "Requirements contract" means a contract:
- 1329 (a) where a contractor agrees to provide a procurement unit's entire requirements for
- 1330 certain procurement items at prices specified in the contract during the contract period; and
- 1331 (b) that:
- 1332 (i) does not require a minimum purchase amount; or
- 1333 (ii) provides a maximum purchase limit.
- 1334 ~~[(40)]~~ (42) "Responsible" means ~~[that a bidder or offeror: (a) is]~~ being capable, in all
- 1335 respects, of: ~~[to fully perform the contract requirements solicited in an invitation for bids or a~~
- 1336 ~~request for proposals; and]~~
- 1337 ~~[(b) has the integrity and reliability to ensure good faith performance.]~~
- 1338 (a) meeting all the requirements of a solicitation; and

1339 (b) fully performing all the requirements of the contract resulting from the solicitation,
1340 including being financially solvent with sufficient financial resources to perform the contract.

1341 [~~(41)~~] (43) "Responsive" means [~~that a bidder or offeror submits a response to an~~
1342 ~~invitation for bids or a request for proposals that conforms~~] conforming in all material respects
1343 to the invitation for bids or request for proposals.

1344 [~~(42)~~] (44) "Sealed" means manually or electronically sealed and submitted bids or
1345 proposals.

1346 [~~(43)~~] (45) (a) "Services" means the furnishing of labor, time, or effort by a contractor,
1347 not involving the delivery of a specific end product other than a report that is incidental to the
1348 required performance.

1349 (b) "Services" does not include an employment agreement or a collective bargaining
1350 agreement.

1351 (46) "Sole source contract" means a contract resulting from a sole source procurement.

1352 (47) "Sole source procurement" means a procurement without competition pursuant to
1353 a determination under Subsection [63G-6a-802\(2\)\(a\)](#) that there is only one source for the
1354 procurement item.

1355 (48) "Solicitation" means an invitation for bids, request for proposals, notice of a sole
1356 source procurement, request for statement of qualifications, request for information, or any
1357 document used to obtain bids, proposals, pricing, qualifications, or information for the purpose
1358 of entering into a procurement contract.

1359 [~~(44)~~] (49) "Specification" means any description of the physical or functional
1360 characteristics, or nature of a procurement item included in an invitation for bids or a request
1361 for proposals, or otherwise specified or agreed to by a procurement unit, including a description
1362 of:

1363 (a) a requirement for inspecting or testing a procurement item; or

1364 (b) preparing a procurement item for delivery.

1365 [~~(45)~~] (50) "Standard procurement process" means one of the following methods of
1366 obtaining a procurement item:

1367 (a) bidding, as described in Part 6, Bidding;

1368 (b) request for proposals, as described in Part 7, Request for Proposals; or

1369 (c) small purchases, in accordance with the requirements established under Section

1370 63G-6a-408.

1371 [~~(46)~~] (51) "State cooperative contract" means a contract awarded by the division for
1372 and in behalf of all public entities.

1373 (52) "Statement of qualifications" means a written statement submitted to a
1374 procurement unit in response to a request for statement of qualifications.

1375 [~~(47)~~] (53) (a) "Subcontractor" means a person under contract with a contractor or
1376 another subcontractor to provide services or labor for design or construction.

1377 (b) "Subcontractor" includes a trade contractor or specialty contractor.

1378 (c) "Subcontractor" does not include a supplier who provides only materials,
1379 equipment, or supplies to a contractor or subcontractor.

1380 [~~(48)~~] (54) "Supplies" means all property, including equipment, materials, and printing.

1381 [~~(49)~~] (55) "Tie bid" means that the lowest responsive and responsible bids are
1382 identical in price.

1383 [~~(50)~~] (56) "Time and materials contract" means a contract where the contractor is
1384 paid:

1385 (a) the actual cost of direct labor at specified hourly rates;

1386 (b) the actual cost of materials and equipment usage; and

1387 (c) an additional amount, expressly described in the contract, to cover overhead and
1388 profit, that is not based on a percentage of the cost to the contractor.

1389 Section 19. Section **63G-6a-104** is amended to read:

1390 **63G-6a-104. Definitions of government entities.**

1391 As used in this chapter:

1392 (1) "Applicable rulemaking authority" means:

1393 (a) as it relates to a legislative procurement unit, the Legislative Management
1394 Committee, which shall adopt a policy establishing requirements applicable to a legislative
1395 procurement unit;

1396 (b) as it relates to a judicial procurement unit, the Judicial Council;

1397 (c) as it relates to an executive branch procurement unit, except to the extent provided
1398 in Subsections (1)(d) through (g), the board;

1399 (d) as it relates to the State Building Board, created in Section 63A-5-101, the State
1400 Building Board, but only to the extent that the rules relate to procurement authority expressly

1401 granted to the State Building Board by statute;

1402 (e) as it relates to the Division of Facilities Construction and Management, created in
1403 Section 63A-5-201, the director of the Division of Facilities Construction and Management,
1404 but only to the extent that the rules relate to procurement authority expressly granted to the
1405 Division of Facilities Construction and Management by statute;

1406 (f) as it relates to the Office of the Attorney General, the attorney general, but only to
1407 the extent that the rules relate to procurement authority expressly granted to the attorney
1408 general by statute;

1409 (g) as it relates to the Department of Transportation, created in Section 72-1-201, the
1410 executive director of the Department of Transportation, but only to the extent that the rules
1411 relate to procurement authority expressly granted to the Department of Transportation by
1412 statute;

1413 (h) as it relates to a local government procurement unit, the legislative body of the local
1414 government procurement unit, not as a delegation of authority from the Legislature, but under
1415 the local government procurement unit's own legislative authority;

1416 (i) as it relates to a school district or a public school, the Utah State Procurement Policy
1417 Board, except to the extent that a school district makes its own nonadministrative rules, with
1418 respect to a particular subject, that do not conflict with the provisions of this chapter;

1419 (j) as it relates to a state institution of higher education, the State Board of Regents;

1420 (k) as it relates to a public transit district, the chief executive of the public transit
1421 district;

1422 (l) as it relates to a local district or a special service district:

1423 (i) before May 13, 2014, the board of trustees of the local district or the governing body
1424 of the special service district; or

1425 (ii) on or after May 13, 2014, the board, except to the extent that the board of trustees
1426 of the local district or the governing body of the special service district makes its own rules:

1427 (A) with respect to a subject addressed by board rules; or

1428 (B) that are in addition to board rules; or

1429 (m) as it relates to a procurement unit, other than a procurement unit described in
1430 Subsections (1)(a) through (l), the board.

1431 (2) "Board" means the Utah State Procurement Policy Board, created in Section

1432 63G-6a-202.

1433 (3) "Building board" means the State Building Board created in Section 63A-5-101.

1434 (4) "Conservation district" is as defined in Section 17D-3-102.

1435 (5) "Cooperative purchasing organization" means an organization, association, or
1436 alliance of purchasers established to combine purchasing power in order to obtain the best
1437 value for the purchasers by engaging in procurements in accordance with Section 63G-6a-2105.

1438 ~~[(5)]~~ (6) "Division" means the Division of Purchasing and General Services.

1439 ~~[(6)]~~ (7) "Educational procurement unit" means:

1440 (a) a school district;

1441 (b) a public school, including a local school board or a charter school;

1442 (c) Utah Schools for the Deaf and Blind;

1443 (d) the Utah Education Network; or

1444 (e) an institution of higher education of the state.

1445 ~~[(7)]~~ (8) "Executive branch procurement unit" means each department, division, office,
1446 bureau, agency, or other organization within the state executive branch, including the division
1447 and the attorney general's office.

1448 ~~[(8) "External procurement unit" means:]~~

1449 ~~[(a) a buying organization not located in this state which, if located in this state, would~~
1450 ~~qualify as a procurement unit; or]~~

1451 ~~[(b) an agency of the United States.]~~

1452 (9) "Judicial procurement unit" means:

1453 (a) the Utah Supreme Court;

1454 (b) the Utah Court of Appeals;

1455 (c) the Judicial Council;

1456 (d) a state judicial district; or

1457 (e) each office, committee, subcommittee, or other organization within the state
1458 judicial branch.

1459 (10) "Legislative procurement unit" means:

1460 (a) the Legislature;

1461 (b) the Senate;

1462 (c) the House of Representatives;

- 1463 (d) a staff office of an entity described in Subsection (10)(a), (b), or (c); or
- 1464 (e) each office, committee, subcommittee, or other organization within the state
- 1465 legislative branch.
- 1466 (11) "Local building authority" is as defined in Section [17D-2-102](#).
- 1467 (12) "Local district" is as defined in Section [17B-1-102](#).
- 1468 (13) "Local government procurement unit" means:
- 1469 (a) a county or municipality, and each office or agency of the county or municipality,
- 1470 unless the county or municipality adopts its own procurement code by ordinance;
- 1471 (b) a county or municipality, and each office or agency of the county or municipality,
- 1472 that has adopted this entire chapter by ordinance; or
- 1473 (c) a county or municipality, and each office or agency of the county or municipality,
- 1474 that has adopted a portion of this chapter by ordinance, to the extent that the term is used in the
- 1475 adopted portion of this chapter.
- 1476 (14) (a) "Procurement unit" means:
- 1477 (i) a legislative procurement unit;
- 1478 (ii) an executive branch procurement unit;
- 1479 (iii) a judicial procurement unit;
- 1480 (iv) an educational procurement unit;
- 1481 (v) a local government procurement unit;
- 1482 (vi) a local district;
- 1483 (vii) a special service district;
- 1484 (viii) a local building authority;
- 1485 (ix) a conservation district;
- 1486 (x) a public corporation; or
- 1487 (xi) a public transit district.
- 1488 (b) "Procurement unit" does not include a political subdivision created under Title 11,
- 1489 Chapter 13, Interlocal Cooperation Act.
- 1490 (15) "Public corporation" is as defined in Section [63E-1-102](#).
- 1491 (16) "Public entity" means any state government entity or a political subdivision of the
- 1492 state, including:
- 1493 (a) a procurement unit;

1494 (b) a municipality or county, regardless of whether the municipality or county has
 1495 adopted this chapter or any part of this chapter; and

1496 (c) any other government entity located in Utah that expends public funds.

1497 (17) "Public transit district" means a public transit district organized under Title 17B,
 1498 Chapter 2a, Part 8, Public Transit District Act.

1499 (18) "Special service district" is as defined in Section [17D-1-102](#).

1500 Section 20. Section **63G-6a-106** is amended to read:

1501 **63G-6a-106. Specific statutory authority -- Limitations on authority of chief**
 1502 **procurement officer and division.**

1503 (1) The procurement authority given to a procurement unit under the following
 1504 provisions shall be retained, and shall be applied only to the extent described in those
 1505 provisions:

1506 (a) Title 53B, State System of Higher Education;

1507 (b) Title 63A, Chapter 5, State Building Board - Division of Facilities Construction
 1508 and Management;

1509 (c) Title 67, Chapter 5, Attorney General;

1510 (d) Title 72, Transportation Code; and

1511 (e) Title 78A, Chapter 5, District [~~Courts~~] Court.

1512 (2) Except as otherwise provided in Sections [63G-6a-105](#) and [63G-6a-107](#), a
 1513 procurement unit shall conduct a procurement in accordance with this chapter.

1514 (3) (a) The Department of Transportation may make rules governing the procurement
 1515 of highway construction or improvement.

1516 (b) The applicable rulemaking authority for a public transit district may make rules
 1517 governing the procurement of a transit construction project or a transit improvement project.

1518 (c) This Subsection (3) supersedes Subsections (1) and (2).

1519 (4) [~~Except to the extent otherwise agreed to in a memorandum of understanding~~
 1520 ~~between the division and the following entities, the~~] The authority of the chief procurement
 1521 officer and of the division does not extend to a procurement unit with independent procurement
 1522 authority, except to the extent the division and the procurement unit with independent
 1523 procurement authority otherwise agree in writing.

1524 (5) [~~An entity described in Subsection (4)] A procurement unit with independent~~

1525 procurement authority may, without supervision, interference, or involvement by the chief
1526 procurement officer or the division, but consistent with the requirements of this chapter:

- 1527 (a) engage in a standard procurement process;
1528 (b) procure an item under an exception, as provided in this chapter, to the requirement
1529 to use a standard procurement process; or
1530 (c) otherwise engage in an act authorized or required by this chapter.

1531 (6) The attorney general may, in accordance with the provisions of this chapter, but
1532 without involvement by the division or the chief procurement officer:

- 1533 (a) retain outside counsel; or
1534 (b) procure litigation support services, including retaining an expert witness.

1535 (7) An entity described in Subsection (4) that is not represented by the attorney
1536 general's office may, in accordance with the provisions of this chapter, but without involvement
1537 by the division or the chief procurement officer:

- 1538 (a) retain outside counsel; or
1539 (b) procure litigation support services, including retaining an expert witness.

1540 (8) The state auditor's office may, in accordance with the provisions of this chapter, but
1541 without involvement by the division or the chief procurement officer, procure audit services.

1542 (9) The state treasurer may, in accordance with the provisions of this chapter, but
1543 without involvement by the division or the chief procurement officer, procure:

- 1544 (a) deposit and investment services; and
1545 (b) services related to issuing bonds.

1546 Section 21. Section **63G-6a-107** is amended to read:

1547 **63G-6a-107. Exemptions from chapter -- Compliance with federal law.**

1548 (1) Except for Part [23] 24, Unlawful Conduct and Penalties, the provisions of this
1549 chapter [~~are not applicable~~] do not apply to:

- 1550 (a) funds administered under the Percent-for-Art Program of the Utah Percent-for-Art
1551 Act;
1552 (b) grants awarded by the state or contracts between the state and any of the following:
1553 (i) an educational procurement unit;
1554 (ii) a conservation district;
1555 (iii) a local building authority;

- 1556 (iv) a local district;
- 1557 (v) a public corporation;
- 1558 (vi) a special service district;
- 1559 (vii) a public transit district; or
- 1560 (viii) two or more of the entities described in Subsections (1)(b)(i) through (vii), acting
- 1561 under legislation that authorizes intergovernmental cooperation;
- 1562 (c) medical supplies or medical equipment, including service agreements for medical
- 1563 equipment, obtained through a purchasing consortium by the Utah State Hospital, the Utah
- 1564 State Developmental Center, the University of Utah Hospital, or any other hospital owned by
- 1565 the state or a political subdivision of the state, if:
- 1566 (i) the consortium uses a competitive procurement process; and
- 1567 (ii) the chief administrative officer of the hospital makes a written finding that the
- 1568 prices for purchasing medical supplies and medical equipment through the consortium are
- 1569 competitive with market prices; or
- 1570 (d) goods purchased for resale~~;~~ to the public.
- 1571 ~~[(e) any action taken by a majority of both houses of the Legislature.]~~
- 1572 ~~[(2) (a) Notwithstanding Subsection (1), the provisions of Part 23, Unlawful Conduct~~
- 1573 ~~and Penalties, are not applicable to an entity described in Subsection (1)(b)(ii), (iii), (iv), (vi),~~
- 1574 ~~(vii), or (viii).]~~
- 1575 ~~[(b)]~~ (2) This chapter does not prevent a procurement unit from complying with the
- 1576 terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.
- 1577 (3) This chapter does not apply to any action taken by a majority of both houses of the
- 1578 Legislature.
- 1579 ~~[(3)]~~ (4) Notwithstanding any conflicting provision of this chapter, when a
- 1580 procurement involves the expenditure of federal assistance, federal contract funds, local
- 1581 matching funds, or federal financial participation funds, the procurement unit shall comply
- 1582 with mandatory applicable federal law and regulations not reflected in this chapter.
- 1583 ~~[(4)]~~ (5) This chapter does not supersede the requirements for retention or withholding
- 1584 of construction proceeds and release of construction proceeds as provided in Section 13-8-5.
- 1585 Section 22. Section **63G-6a-108** is amended to read:
- 1586 **63G-6a-108. Limitations on and responsibility of executive branch procurement**

1587 **units -- No exemption for procurement units with independent procurement authority.**

1588 (1) [~~Except as provided in Subsection (2), a~~] An executive branch procurement unit
1589 may not engage in a procurement unless:

1590 (a) the procurement is made under the direction and control of the division; or

1591 [~~(b) the division, pursuant to rules made by the board, permits the procurement unit to~~
1592 ~~make the procurement on its own.~~]

1593 [~~(2) Subsection (1) does not apply to the following procurement units, all of which~~
1594 ~~have independent procurement authority:~~]

1595 [~~(a) a legislative procurement unit;~~]

1596 [~~(b) a judicial procurement unit;~~]

1597 [~~(c) an educational procurement unit;~~]

1598 [~~(d) a local government procurement unit;~~]

1599 [~~(e) a conservation district;~~]

1600 [~~(f) a local building authority;~~]

1601 [~~(g) a local district;~~]

1602 [~~(h) a public corporation;~~]

1603 [~~(i) a special service district;~~]

1604 [~~(j) the Utah Housing Corporation; or~~]

1605 [~~(k) a public transit district.~~]

1606 (b) the procurement is made under Section [63G-6a-106](#).

1607 (2) An executive branch procurement unit that conducts any part of a procurement
1608 under this chapter is responsible to conduct that part of the procurement in compliance with
1609 this chapter.

1610 (3) A procurement unit with independent procurement authority is not exempt from
1611 complying with the requirements of this chapter.

1612 Section 23. Section **63G-6a-109** is enacted to read:

1613 **63G-6a-109. Issuing procurement unit and conducting procurement unit.**

1614 (1) With respect to a procurement by an executive branch procurement unit:

1615 (a) the division is the issuing procurement unit; and

1616 (b) the executive branch procurement unit is the conducting procurement unit and is
1617 responsible to ensure that the procurement is conducted in compliance with this chapter.

1618 (2) With respect to a procurement by any other procurement unit, the procurement unit
 1619 is both the issuing procurement unit and the conducting procurement unit.

1620 Section 24. Section **63G-6a-204** is amended to read:

1621 **63G-6a-204. Applicability of rules and regulations of Utah State Procurement**
 1622 **Policy Board and State Building Board -- Report to interim committee.**

1623 (1) Except as provided in Subsection (2), rules made by the board under this chapter
 1624 shall govern all procurement units for which the board is the applicable rulemaking authority.

1625 (2) The building board rules governing procurement of construction, architect-engineer
 1626 services, and leases apply to the procurement of construction, architect-engineer services, and
 1627 leases of real property by the Division of Facilities Construction and Management.

1628 (3) An applicable rulemaking authority may make its own rules, consistent with this
 1629 chapter, governing procurement by a person over which the applicable rulemaking authority
 1630 has rulemaking authority.

1631 (4) The board shall make a report on or before July 1 of each year to a legislative
 1632 interim committee, designated by the Legislative Management Committee created under
 1633 Section **36-12-6**, on the establishment, implementation, and enforcement of the rules made
 1634 under Section **63G-6a-203**.

1635 (5) Notwithstanding Subsection **63G-3-301**(13)(b), an applicable rulemaking authority
 1636 is ~~is~~ ~~[, on or before May 13, 2014,]~~ required to initiate rulemaking proceedings, for rules required
 1637 to be made under this chapter ~~[, on or before:~~

1638 (a) May 13, 2014, if the applicable rulemaking authority is the board; or

1639 (b) January 1, 2015, for each other applicable rulemaking authority.

1640 Section 25. Section **63G-6a-303** is amended to read:

1641 **63G-6a-303. Duties of chief procurement officer.**

1642 (1) Except as otherwise specifically provided in this chapter, the chief procurement
 1643 officer serves as the central procurement officer of the state and shall:

1644 ~~[(1)]~~ (a) adopt office policies governing the internal functions of the division;

1645 ~~[(2)]~~ (b) procure or supervise each procurement over which the chief procurement
 1646 officer has authority;

1647 ~~[(3)]~~ (c) establish and maintain programs for the inspection, testing, and acceptance of
 1648 each procurement item over which the chief procurement officer has authority;

1649 ~~[(4)]~~ (d) prepare statistical data concerning each procurement and procurement usage
1650 of a state procurement unit;

1651 ~~[(5)]~~ (e) ensure that:

1652 ~~[(a)]~~ (i) before approving a procurement not covered by an existing statewide contract
1653 for information technology or telecommunications supplies or services, the chief information
1654 officer and the agency have stated in writing to the division that the needs analysis required in
1655 Section ~~63F-1-205~~ was completed, unless the procurement is approved in accordance with
1656 Title 63M, Chapter 1, Part 26, Government Procurement Private Proposal Program; and

1657 ~~[(b)]~~ (ii) the oversight authority required by Subsection (5)(a) is not delegated outside
1658 the division; ~~[and]~~

1659 ~~[(6)]~~ (f) provide training to procurement units and to persons who do business with
1660 procurement units[-];

1661 (g) if the chief procurement officer determines that a procurement over which the chief
1662 procurement officer has authority is out of compliance with this chapter or board rules:

1663 (i) correct or amend the procurement to bring it into compliance; or

1664 (ii) cancel the procurement, if:

1665 (A) it is not feasible to bring the procurement into compliance; or

1666 (B) the chief procurement officer determines that it is in the best interest of the state to
1667 cancel the procurement; and

1668 (h) if the chief procurement officer determines that a contract over which the chief
1669 procurement officer has authority is out of compliance with this chapter or board rules, correct
1670 or amend the contract to bring it into compliance or cancel the contract:

1671 (i) if the chief procurement officer determines that correcting, amending, or canceling
1672 the contract is in the best interest of the state; and

1673 (ii) after consultation with the attorney general's office.

1674 (2) The chief procurement officer may:

1675 (a) correct, amend, or cancel a procurement as provided in Subsection (1)(g) at any
1676 stage of the procurement process; and

1677 (b) correct, amend, or cancel a contract as provided in Subsection (1)(h) at any time
1678 during the term of the contract.

1679 Section 26. Section ~~63G-6a-402~~ is amended to read:

1680 **63G-6a-402. Procurement unit required to comply with Utah Procurement Code**
1681 **and applicable rules -- Rulemaking authority -- Reporting.**

1682 (1) Except as otherwise provided in Section 63G-6a-107, Section 63G-6a-403, Part 8,
1683 Exceptions to Procurement Requirements, or elsewhere in this chapter, a procurement unit may
1684 not obtain a procurement item, unless:

1685 (a) if the procurement unit is the division or a procurement unit with independent
1686 procurement authority, the procurement unit:

1687 (i) uses a standard procurement process or an exception to a standard procurement
1688 process, described in Part 8, Exceptions to Procurement Requirements; and

1689 (ii) complies with:

1690 (A) the requirements of this chapter; and

1691 (B) the rules made pursuant to this chapter by the applicable rulemaking authority;

1692 (b) if the procurement unit is a county, a municipality, or the Utah Housing

1693 Corporation, the procurement unit complies with:

1694 (i) the requirements of this chapter that are adopted by the procurement unit; and

1695 (ii) all other procurement requirements that the procurement unit is required to comply
1696 with; or

1697 (c) if the procurement unit is not a procurement unit described in [~~Subsections~~]

1698 Subsection (1)(a) or (b), the procurement unit:

1699 (i) obtains the procurement item under the direction and approval of the division,
1700 unless otherwise provided by a rule made by the board;

1701 (ii) uses a standard procurement process; and

1702 (iii) complies with:

1703 (A) the requirements of this chapter; and

1704 (B) the rules made pursuant to this chapter by the applicable rulemaking authority.

1705 (2) Subject to Subsection (3), the applicable rulemaking authority shall make rules
1706 relating to the management and control of procurements and procurement procedures by a
1707 procurement unit.

1708 (3) (a) Rules made under Subsection (2) shall ensure compliance with the federal
1709 contract prohibition provisions of the Sudan Accountability and Divestment Act of 2007 (Pub.
1710 L. No. 110-174) that prohibit contracting with a person doing business in Sudan.

1711 (b) The State Building Board rules governing procurement of construction,
1712 architect-engineer services, and leases apply to the procurement of construction,
1713 architect-engineer services, and leases of real property by the Division of Facilities
1714 Construction and Management.

1715 (4) An applicable rulemaking authority that is subject to Title 63G, Chapter 3, Utah
1716 Administrative Rulemaking Act, shall make the rules described in this chapter in accordance
1717 with the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

1718 (5) The State Building Board shall make a report on or before July 1 of each year to a
1719 legislative interim committee, designated by the Legislative Management Committee created
1720 under Section 36-12-6, on the establishment, implementation, and enforcement of the rules
1721 made by the State Building Board under this chapter.

1722 Section 27. Section 63G-6a-403 is amended to read:

1723 **63G-6a-403. Prequalification of potential vendors.**

1724 (1) ~~(a)~~ As used in this section~~["vendor" means]:~~

1725 (a) "Closed-ended prequalification process" means a process to prequalify potential
1726 vendors under this section that is characterized by:

1727 (i) a short, specified period of time during which potential vendors may be
1728 prequalified; and

1729 (ii) a specified date at which prequalifications expire.

1730 (b) "Open-ended prequalification process" means a process to prequalify vendors and
1731 potential vendors under this section that is characterized by an indeterminate period of time
1732 during any part of which vendors or potential vendors may be prequalified and the
1733 prequalification of previously prequalified vendors or potential vendors may be periodically
1734 renewed.

1735 (c) "Vendor" means:

1736 (i) a bidder;

1737 (ii) an offeror; or

1738 (iii) a contractor, including an architect or an engineer.

1739 ~~(b)~~ (2) A procurement unit may, in accordance with this section:

1740 ~~(i)~~ (a) using a closed-ended prequalification process or an open-ended
1741 prequalification process:

1742 (i) prequalify potential vendors to provide any procurement item or type of
1743 procurement item specified by the procurement unit; [and] or
1744 (ii) rank architects, engineers, or other professional service providers to begin the fee
1745 negotiation process, as provided in this chapter; and
1746 [(ii)] (b) limit participation in [~~an invitation for bids, a request for proposals, or an~~
1747 ~~approved vendor list~~] a standard procurement process to the prequalified potential vendors for
1748 the specified procurement item or type of procurement item.

1749 [(2)] (3) To prequalify potential vendors [~~to provide a specified type of procurement~~
1750 ~~item~~] or rank professional service providers, a procurement unit shall issue a request for
1751 statement of qualifications.

1752 [(3)] (4) A procurement unit that issues a request for statement of qualifications:
1753 (a) shall:

1754 [(a)] (i) publish the request for statement of qualifications in accordance with the
1755 requirements of Section [~~63G-6a-402~~] 63G-6a-406; and

1756 [(b)] (ii) state in the request for statement of qualifications:

1757 [(i)] (A) the procurement item or type of procurement item to which the request for
1758 statement of qualifications relates;

1759 [(ii)] (B) the scope of work to be performed;

1760 [(iii)] (C) the instructions and [~~the~~] deadline for [~~providing information in response to~~
1761 ~~the request for~~] submitting a statement of qualifications;

1762 [(iv)] (D) the [~~minimum~~] criteria [~~for prequalification~~] by which the procurement unit
1763 will evaluate statements of qualifications;

1764 (E) whether the prequalification process is a closed-ended prequalification process or
1765 an open-ended prequalification process;

1766 [(v)] (F) if the prequalification process is a closed-ended prequalification process, the
1767 period of time during which the list of prequalified potential vendors will remain in effect,
1768 which may not be longer than 18 months after the list of prequalified potential vendors is made
1769 available to the public under Subsection [(8)] (11)(b); [~~and~~]

1770 (G) if the prequalification process is an open-ended prequalification process, when a
1771 potential vendor may submit a statement of qualifications for the potential vendor to be
1772 considered for inclusion on the list of prequalified potential vendors; and

1773 ~~[(vi)]~~ (H) that a procurement unit may limit participation in an invitation for bids or a
1774 request for proposals~~[-, during the time period described in Subsection (3)(b)(v);]~~ to the
1775 potential vendors that are prequalified to provide the specified procurement item or type of
1776 procurement item[-]; and

1777 (b) may request the person submitting a statement of qualifications to provide:

1778 (i) basic information about the person;

1779 (ii) the person's experience and work history;

1780 (iii) information about the person's management and staff;

1781 (iv) information about the person's licenses, certifications, and other qualifications;

1782 (v) any applicable performance ratings;

1783 (vi) financial statements reporting the person's financial condition; and

1784 (vii) any other pertinent information.

1785 (5) (a) In order to renew a prequalification, a vendor or potential vendor that has been
1786 previously prequalified through an open-ended prequalification process shall submit a
1787 statement of qualifications no more than 18 months after the previous prequalification of that
1788 vendor or potential vendor.

1789 (b) A previously prequalified vendor or potential vendor submitting a statement of
1790 qualifications under Subsection (5)(a) shall comply with all requirements applicable at that
1791 time to a potential vendor seeking prequalification for the first time.

1792 (6) A procurement unit may at any time modify prequalification requirements of an
1793 open-ended prequalification process.

1794 ~~[(4)]~~ (7) The [~~minimum~~] criteria described in Subsection [~~(3)(b)(iv)]~~ (4)(a)(ii)(D):

1795 (a) shall include the prequalification requirements unique to the procurement;

1796 (b) may include performance rating criteria; and

1797 (c) may not be so restrictive that the criteria unreasonably limit competition.

1798 ~~[(5)]~~ (8) A procurement unit may, before making a final list of prequalified vendors,
1799 request additional information to clarify responses made to the request for statement of
1800 qualifications.

1801 ~~[(6)]~~ (9) A potential vendor shall be included on the list of prequalified potential
1802 vendors if the potential vendor:

1803 (a) submits a timely, responsive response to the request for statement of qualifications;

1804 and

1805 (b) meets the [~~minimum~~] criteria for qualification described in Subsection [~~(3)(b)(iv)~~]
1806 (4)(a)(ii)(D).

1807 [~~(7)~~] (10) If a request for statement of qualifications will result in only one potential
1808 vendor being placed on the list of prequalified potential vendors:

1809 (a) the procurement unit shall cancel the request for statement of qualifications; and

1810 (b) the list may not be used by the procurement unit.

1811 [~~(8)~~] (11) The procurement unit shall:

1812 (a) before making the list of prequalified potential vendors available to the public,
1813 provide each potential vendor who provided information in response to the request, but who
1814 did not meet the minimum qualifications for placement on the list, a written justification
1815 statement describing why the potential vendor did not meet the criteria for inclusion on the list;
1816 and

1817 (b) [~~within 30 days after the day of the deadline described in Subsection (3)(b)(iii);~~]
1818 make the list of prequalified potential vendors available to the public[-] within 30 days after:

1819 (i) completing the evaluation process, if the prequalification process is a closed-ended
1820 prequalification process; or

1821 (ii) updating the list of prequalified potential vendors, if the prequalification process is
1822 an open-ended prequalification process.

1823 Section 28. Section **63G-6a-404** is amended to read:

1824 **63G-6a-404. Approved vendor list.**

1825 (1) (a) As used in this section, "vendor" [~~is~~] has the same meaning as defined in
1826 [~~Subsection~~] Section 63G-6a-403[~~(1)(a)~~].

1827 (b) The process described in this section may not be used for construction projects that
1828 cost more than an amount specified by the applicable rulemaking authority.

1829 (c) The division or a procurement unit with independent procurement authority may
1830 compile a list of approved vendors from which procurement items may be obtained.

1831 (2) An approved vendor list may only be compiled from timely, responsive responses
1832 received under Section **63G-6a-403** or the process described in Part 15, Architect-Engineer
1833 Services.

1834 (3) In order to ensure equal treatment of vendors on an approved vendor list, for

1835 services other than the services described in Subsection (4) or (5) the procurement unit shall
1836 use one of the following methods in an unbiased manner:

- 1837 (a) a rotation system, organized alphabetically, numerically, or randomly;
1838 (b) assigning vendors to a specified geographical area; or
1839 (c) classifying each vendor based on each vendor's particular expertise, qualifications,
1840 or field.

1841 (4) (a) For a construction project that costs less than the amount established by the
1842 applicable rulemaking authority, under Subsection (1)(b), a procurement unit shall select a
1843 potential construction contractor from an approved potential contractor list, using an invitation
1844 for bids or a request for proposals.

1845 (b) For architectural or engineering services for a construction project described in
1846 Subsection (4)(a), a procurement unit shall select a potential contractor from an approved
1847 potential contractor list:

- 1848 (i) using a rotation system, organized alphabetically, numerically, or randomly;
1849 (ii) assigning a potential contractor to a specified geographical area; or
1850 (iii) classifying each potential contractor based on the potential contractor's field or
1851 area of expertise.

1852 (5) A procurement unit may not use an approved vendor list described in this section
1853 for a construction project with a cost that is equal to or greater than the amount established by
1854 the applicable rulemaking authority under Subsection (1)(b).

1855 (6) (a) After selecting a potential contractor under Subsection (4)(b), a procurement
1856 unit shall enter into fee negotiations with the potential contractor.

1857 (b) If, after good faith negotiations, the procurement unit and the potential contractor
1858 are unable to negotiate a fee that is acceptable to both parties, the procurement unit shall select
1859 another contractor under Subsection (4)(b) and enter into fee negotiations with that potential
1860 contractor.

1861 Section 29. Section **63G-6a-406** is amended to read:

1862 **63G-6a-406. Public notice of certain solicitations.**

1863 (1) The division or a procurement unit with independent procurement authority that
1864 issues [~~an invitation for bids, a request for proposals, or a notice of sole source procurement~~] a
1865 solicitation required to be published in accordance with this section, shall provide public notice

1866 that includes:

1867 (a) ~~[for an invitation for bids or a request for proposals,]~~ the name of the ~~[issuing]~~

1868 conducting procurement unit;

1869 (b) the name of the procurement unit acquiring the procurement item;

1870 (c) ~~[for an invitation for bids or a request for proposals,]~~ information on how to contact
1871 the issuing procurement unit ~~[in relation to the invitation for bids or request for proposals];~~

1872 ~~[(d) for a notice of sole source procurement, contact information and other information~~
1873 ~~relating to contesting, or obtaining additional information in relation to, the sole source~~
1874 ~~procurement;]~~

1875 ~~[(e) for an invitation for bids or a request for proposals, the date of the opening and~~
1876 ~~closing of the invitation for bids or request for proposals;]~~

1877 ~~[(f) for a notice of sole source procurement, the earliest date that the procurement unit~~
1878 ~~may make the sole source procurement;]~~

1879 (d) the date of the opening and closing of the solicitation;

1880 ~~[(g)] (e) information on how to obtain a copy of the [invitation for bids, request for~~
1881 ~~proposals, or further information related to the sole source procurement; and] procurement~~
1882 documents;

1883 ~~[(h)] (f) a general description of the procurement items that will be obtained through~~
1884 ~~the standard procurement process or sole source procurement[-]; and~~

1885 (g) for a notice of a sole source procurement;

1886 (i) contact information and other information relating to contesting or obtaining
1887 additional information relating to the sole source procurement; and

1888 (ii) the earliest date that the procurement unit may make the sole source procurement.

1889 (2) Except as provided in Subsection (4), ~~[for an invitation for bids or a request for~~
1890 ~~proposals,]~~ the issuing procurement unit shall publish the notice described in Subsection (1)[
1891 ~~using at least one of the following methods]:~~

1892 (a) at least seven days before the day of the deadline for submission of a bid or other
1893 response~~[-, publish the notice:];~~ and

1894 (b) (i) in a newspaper of general circulation in the state; [or]

1895 (ii) in a newspaper of local circulation in the area:

1896 (A) directly impacted by the procurement; or

1897 (B) over which the procurement unit has jurisdiction; [or]
1898 [~~(b) at least seven consecutive days before the day of the deadline for submission of a~~
1899 ~~bid or other response, publish the notice:~~]
1900 [(i)] (iii) on the main website for the issuing procurement unit or the procurement unit
1901 acquiring the procurement item; or
1902 [(ii)] (iv) on a state website that is owned, managed by, or provided under contract
1903 with, the division for posting a public procurement notice.
1904 (3) Except as provided in Subsection (4), for a sole source procurement for which
1905 notice is required to be published in accordance with this section, the issuing procurement unit
1906 [~~making the sole source procurement~~] shall publish the notice described in Subsection (1)[
1907 ~~using at least one of the following methods~~]:
1908 (a) at least seven days before the [~~day on which the procurement unit makes the~~
1909 ~~acquisition of the~~ sole source procurement[~~, publish the notice:~~] item; and
1910 (b) (i) in a newspaper of general circulation in the state; [or]
1911 (ii) in a newspaper of local circulation in the area:
1912 (A) directly impacted by the procurement; or
1913 (B) over which the procurement unit has jurisdiction; [or]
1914 [~~(b) at least seven consecutive days before the day on which the procurement unit~~
1915 ~~makes the sole source procurement, publish the notice:~~]
1916 [(i)] (iii) on the main website for the procurement unit acquiring the procurement item;
1917 or
1918 [(ii)] (iv) on a state website that is owned by, managed by, or provided under contract
1919 with, the division for posting a procurement notice.
1920 (4) An issuing procurement unit[~~, or the procurement unit making a sole source~~
1921 ~~procurement~~] may reduce the seven-day period described in Subsection (2) or (3), if the
1922 procurement officer or the procurement officer's designee signs a written statement that:
1923 (a) states that a shorter time is needed; and
1924 (b) [~~as it relates to an invitation for bids or a request for proposals,~~] determines that
1925 competition from multiple sources may be obtained within the shorter period of time.
1926 (5) (a) An issuing procurement unit shall make a copy of [~~an invitation for bids or a~~
1927 ~~request for proposals~~] the solicitation documents available for public inspection at the main

1928 office of the issuing procurement unit or on the website described in Subsection (2)(b) until the
1929 award of the contract or the cancellation of the procurement.

1930 (b) A procurement unit [~~making~~] issuing a sole source procurement shall make a copy
1931 of information related to the sole source procurement available for public inspection at the
1932 main office of the procurement unit or on the website described in Subsection (3)(b) until the
1933 award of the contract or the cancellation of the procurement.

1934 (c) A procurement unit shall maintain all records in accordance with Part 20, Records.
1935 Section 30. Section 63G-6a-408 is amended to read:

1936 **63G-6a-408. Small purchases.**

1937 (1) As used in this section:

1938 (a) "Annual cumulative threshold" means the maximum total annual amount,
1939 established by the applicable rulemaking authority under Subsection (2)(a)(i), that a
1940 procurement unit may expend to obtain procurement items from the same source under this
1941 section.

1942 (b) "Individual procurement threshold" means the maximum amount, established by
1943 the applicable rulemaking authority under Subsection (2)(a)(ii), for which a procurement unit
1944 may purchase a procurement item under this section.

1945 (c) "Single procurement aggregate threshold" means the maximum total amount,
1946 established by the applicable rulemaking authority under Subsection (2)(a)(iii), that a
1947 procurement unit may expend to obtain multiple procurement items from one source at one
1948 time under this section.

1949 (2) The applicable rulemaking authority may make rules governing small purchases,
1950 including:

1951 (a) establishing expenditure thresholds, including:

1952 (i) an annual cumulative threshold;

1953 (ii) an individual procurement threshold; and

1954 (iii) a single procurement aggregate threshold;

1955 (b) establishing procurement requirements relating to the thresholds described in
1956 Subsection (2)(a); and

1957 (c) the use of electronic, telephone, or written quotes.

1958 (3) Expenditures made under this section by a procurement unit may not exceed a

1959 threshold established by the applicable rulemaking authority, unless the chief procurement
1960 officer or the head of a procurement unit with independent procurement authority gives written
1961 authorization to exceed the threshold that includes the reasons for exceeding the threshold.

1962 (4) Except as provided in Subsection (5), an executive branch procurement unit may
1963 not obtain a procurement item through a small purchase standard procurement process if the
1964 procurement item may be obtained through a state cooperative contract or a contract awarded
1965 by the chief procurement officer under Subsection [63G-6a-2105\(1\)](#).

1966 (5) Subsection (4) does not apply if:

1967 (a) the procurement item is obtained for an unanticipated, urgent or unanticipated,
1968 emergency condition, including:

1969 (i) an item needed to avoid stopping a public construction project;

1970 (ii) an immediate repair to a facility or equipment; or

1971 (iii) another emergency condition; or

1972 (b) the chief procurement officer or the head of a procurement unit that is an executive
1973 branch procurement unit with independent procurement authority:

1974 (i) determines in writing that it is in the best interest of the procurement unit to obtain
1975 an individual procurement item outside of the state contract, comparing:

1976 (A) the contract terms and conditions applicable to the procurement item under the
1977 state contract with the contract terms and conditions applicable to the procurement item if the
1978 procurement item is obtained outside of the state contract;

1979 (B) the maintenance and service applicable to the procurement item under the state
1980 contract with the maintenance and service applicable to the procurement item if the
1981 procurement item is obtained outside of the state contract;

1982 (C) the warranties applicable to the procurement item under the state contract with the
1983 warranties applicable to the procurement item if the procurement item is obtained outside of
1984 the state contract;

1985 (D) the quality of the procurement item under the state contract with the quality of the
1986 procurement item if the procurement item is obtained outside of the state contract; and

1987 (E) the cost of the procurement item under the state contract with the cost of the
1988 procurement item if the procurement item is obtained outside of the state contract;

1989 (ii) for a procurement item that, if defective in its manufacture, installation, or

1990 performance, may result in serious physical injury, death, or substantial property damage,
1991 determines in writing that the terms and conditions, relating to liability for injury, death, or
1992 property damage, available from the source other than the contractor who holds the state
1993 contract, are similar to, or better than, the terms and conditions available under the state
1994 contract; and

1995 (iii) grants an exception, in writing, to the requirement described in Subsection (4).

1996 (6) Except as otherwise expressly provided in this section, a procurement unit:

1997 (a) may not use the small purchase standard procurement process described in this
1998 section for ongoing, continuous, and regularly scheduled procurements that exceed the annual
1999 cumulative threshold; and

2000 (b) shall make its ongoing, continuous, and regularly scheduled procurements that
2001 exceed the annual cumulative threshold through a contract awarded through another standard
2002 procurement process described in this chapter or an applicable exception to another standard
2003 procurement process, described in Part 8, Exceptions to Procurement Requirements.

2004 (7) This section does not prohibit regularly scheduled payments for a procurement item
2005 obtained under another provision of this chapter.

2006 (8) It is unlawful for a person to intentionally or knowingly divide a procurement into
2007 one or more smaller procurements with the intent to make a procurement:

2008 (a) qualify as a small purchase, if, before dividing the procurement, it would not have
2009 qualified as a small purchase; or

2010 (b) meet a threshold established by rule made by the applicable rulemaking authority,
2011 if, before dividing the procurement, it would not have met the threshold.

2012 (9) A division of a procurement that is prohibited under Subsection (8) includes doing
2013 any of the following with the intent or knowledge described in Subsection (8):

2014 (a) making two or more separate purchases;

2015 (b) dividing an invoice or purchase order into two or more invoices or purchase orders;

2016 or

2017 (c) making smaller purchases over a period of time.

2018 (10) A person who violates Subsection (8) is subject to the criminal penalties described
2019 in Section [~~63G-6a-2305~~] [63G-6a-2405](#).

2020 (11) The Division of Finance within the Department of Administrative Services may

2021 conduct an audit of an executive branch procurement unit to verify compliance with the
2022 requirements of this section.

2023 (12) An executive branch procurement unit may not make a small purchase after
2024 January 1, 2014, unless the chief procurement officer certifies that the person responsible for
2025 procurements in the procurement unit has satisfactorily completed training on this section and
2026 the rules made under this section.

2027 Section 31. Section **63G-6a-603** is amended to read:

2028 **63G-6a-603. Invitation for bids -- Contents -- Notice.**

2029 (1) The bidding standard procurement process begins when the [~~division or a~~
2030 ~~procurement unit with independent procurement authority~~] issuing procurement unit issues an
2031 invitation for bids.

2032 (2) An invitation for bids shall:

2033 (a) state the period of time during which bids will be accepted;

2034 (b) describe the manner in which a bid shall be submitted;

2035 (c) state the place where a bid shall be submitted; and

2036 (d) include, or incorporate by reference:

2037 (i) a description of the procurement items sought;

2038 (ii) the objective criteria that will be used to evaluate the bids; and

2039 (iii) the required contractual terms and conditions.

2040 (3) An issuing procurement unit shall publish an invitation for bids in accordance with
2041 the requirements of Section **63G-6a-406**.

2042 Section 32. Section **63G-6a-606** is amended to read:

2043 **63G-6a-606. Evaluation of bids -- Award -- Cancellation -- Disqualification.**

2044 (1) [~~The division or a~~] A procurement unit [~~with independent procurement authority~~]
2045 that conducts a procurement using a bidding standard procurement process shall evaluate each
2046 bid using the objective criteria described in the invitation for bids, which may include:

2047 (a) experience;

2048 (b) performance ratings;

2049 (c) inspection;

2050 (d) testing;

2051 (e) quality;

- 2052 (f) workmanship;
- 2053 (g) time and manner of delivery;
- 2054 (h) references;
- 2055 (i) financial stability;
- 2056 (j) cost;
- 2057 (k) suitability for a particular purpose; or
- 2058 (l) other objective criteria specified in the invitation for bids.
- 2059 (2) Criteria not described in the invitation for bids may not be used to evaluate a bid.
- 2060 (3) The conducting procurement unit shall:
- 2061 (a) award the contract as soon as practicable to:
- 2062 (i) the lowest responsive and responsible bidder who meets the objective criteria
- 2063 described in the invitation for bids; or
- 2064 (ii) if, in accordance with Subsection (4), the procurement officer or the head of the
- 2065 conducting procurement unit disqualifies the bidder described in Subsection (3)(a)(i), the next
- 2066 lowest responsive and responsible bidder who meets the objective criteria described in the
- 2067 invitation for bids; or
- 2068 (b) cancel the invitation for bids without awarding a contract.
- 2069 (4) In accordance with Subsection (5), the procurement officer or the head of the
- 2070 conducting procurement unit may disqualify a bidder for:
- 2071 (a) a violation of this chapter;
- 2072 (b) a violation of a requirement of the invitation for bids;
- 2073 (c) unlawful or unethical conduct; or
- 2074 (d) a change in circumstance that, had the change been known at the time the bid was
- 2075 submitted, would have caused the bidder to not be the lowest responsive and responsible bidder
- 2076 who meets the objective criteria described in the invitation for bids.
- 2077 (5) A procurement officer or head of a conducting procurement unit who disqualifies a
- 2078 bidder under Subsection (4) shall:
- 2079 (a) make a written finding, stating the reasons for disqualification; and
- 2080 (b) provide a copy of the written finding to the disqualified bidder.
- 2081 (6) If a conducting procurement unit cancels an invitation for bids without awarding a
- 2082 contract, the conducting procurement unit shall make available for public inspection a written

2083 justification for the cancellation.

2084 Section 33. Section **63G-6a-607** is amended to read:

2085 **63G-6a-607. Action when all bids are over budget.**

2086 (1) Except as provided in Subsection (2) or (3), if the fiscal officer for the conducting
2087 procurement unit certifies that all accepted bids exceed available funds and that the lowest
2088 responsive and responsible bidder does not exceed the available funds by more than 5%, the
2089 procurement officer may negotiate an adjustment of the bid price and bid requirements with the
2090 lowest responsive and responsible bidder in order to bring the bid within the amount of
2091 available funds.

2092 (2) A procurement officer may not adjust the bid requirements under Subsection (1) if
2093 there is a substantial likelihood that, had the adjustment been included in the invitation for
2094 bids, a person that did not submit a bid would have submitted a responsive, responsible, and
2095 competitive bid.

2096 (3) The Division of Facilities Construction and Management is exempt from the
2097 requirements of this section if:

2098 (a) the building board adopts rules governing procedures when all accepted bids exceed
2099 available funds; and

2100 (b) the Division of Facilities Construction and Management complies with the rules
2101 described in Subsection (3)(a).

2102 Section 34. Section **63G-6a-609** is amended to read:

2103 **63G-6a-609. Multiple stage bidding process.**

2104 (1) ~~[The division or a]~~ A procurement unit ~~[with independent procurement authority]~~
2105 that conducts a procurement using a bidding standard procurement process may ~~[conduct a bid~~
2106 ~~in]~~ use multiple stages[;] to:

2107 (a) narrow the number of bidders who will progress to a subsequent stage;

2108 (b) prequalify bidders for subsequent stages, in accordance with Section [63G-6a-403](#);

2109 (c) enter into a contract for a single procurement; or

2110 (d) award multiple contracts for a series of upcoming procurements.

2111 (2) The invitation for bids for a multiple stage bidding process shall:

2112 (a) describe the requirements for, and purpose of, each stage of the process;

2113 (b) indicate whether the procurement unit intends to award:

- 2114 (i) a single contract; or
2115 (ii) multiple contracts for a series of upcoming procurements; and
2116 (c) state that:
2117 (i) the first stage is for prequalification only;
2118 (ii) a bidder may not submit any pricing information in the first stage of the process;
2119 and
2120 (iii) bids in the second stage will only be accepted from a person who prequalifies in
2121 the first stage.
2122 (3) During the first stage, the conducting procurement unit:
2123 (a) shall prequalify bidders to participate in subsequent stages, in accordance with
2124 Section 63G-6a-403;
2125 (b) shall prohibit the submission of pricing information until the final stage; and
2126 (c) may, before beginning the second stage, request additional information to clarify
2127 the qualifications of the bidders who submit timely responses.
2128 (4) Contracts may only be awarded for a procurement item described in stage one of
2129 the invitation for bids.
2130 (5) The [~~division or a~~] conducting procurement unit [~~with independent procurement~~
2131 ~~authority may conduct a bid in~~] may use as many stages as it determines to be appropriate.
2132 (6) Except as otherwise expressly provided in this section, [~~the division or~~] a
2133 procurement unit [~~with independent procurement authority shall conduct~~] conducting a
2134 multiple stage bidding process [~~in accordance~~] under this section shall ensure compliance with
2135 this part.
2136 (7) The applicable rulemaking authority may make rules governing the use of a
2137 multiple stage process described in this section.
2138 Section 35. Section **63G-6a-611** is amended to read:
2139 **63G-6a-611. Invitation for bids for reverse auction -- Notice contents --**
2140 **Agreement to terms and conditions.**
2141 (1) The reverse auction bidding process begins when the [~~division or a~~] issuing
2142 procurement unit [~~with independent procurement authority~~] issues an invitation for bids to
2143 prequalify bidders to participate in the reverse auction.
2144 (2) The invitation for bids shall:

- 2145 (a) state the period of time during which bids will be accepted;
- 2146 (b) state that the bid will be conducted by reverse auction;
- 2147 (c) describe the procurement items sought;
- 2148 (d) describe the minimum requirements to become prequalified;
- 2149 (e) state the required contractual terms and conditions; and
- 2150 (f) describe the procedure that the ~~[division or the]~~ conducting procurement unit ~~[with~~
2151 ~~independent procurement authority]~~ will follow in ~~[conducting]~~ the reverse auction.
- 2152 (3) In order to participate in a reverse auction, a bidder shall agree to:
- 2153 (a) the specifications, and contractual terms and conditions, of the procurement; and
- 2154 (b) be trained in, and abide by, the procedure that the division or the procurement unit
2155 with independent procurement authority will follow in conducting the reverse auction.
- 2156 (4) The division or a procurement unit with independent procurement authority shall
2157 publish an invitation for bids for a reverse auction in accordance with the requirements of
2158 Section [63G-6a-406](#).
- 2159 Section 36. Section **63G-6a-612** is amended to read:
- 2160 **63G-6a-612. Conduct of reverse auction.**
- 2161 (1) ~~[When]~~ A procurement unit conducting a reverse auction~~[- the division or a~~
2162 ~~procurement unit with independent procurement authority]~~:
- 2163 (a) may conduct the reverse auction at a physical location or by electronic means;
- 2164 (b) shall permit all prequalified bidders to participate in the reverse auction;
- 2165 (c) may not permit a bidder to participate in the reverse auction if the bidder did not
2166 prequalify to participate in the reverse auction;
- 2167 (d) may not accept a bid after the time for submission of a bid has expired;
- 2168 (e) shall update the bids on a real time basis; and
- 2169 (f) shall conduct the reverse auction in a manner that permits each bidder to:
- 2170 (i) bid against each other; and
- 2171 (ii) lower the bidder's price below the lowest bid before the reverse auction closes.
- 2172 (2) At the end of the reverse auction, the conducting procurement unit shall:
- 2173 (a) award the contract as soon as practicable to the lowest responsive and responsible
2174 bidder who meets the objective criteria described in the invitation for bids; or
- 2175 (b) cancel the reverse auction without awarding a contract.

2176 (3) After the reverse auction is finished, the conducting procurement [~~officer~~] unit shall
2177 make publicly available:

2178 (a) (i) the amount of the final bid submitted by each bidder during the reverse auction;
2179 and

2180 (ii) the identity of the bidder that submitted each final bid; and

2181 (b) if practicable:

2182 (i) the amount of each bid submitted during the reverse auction; and

2183 (ii) the identity of the bidder that submitted each bid.

2184 Section 37. Section **63G-6a-703** is amended to read:

2185 **63G-6a-703. Request for proposals -- Notice -- Contents.**

2186 (1) The request for proposals standard procurement process begins when the division
2187 or a procurement unit with independent procurement authority issues a request for proposals.

2188 (2) A request for proposals shall:

2189 (a) state the period of time during which a proposal will be accepted;

2190 (b) describe the manner in which a proposal shall be submitted;

2191 (c) state the place where a proposal shall be submitted;

2192 (d) include, or incorporate by reference:

2193 (i) a description of the procurement items sought;

2194 (ii) a description of the subjective and objective criteria that will be used to evaluate
2195 the proposal; and

2196 (iii) the standard contractual terms and conditions required by the authorized
2197 purchasing entity;

2198 (e) state the relative weight that will be given to each score [~~awarded~~] for the criteria
2199 described in Subsection (2)(d)(ii), including cost;

2200 (f) (i) state the formula that will be used to determine the score [~~awarded~~] for the cost
2201 of each proposal; or

2202 (ii) state that the cost will be a fixed fee or a fixed percentage of the contract value and
2203 will not be considered in evaluating proposals, if:

2204 (A) it is standard industry practice to consider cost as a fixed fee or as a fixed
2205 percentage of the contract value or not to be considered in the evaluation of proposals; or

2206 (B) the procurement officer determines it to be in the best interest of the procurement

2207 unit to consider cost as a fixed fee or as a fixed percentage of the contract value or that cost not
2208 be considered in evaluating proposals;

2209 (g) if the request for proposals will be conducted in multiple stages, as described in
2210 Section [63G-6a-710](#), include a description of the stages and the criteria and scoring that will be
2211 used to screen offerors at each stage; and

2212 (h) state that discussions may be conducted with offerors who submit proposals
2213 determined to be reasonably susceptible of being selected for award, followed by an
2214 opportunity to make best and final offers, but that proposals may be accepted without
2215 discussions.

2216 (3) The division or a procurement unit with independent procurement authority shall
2217 publish a request for proposals in accordance with the requirements of Section [63G-6a-406](#).

2218 Section 38. Section [63G-6a-704](#) is amended to read:

2219 **[63G-6a-704. Opening of proposals and acceptance.](#)**

2220 (1) An issuing procurement unit shall ensure that proposals are opened in a manner that
2221 avoids disclosing the contents to competing offerors during the evaluation process.

2222 (2) An issuing procurement unit may not accept a proposal[~~:(a)~~] after the time for
2223 submission of a proposal has expired[~~; or~~].

2224 [~~(b) that is not responsive to the request for proposals.~~]

2225 (3) At any time during the request for proposals standard procurement process, a
2226 conducting procurement unit may reject a proposal if the conducting procurement unit
2227 determines that:

2228 (a) the person submitting the proposal is not responsible; or

2229 (b) the proposal is not responsive or does not meet mandatory minimum requirements
2230 stated in the request for proposals.

2231 Section 39. Section [63G-6a-707](#) is amended to read:

2232 **[63G-6a-707. Evaluation of proposals -- Evaluation committee.](#)**

2233 (1) [~~Each proposal shall be evaluated~~] To determine which proposal provides the best
2234 value to the procurement unit, the evaluation committee shall evaluate each responsive and
2235 responsible proposal that has not been disqualified from consideration under the provisions of
2236 this chapter, using the criteria described in the request for proposals, which may include:

2237 (a) experience;

- 2238 (b) performance ratings;
- 2239 (c) inspection;
- 2240 (d) testing;
- 2241 (e) quality;
- 2242 (f) workmanship;
- 2243 (g) time, manner, or schedule of delivery;
- 2244 (h) references;
- 2245 (i) financial stability;
- 2246 (j) suitability for a particular purpose;
- 2247 (k) management plans;
- 2248 (l) cost; or
- 2249 (m) other subjective or objective criteria specified in the request for proposals.
- 2250 (2) Criteria not described in the request for proposals may not be used to evaluate a
- 2251 proposal.
- 2252 (3) The ~~[issuing]~~ conducting procurement unit shall:
- 2253 (a) appoint an evaluation committee consisting of at least three individuals; and
- 2254 (b) ensure that the evaluation committee and each member of the evaluation
- 2255 committee:
- 2256 (i) does not have a conflict of interest with any of the offerors;
- 2257 (ii) can fairly evaluate each proposal;
- 2258 (iii) does not contact or communicate with an offeror for any reason other than
- 2259 conducting the standard procurement process; and
- 2260 (iv) conducts the evaluation in a manner that ensures a fair and competitive process
- 2261 and avoids the appearance of impropriety.
- 2262 (4) The evaluation committee may, with the approval of the head of the conducting
- 2263 procurement unit, enter into discussions or conduct interviews with, or ~~[participate in]~~ attend
- 2264 presentations by, the offerors.
- 2265 (5) (a) Except as provided in Subsection (6) or (7), each member of the evaluation
- 2266 committee is prohibited from knowing, or having access to, any information relating to the
- 2267 cost, or the scoring of the cost, of a proposal until after the evaluation committee submits its
- 2268 final recommended scores on all other criteria to the issuing procurement unit.

- 2269 (b) The issuing procurement unit shall:
- 2270 (i) if applicable, assign an individual who is not a member of the evaluation committee
2271 to calculate scores for cost based on the applicable scoring formula, weighting, and other
2272 scoring procedures contained in the request for proposals;
- 2273 (ii) review the evaluation committee's scores and correct any errors, scoring
2274 inconsistencies, and reported noncompliance with this chapter;
- 2275 (iii) add the scores calculated for cost, if applicable, to the evaluation committee's final
2276 recommended scores on criteria other than cost to derive the total combined score for each
2277 responsive and responsible proposal; and
- 2278 (iv) provide to the evaluation committee the total combined score calculated for each
2279 responsive and responsible proposal, including any applicable cost formula, weighting, and
2280 scoring procedures used to calculate the total combined scores.
- 2281 (d) The evaluation committee may not:
- 2282 (i) change its final recommended scores described in Subsection (5)(a) after the
2283 evaluation committee has submitted those scores to the issuing procurement unit; or
- 2284 (ii) change cost scores calculated by the issuing procurement unit.
- 2285 (6) (a) As used in this Subsection (6), "management fee" includes only the following
2286 fees of the construction manager/general contractor:
- 2287 (i) preconstruction phase services;
- 2288 (ii) monthly supervision fees for the construction phase; and
- 2289 (iii) overhead and profit for the construction phase.
- 2290 (b) When selecting a construction manager/general contractor for a construction
2291 project, the evaluation committee:
- 2292 (i) may, at any time after the opening of the responses to the request for proposals, have
2293 access to, and consider, the management fee proposed by the offerors; and
- 2294 (ii) except as provided in Subsection (7), may not know or have access to any other
2295 information relating to the cost of construction submitted by the offerors, until after the
2296 evaluation committee submits its final recommended scores on all other criteria to the issuing
2297 procurement unit.
- 2298 (7) An issuing procurement unit is not required to comply with Subsection (5) if,
2299 before opening the responses to the request for proposals, the head of the issuing procurement

2300 unit or a person designated by rule made by the applicable rulemaking authority:

2301 (a) signs a written statement:

2302 (i) indicating that, due to the nature of the proposal or other circumstances, it is in the
2303 best interest of the procurement unit to waive compliance with Subsection (5); and

2304 (ii) describing the nature of the proposal and the other circumstances relied upon to
2305 waive compliance with Subsection (5); and

2306 (b) makes the written statement available to the public, upon request.

2307 [~~(8) The evaluation committee shall award scores to each responsive and responsible~~
2308 ~~proposal that has not been disqualified from consideration under the provisions of this chapter.]~~

2309 Section 40. Section ~~63G-6a-707.5~~, which is renumbered from Section 63G-6a-705 is
2310 renumbered and amended to read:

2311 ~~[63G-6a-705].~~ **63G-6a-707.5. Best and final offers.**

2312 [~~(1) After proposals are received and opened, the issuing procurement unit may~~
2313 ~~conduct discussions with the offerors and allow the offerors to make best and final offers after~~
2314 ~~the discussions.]~~

2315 (1) At any time during the evaluation process, the evaluation committee, with the
2316 approval of the director or head of the issuing procurement unit, may:

2317 (a) request best and final offers from responsible and responsive offerors; and

2318 (b) evaluate those offers.

2319 (2) [The issuing procurement unit] In requesting and evaluating best and final offers
2320 under Subsection (1), the evaluation committee shall:

2321 (a) ensure that each offeror receives fair and equal treatment with respect to the other
2322 offerors;

2323 (b) establish a schedule and procedures for conducting discussions;

2324 (c) ensure that information in each proposal and information gathered during
2325 discussions is not shared with other offerors until the contract is awarded;

2326 (d) ensure that auction tactics are not used in the discussion process, including
2327 discussing and comparing the costs and features of other proposals; and

2328 (e) set a common date and time for the submission of best and final offers.

2329 (3) If an offeror chooses not to participate in a discussion or does not make a timely
2330 best and final offer, the offer submitted by the [~~offerors~~] offeror before the conduct of

2331 discussions shall be treated as the offeror's best and final offer.

2332 Section 41. Section **63G-6a-708** is amended to read:

2333 **63G-6a-708. Justification statement -- Cost-benefit analysis.**

2334 (1) In determining which proposal provides the best value to the procurement unit, the
 2335 evaluation committee shall prepare and deliver to the issuing procurement unit a written
 2336 justification statement that:

2337 (a) explains the score assigned to each evaluation category and how the proposal with
 2338 the highest total combined score provides the best value to the procurement unit in comparison
 2339 to the other proposals;

2340 (b) if applicable, includes the cost-benefit analysis described in Subsection (2) and how
 2341 the cost-benefit analysis relates to the best value to the procurement unit; and

2342 (c) if applicable, includes the written determination described in Subsection (5).

2343 ~~[(+)]~~ (2) If, in determining the best value to the procurement unit, the evaluation
 2344 committee awards the highest score [awarded by the evaluation committee], including the score
 2345 for cost, [is awarded] to a proposal other than the lowest cost proposal, and the difference
 2346 between the cost of the highest scored proposal and the lowest cost proposal exceeds the
 2347 greater of \$10,000 or 5% of the lowest cost proposal, the [issuing procurement unit] evaluation
 2348 committee shall [make] prepare an informal written cost-benefit analysis that:

2349 (a) explains, in general terms, the advantage to the procurement unit of awarding the
 2350 contract to the higher cost offeror; and

2351 (b) [includes,] except as provided in Subsection ~~[(+)](c);~~ (5):

2352 (i) includes the estimated added financial value to the procurement unit of each
 2353 [criteria] criterion that justifies awarding the contract to the higher cost offeror; and

2354 ~~[(c) includes, to the extent that assigning a financial value to a particular criteria is not~~
 2355 ~~practicable, a statement describing:]~~

2356 ~~[(i) why it is not practicable to assign a financial value to the criteria; and]~~

2357 ~~[(ii) in nonfinancial terms, the advantage to the procurement unit, based on the~~
 2358 ~~particular criteria, of awarding the contract to the higher cost offeror;]~~

2359 ~~[(d)]~~ (ii) demonstrates that the value of the advantage to the procurement unit of
 2360 awarding the contract to the higher cost offeror exceeds the value of the difference between the
 2361 cost of the higher cost proposal and the cost of the lower cost proposals[; and].

2362 ~~[(e) includes any other information required by rule made by the applicable rulemaking~~
2363 ~~authority.]~~

2364 ~~[(2)] (3)~~ If the informal cost-benefit analysis described in Subsection ~~[(1)] (2)~~ does not
2365 justify ~~[award of]~~ awarding the contract to the offeror that received the highest score, the
2366 issuing procurement unit:

2367 (a) may not award the contract to the offeror that received the highest score; and

2368 (b) may award the contract to the offeror that received the next highest score, unless:

2369 (i) an informal cost-benefit analysis is required, because the difference between the
2370 cost proposed by the offeror that received the next highest score and the lowest cost proposal
2371 exceeds the greater of \$10,000 or 5% of the lowest cost proposal; and

2372 (ii) the informal cost-benefit analysis does not justify award of the contract to the
2373 offeror that received the next highest score.

2374 ~~[(3)] (4)~~ If the informal cost-benefit analysis described in Subsection ~~[(1)] (2)~~ does not
2375 justify award of the contract to the offeror, described in Subsection ~~[(2)] (3)~~, that received the
2376 next highest score, the issuing procurement unit:

2377 (a) may not award the contract to the offeror that received the next highest score; and

2378 (b) shall continue with the process described in Subsection ~~[(2)] (3)~~ for each offeror
2379 that received the next highest score, until the issuing procurement unit:

2380 (i) awards the contract in accordance with the provisions of this section; or

2381 (ii) cancels the request for proposals.

2382 (5) (a) The evaluation committee, with the issuing procurement unit's approval, may
2383 waive, in whole or in part, a requirement under Subsection (2)(b) if the evaluation committee
2384 determines in writing that assigning a financial value to a particular procurement item or
2385 evaluation criterion is not practicable.

2386 (b) A written determination under Subsection (5)(a):

2387 (i) shall explain:

2388 (A) why it is not practicable to assign a financial value to the procurement item or
2389 evaluation criterion; and

2390 (B) in nonfinancial terms, why awarding the contract to the higher cost offeror
2391 provides the best value to the procurement unit; and

2392 (ii) may be included as part of the justification statement.

2393 ~~[(4)]~~ (6) (a) An issuing procurement unit is not required to make the cost-benefit
 2394 analysis described in this section for a contract with a construction manager/general contractor
 2395 if the contract is awarded based solely on the qualifications of the construction
 2396 manager/general contractor and the management fee described in Subsection [~~63G-6a-706~~]
 2397 63G-6a-707(6).

2398 (b) The applicable rulemaking authority shall make rules that establish procedures and
 2399 criteria for awarding a contract described in Subsection ~~[(4)]~~ (6)(a) to ensure that:

2400 (i) a competitive process is maintained; and

2401 (ii) the contract awarded is in the best interest of the procurement unit.

2402 Section 42. Section **63G-6a-709** is amended to read:

2403 **63G-6a-709. Award of contract -- Cancellation -- Disqualification.**

2404 (1) After completion of the evaluation and scoring of proposals [~~is completed, the~~
 2405 ~~issuing procurement unit shall;~~] and the justification statement, including any required
 2406 cost-benefit analysis, the evaluation committee shall submit the proposals, evaluation scores,
 2407 and justification statement to the head of the procurement unit or designee for review and final
 2408 determination of contract award.

2409 (2) After reviewing the proposals, evaluation scores, and justification statement,
 2410 including any required cost-benefit analysis, the head of the issuing procurement unit or
 2411 designee shall:

2412 (a) [~~except as provided in Section 63G-6a-708;~~] award the contract as soon as
 2413 practicable to:

2414 (i) the responsive and responsible offeror with the highest total score; or

2415 (ii) if, in accordance with Subsection ~~[(2)]~~ (3), the procurement officer or the head of
 2416 the issuing procurement unit disqualifies the offeror described in Subsection ~~[(1)]~~ (2)(a)(i), the
 2417 responsive and responsible offeror with the next highest total score; or

2418 (b) cancel the request for proposals without awarding a contract.

2419 ~~[(2)]~~ (3) In accordance with Subsection ~~[(3)]~~ (4), the procurement officer or the head of
 2420 the issuing procurement unit may disqualify an offeror for:

2421 (a) a violation of this chapter;

2422 (b) not being responsive or responsible;

2423 ~~[(b)]~~ (c) a violation of a requirement of the request for proposals;

2424 ~~[(e)]~~ (d) unlawful or unethical conduct; or

2425 ~~[(d)]~~ (e) a change in circumstance that, had the change been known at the time the
2426 proposal was submitted, would have caused the proposal to not have the highest score.

2427 ~~[(3)]~~ (4) A procurement officer or head of an issuing procurement unit who disqualifies
2428 an offeror under Subsection ~~[(2)]~~ (3) shall:

2429 (a) make a written finding, stating the reasons for disqualification; and

2430 (b) provide a copy of the written finding to the disqualified offeror.

2431 ~~[(4)]~~ (5) If an issuing procurement unit cancels a request for proposals without
2432 awarding a contract, the issuing procurement unit shall make available for public inspection a
2433 written justification for the cancellation.

2434 Section 43. Section **63G-6a-709.5** is amended to read:

2435 **63G-6a-709.5. Publication of award and scores.**

2436 (1) The issuing procurement unit shall, on the day on which the award of a contract is
2437 announced, make available to each offeror and to the public a written statement that includes:

2438 ~~[(1)]~~ (a) the name of the offeror to which the contract is awarded and the total score
2439 awarded by the evaluation committee to that offeror;

2440 (b) the justification statement under Section 63G-6a-708, including any required
2441 cost-benefit analysis; and

2442 ~~[(2)]~~ (c) the total score awarded by the evaluation committee to each offeror to which
2443 the contract is not awarded, without identifying which offeror received which score~~[-and]~~.

2444 ~~[(3) any cost-benefit analysis made, under Section 63G-6a-708, in relation to the~~
2445 ~~request for proposals.]~~

2446 (2) Subsection (1)(a) does not prevent the issuing procurement unit from using codes
2447 or another method in a statement under Subsection (1) to distinguish offerors to which the
2448 contract is not awarded and to indicate their scores, as long as an offeror cannot be matched
2449 with the score awarded to that offeror.

2450 Section 44. Section **63G-6a-802** is amended to read:

2451 **63G-6a-802. Award of contract without competition -- Notice -- Extension of**
2452 **contract without engaging in standard procurement process.**

2453 (1) As used in this section:

2454 (a) "Transitional costs" mean the costs of changing from an existing provider of, or

2455 type of, a procurement item to another provider of, or type of, procurement item.

2456 (b) "Transitional costs" include:

2457 (i) training costs;

2458 (ii) conversion costs;

2459 (iii) compatibility costs;

2460 (iv) system downtime;

2461 (v) disruption of service;

2462 (vi) staff time necessary to put the transition into effect;

2463 (vii) installation costs; and

2464 (viii) ancillary software, hardware, equipment, or construction costs.

2465 (c) "Transitional costs" do not include:

2466 (i) the costs of preparing for or engaging in a procurement process; or

2467 (ii) contract negotiation or contract drafting costs.

2468 (d) "Trial use contract" means a contract between a procurement unit and a vendor for

2469 a procurement item that the procurement unit acquires for trial use or testing to determine

2470 whether the procurement item will benefit the procurement unit.

2471 (2) The division or a procurement unit with independent procurement authority may

2472 award a contract for a procurement item without competition if the procurement officer, the

2473 head of the procurement unit, or a designee of either who is senior to the procurement officer

2474 or the head of the procurement unit, determines in writing that:

2475 (a) there is only one source for the procurement item; [~~or~~]

2476 (b) the award to a specific supplier, service provider, or contractor is a condition of a

2477 donation that will fund the full cost of the supply, service, or construction item[-]; or

2478 (c) the procurement item is needed for trial use or testing to determine whether the

2479 procurement item will benefit the procurement unit.

2480 (3) Circumstances under which there is only one source for a procurement item may

2481 include:

2482 (a) where the most important consideration in obtaining a procurement item is the

2483 compatibility of equipment, technology, software, accessories, replacement parts, or service;

2484 [~~(b) where a procurement item is needed for trial use or testing;~~]

2485 [~~(c)~~] (b) where transitional costs are unreasonable or cost prohibitive; or

2486 [~~(d)~~] (c) procurement of public utility services.

2487 (4) (a) [~~The~~] Subject to Subsection (4)(b), the applicable rulemaking authority shall
2488 make rules regarding the publication of notice for a sole source procurement that, at a
2489 minimum, require publication of notice of a sole source procurement, in accordance with
2490 Section [63G-6a-406](#), if the cost of the procurement exceeds \$50,000.

2491 (b) Publication of notice under Section [63G-6a-406](#) is not required for:

2492 (i) the procurement of public utility services pursuant to a sole source contract; or

2493 (ii) other sole source procurements provided by rule.

2494 (5) The division or a procurement unit with independent procurement authority who
2495 awards a sole source contract on behalf of another procurement unit shall negotiate with the
2496 contractor to ensure that the terms of the contract, including price and delivery, are in the best
2497 interest of the procurement unit.

2498 (6) (a) The period of trial use or testing of a procurement item under a trial use contract
2499 may not exceed 18 months, unless the procurement officer provides a written exception
2500 documenting the reason for a longer period.

2501 (b) A trial use contract shall:

2502 (i) state that the purpose of the contract is strictly for the purpose of the trial use or
2503 testing of a procurement item;

2504 (ii) state that the contract terminates upon completion of the trial use or testing period;

2505 (iii) state that after the trial use or testing period the procurement unit is not obligated
2506 to purchase or enter into a contract for the procurement item, regardless of the trial use or
2507 testing result;

2508 (iv) state that any purchase of the procurement item beyond the terms of the trial use
2509 contract will be made in accordance with this chapter; and

2510 (v) include, as applicable:

2511 (A) test schedules;

2512 (B) deadlines and a termination date;

2513 (C) measures that will be used to evaluate the performance of the procurement item;

2514 (D) any fees and associated expenses or an explanation of the circumstances

2515 warranting a waiver of those fees and expenses;

2516 (E) the obligations of the procurement unit and vendor;

2517 (F) provisions regarding the ownership of the procurement item during and after the
2518 trial use or testing period;

2519 (G) an explanation of the grounds upon which the contract may be terminated;

2520 (H) a limitation of liability;

2521 (I) a consequential damage waiver provision;

2522 (J) a statement regarding the confidentiality or nondisclosure of information;

2523 (K) a provision relating to any required bond or security deposit; and

2524 (L) other requirements unique to the procurement item for trial use or testing.

2525 (c) Publication of notice under Section 63G-6a-406 is not required for a procurement
2526 pursuant to a trial use contract.

2527 ~~[(6)]~~ (7) The division or a procurement unit with independent procurement authority
2528 may extend a contract for a reasonable period of time without engaging in a standard
2529 procurement process, if:

2530 (a) the award of a new contract for the procurement item is delayed due to a protest or
2531 appeal;

2532 (b) the standard procurement process is delayed due to unintentional error;

2533 (c) changes in industry standards require significant changes to specifications for the
2534 procurement item;

2535 (d) the extension is necessary to prevent the loss of federal funds;

2536 (e) the extension is necessary to address a circumstance where the appropriation of
2537 state or federal funds has been delayed; ~~[or]~~

2538 (f) the extension covers the period of time during which contract negotiations with a
2539 new provider are being conducted~~[;]~~; or

2540 (g) the extension is necessary to avoid a lapse in critical governmental services that
2541 may negatively impact public health, safety, or welfare.

2542 Section 45. Section 63G-6a-1202 is repealed and reenacted to read:

2543 **63G-6a-1202. Standard contract clauses encouraged.**

2544 A procurement unit is encouraged to establish standard contract clauses to assist the
2545 procurement unit and to help contractors and potential contractors to understand applicable
2546 requirements.

2547 Section 46. Section 63G-6a-1204 is amended to read:

2548 **63G-6a-1204. Multiyear contracts.**

2549 (1) Except as provided in Subsection (7), a procurement unit may enter into a multiyear
2550 contract resulting from an invitation for bids or a request for proposals, if:

2551 (a) the procurement officer determines, in the discretion of the procurement officer,
2552 that entering into a multiyear contract is in the best interest of the procurement unit; and

2553 (b) the invitation for bids or request for proposals:

2554 (i) states the term of the contract, including all possible renewals of the contract;

2555 (ii) states the conditions for renewal of the contract; and

2556 (iii) includes the provisions of Subsections (3) through (5) that are applicable to the
2557 contract.

2558 (2) In making the determination described in Subsection (1)(a), the procurement officer
2559 shall consider whether entering into a multiyear contract will:

2560 (a) result in significant savings to the procurement unit, including:

2561 (i) reduction of the administrative burden in procuring, negotiating, or administering
2562 contracts;

2563 (ii) continuity in operations of the procurement unit; or

2564 (iii) the ability to obtain a volume or term discount;

2565 (b) encourage participation by a person who might not otherwise be willing or able to
2566 compete for a shorter term contract; or

2567 (c) provide an incentive for a bidder or offeror to improve productivity through capital
2568 investment or better technology.

2569 (3) (a) The determination described in Subsection (1)(a) is discretionary and is not
2570 required to be in writing or otherwise recorded.

2571 (b) Except as provided in Subsections (4) and (5), notwithstanding any provision of an
2572 invitation for bids, a request for proposals, or a contract to the contrary, a multiyear contract,
2573 including a contract that was awarded outside of an invitation for bids or request for proposals
2574 process, may not continue or be renewed for any year after the first year of the multiyear
2575 contract if adequate funds are not appropriated or otherwise available to continue or renew the
2576 contract.

2577 (4) A multiyear contract that is funded solely by federal funds may be continued or
2578 renewed for any year after the first year of the multiyear contract if:

2579 (a) adequate funds to continue or renew the contract have not been, but are expected to
2580 be appropriated by, and received from, the federal government;

2581 (b) continuation or renewal of the contract before the money is appropriated or
2582 received is permitted by the federal government; and

2583 (c) the contract states that it may be cancelled or suspended, without penalty, if the
2584 anticipated federal funds are not appropriated or received.

2585 (5) A multiyear contract that is funded in part by federal funds may be continued or
2586 renewed for any year after the first year of the multiyear contract if:

2587 (a) the portion of the contract that is to be funded by funds of a public entity are
2588 appropriated;

2589 (b) adequate federal funds to continue or renew the contract have not been, but are
2590 expected to be, appropriated by, and received from, the federal government;

2591 (c) continuation or renewal of the contract before the federal money is appropriated or
2592 received is permitted by the federal government; and

2593 (d) the contract states that it may be cancelled or suspended, without penalty, if the
2594 anticipated federal funds are not appropriated or received.

2595 (6) A procurement unit may not continue or renew a multiyear contract after the end of
2596 the multiyear contract term or the renewal periods described in the contract, unless the
2597 procurement unit engages in a new standard procurement process or complies with an
2598 exception, described in this chapter, to using a standard procurement process.

2599 (7) A multiyear contract, including any renewal periods, may not exceed a period of
2600 five years, unless:

2601 (a) the procurement officer determines, in writing, that:

2602 (i) a longer period is necessary in order to obtain the procurement item;

2603 (ii) a longer period is customary for industry standards; or

2604 (iii) a longer period is in the best interest of the procurement unit; and

2605 (b) the written determination described in Subsection (7)(a) is included in the file
2606 relating to the procurement.

2607 (8) This section does not apply to a contract for the design or construction of a facility,
2608 a road, a public transit project, or a contract for the financing of equipment.

2609 Section 47. Section **63G-6a-1206** is amended to read:

2610 **63G-6a-1206. Rules and regulations to determine allowable incurred costs --**
2611 **Required information -- Auditing of books.**

2612 (1) (a) The applicable rulemaking authority may, by rule, establish the cost principles
2613 to be included in a cost-reimbursement contract to determine incurred costs for the purpose of
2614 calculating a reimbursement.

2615 (b) The cost principles established by rule under Subsection (1)(a) may be modified, by
2616 contract, if the procurement officer or head of the issuing procurement unit approves the
2617 modification.

2618 (2) Except as provided in Subsection (5), a person who seeks to be, or is, a party in a
2619 cost-based contract with a procurement unit shall:

2620 (a) submit cost or pricing data relating to determining the cost or pricing amount; and

2621 (b) certify that, to the best of the contractor's knowledge and belief, the cost or pricing
2622 data submitted is accurate and complete as of the date specified by the procurement unit.

2623 (3) The procurement officer shall ensure that the date specified under Subsection (2)(b)
2624 is before:

2625 (a) the pricing of any contract awarded by a standard procurement process or pursuant
2626 to a sole source procurement, if the total contract price is expected to exceed an amount
2627 established by rule made by the applicable rulemaking authority; or

2628 (b) the pricing of any change order that is expected to exceed an amount established by
2629 rule made by the applicable rulemaking authority.

2630 (4) A contract or change order that requires a certification described in Subsection (2)
2631 shall include a provision that the price to the procurement unit, including profit or fee, shall be
2632 adjusted to exclude any significant sums by which the procurement unit finds that the price was
2633 increased because the contractor provided cost or pricing data that was inaccurate, incomplete,
2634 or not current as of the date specified by the procurement officer.

2635 (5) A procurement unit is not required to comply with Subsection (2) if:

2636 (a) the contract price is based on adequate price competition;

2637 (b) the contract price is based on established catalogue prices or market prices;

2638 (c) the contract price is set by law or rule; or

2639 (d) the procurement states, in writing:

2640 (i) that, in accordance with rules made by the applicable rulemaking authority, the

2641 requirements of Subsection (2) may be waived; and

2642 (ii) the reasons for the waiver.

2643 (6) The procurement officer or audit entity under contract with the procurement unit

2644 may, at reasonable times and places, only to the extent that the books and records relate to the

2645 applicable cost or pricing data, audit the books and records of:

2646 (a) a person who has submitted cost or pricing data pursuant to this section; or

2647 (b) a contractor or subcontractor under a contract or subcontract other than a firm fixed
2648 price contract.

2649 (7) Unless a shorter time is provided for by contract:

2650 (a) a person described in Subsection (6)(a) shall maintain the books and records
2651 described in Subsection (6) for three years after the day on which the fiscal year in which final
2652 payment is made under the contract ends;

2653 (b) a contractor shall maintain the books and records described in Subsection (6) for
2654 three years after the day on which the fiscal year in which final payment under the prime
2655 contract ends; and

2656 (c) a subcontractor shall maintain the books and records described in Subsection (6) for
2657 three years after the day on which the fiscal year in which final payment is made under the
2658 subcontract ends.

2659 Section 48. Section **63G-6a-1503** is amended to read:

2660 **63G-6a-1503. Selection committee for architect-engineer services.**

2661 (1) In the procurement of architect-engineer services, the procurement officer or the
2662 head of an issuing procurement unit shall encourage firms engaged in the lawful practice of
2663 their profession to submit [~~annually~~] a statement of qualifications [~~and performance data~~].

2664 (2) The Building Board shall be the evaluation committee for architect-engineer
2665 services contracts under its authority.

2666 (3) An evaluation committee for architect-engineer services contracts not under the
2667 authority of the Building Board shall be established in accordance with rules made by the
2668 applicable rulemaking authority.

2669 (4) An evaluation committee shall:

2670 (a) evaluate current statements of qualifications [~~and performance data on file with the~~
2671 ~~state, together with those that may be submitted by other firms~~] in response to the

2672 announcement of ~~[the]~~ a proposed contract;

2673 (b) consider no less than three firms; and

2674 (c) based upon criteria established and published by the issuing procurement unit,
2675 select no less than three of the firms considered to be the most highly qualified to provide the
2676 services required.

2677 Section 49. Section **63G-6a-1602** is amended to read:

2678 **63G-6a-1602. Protest -- Time -- Authority to resolve protest.**

2679 (1) (a) ~~[Except as provided in Subsection (2), a]~~ A person who is an actual or
2680 prospective bidder, offeror, or contractor who is aggrieved in connection with a procurement or
2681 award of a contract may file a written protest ~~[to]~~ with the protest officer ~~[as follows:]~~.

2682 ~~[(a)]~~ (b) (i) ~~[with respect]~~ A protest under Subsection (1)(a) relating to an invitation for
2683 bids or a request for proposals shall be filed:

2684 ~~[(i)]~~ (A) before the opening of bids or the closing date for proposals; or

2685 ~~[(ii)]~~ (B) if the person filing the protest did not know and should not have known of the
2686 facts giving rise to the protest before the bid opening or the closing date for proposals, within
2687 seven days after the day on which the person knows or should have known of the facts giving
2688 rise to the protest~~[-or]~~.

2689 (ii) A protest under Subsection (1)(a) relating to a form of procurement not described
2690 in Subsection (1)(b)(i) but involving a deadline established for the submission of a price or
2691 response shall be filed:

2692 (A) before the deadline for the submission of a price or response; or

2693 (B) if the person filing the protest did not know and should not have known of the facts
2694 giving rise to the protest before the deadline for the submission of a price or response, within
2695 seven days after the day on which the person knows or should have known of the facts giving
2696 rise to the protest.

2697 ~~[(b)]~~ (iii) ~~[if Subsection (1)(a) does not apply,]~~ A protest under Subsection (1)(a)
2698 relating to a form of procurement not described in Subsection (1)(b)(i) or (ii) shall be filed
2699 within seven days after the day on which the person filing the protest knows or should have
2700 known of the facts giving rise to the protest.

2701 (2) A person who is debarred or suspended under this chapter may protest the
2702 debarment or suspension to the protest officer that ordered the debarment or suspension, as

2703 applicable, within seven days after the day on which the debarment or suspension is ordered.

2704 (3) A person who files a protest under this section shall include in the filing document:

2705 (a) the person's address of record and email address of record; and

2706 (b) a concise statement of the grounds upon which the protest is made.

2707 (4) A person described in Subsection (1)[;] or (2)[; or (3)] who fails to [~~timely~~] file a
2708 protest [~~under this section~~] within the time prescribed in Subsection (1)(b) or (2), respectively,
2709 may not [~~bring a~~]:

2710 (a) protest[;] to the protest officer a solicitation or award of a contract, or a debarment
2711 or suspension, respectively; or

2712 (b) file an action[;] or appeal challenging a solicitation or award of a contract, or a
2713 debarment or suspension, respectively, before [the protest officer,] an appeals panel, a court, or
2714 any other forum.

2715 (5) Subject to the applicable requirements of Section [63G-10-403](#), a protest officer, or
2716 the protest officer's designee, may enter into a settlement agreement to resolve a protest.

2717 Section 50. Section [63G-6a-1603](#) is amended to read:

2718 **[63G-6a-1603. Protest officer responsibilities and authority if protest filed --](#)**

2719 **[Decisions of protest officer to be in writing -- Effect of no writing.](#)**

2720 (1) After a [~~timely~~] protest is filed [~~in accordance with Section [63G-6a-1602](#)],~~ the
2721 protest officer[;] shall determine whether the protest is timely filed and complies fully with the
2722 requirements of Section [63G-6a-1602](#).

2723 [~~(a) shall consider the protest; and]~~

2724 [~~(b) may hold a hearing on the protest.~~]

2725 (2) If the protest officer determines that the protest is not timely filed or that the protest
2726 does not fully comply with Section [63G-6a-1602](#), the protest officer shall dismiss the protest.

2727 (3) If the protest officer determines that the protest is timely filed and complies fully
2728 with Section [63G-6a-1602](#), the protest officer shall:

2729 (a) dismiss the protest if the protest officer determines that the protest alleges facts that,
2730 if true, do not provide an adequate basis for the protest;

2731 (b) uphold the protest without holding a hearing if the protest officer determines that
2732 the undisputed facts of the protest indicate that the protest should be upheld; or

2733 (c) hold a hearing on the protest if there are genuine issues of material fact that need to

2734 be resolved in order to determine whether the protest should be upheld.

2735 ~~[(2)]~~ (4) (a) ~~[The]~~ If a hearing is held on a protest, the protest officer may:

2736 (i) subpoena witnesses and compel their attendance at ~~[a]~~ the protest hearing; ~~[or]~~

2737 (ii) subpoena documents for production at ~~[a]~~ the protest hearing~~[-];~~

2738 (iii) obtain additional factual information; and

2739 (iv) obtain testimony from experts, the person filing the protest, representatives of the

2740 procurement unit, or others to assist the protest officer to make a decision on the protest.

2741 (b) The Rules of Evidence do not apply to a protest hearing.

2742 (c) The applicable rulemaking authority shall make rules relating to intervention in a

2743 protest, including designating:

2744 (i) who may intervene; and

2745 (ii) the time and manner of intervention.

2746 ~~[If a hearing on a protest is held under this section, the]~~ A protest officer shall:

2747 (i) record ~~[the]~~ each hearing held on a protest under this section;

2748 ~~[(ii) preserve all evidence presented at the hearing; and]~~

2749 ~~[(iii) preserve all records and other evidence relied upon in reaching the written~~

2750 ~~decision described in this section.]~~

2751 ~~[(e)]~~ (ii) [Regardless] regardless of whether a hearing on a protest is held under this

2752 section, [the protest officer shall] preserve all records and other evidence relied upon in

2753 reaching the protest officer's written decision~~[- (f) The records described in Subsections (2)(d)~~

2754 ~~and (e) may not be destroyed]~~ until the decision, and any appeal of the decision, becomes

2755 final~~[-]; and~~

2756 (iii) submit to the procurement policy board chair a copy of the protest officer's written

2757 decision and all records and other evidence relied upon in reaching the decision, within seven

2758 days after receiving:

2759 (A) notice that an appeal of the protest officer's decision has been filed under Section

2760 [63G-6a-1702](#); or

2761 (B) a request from the chair of the procurement policy board.

2762 ~~[(g)]~~ (e) A protest [officer who holds] officer's holding a hearing, [considers]

2763 considering a protest, or [issues] issuing a written decision under this section does not [waive

2764 the] affect a person's right to~~[-, at a]~~ later ~~[date,]~~ question or challenge the protest officer's

2765 jurisdiction to hold the hearing, consider the protest, or ~~render~~ issue the decision.

2766 ~~(3)~~ (5) (a) A protest officer, or the protest officer's designee, shall promptly issue a
2767 written decision regarding any protest, debarment, suspension, or contract controversy if it is
2768 not settled by mutual agreement.

2769 (b) The decision shall:

2770 (i) state the reasons for the action taken ~~and~~;

2771 (ii) inform the protestor, contractor, or prospective contractor of the right to judicial or
2772 administrative review as provided in this chapter~~[-]~~; and

2773 (iii) indicate the amount of the security deposit or bond required under Section
2774 63G-6a-1703 and how that amount was calculated.

2775 ~~(4)~~ (6) (a) A decision described in this section is effective until stayed or reversed on
2776 appeal, except to the extent provided in Section 63G-6a-1903. A person who issues a decision
2777 described in Subsection (1) shall mail, email, or otherwise immediately furnish a copy of the
2778 decision to the protestor, prospective contractor, or contractor.

2779 (b) A decision described in Subsection ~~(4)~~ (6)(a) that is issued in relation to a
2780 procurement unit other than a legislative procurement unit or a judicial procurement unit shall
2781 be final and conclusive unless the protestor, prospective contractor, or contractor:

2782 (i) for a controversy described in Section 63G-6a-1905, commences an action in
2783 district court in accordance with Subsection 63G-6a-1802(5);

2784 (ii) for a controversy related to a solicitation or the award of a contract, files an appeal
2785 under Section 63G-6a-1702; or

2786 (iii) for a debarment or suspension, files an appeal under Section 63G-6a-1702.

2787 (c) A decision described in Subsection ~~(4)~~ (6)(a) that is issued in relation to a
2788 legislative procurement unit or a judicial procurement unit shall be final and conclusive unless
2789 the protestor, prospective contractor, or contractor:

2790 (i) for a controversy described in Section 63G-6a-1905, commences an action in
2791 district court in accordance with Subsection 63G-6a-1802(5);

2792 (ii) for a controversy related to a solicitation or the award of a contract, files an appeal
2793 under Subsection 63G-6a-1802(1)~~(b)~~(c); or

2794 (iii) for a debarment or suspension, files an appeal under Subsection
2795 63G-6a-1802(1)~~(b)~~(c).

2796 [(5)] (7) If the protest officer does not issue the written decision regarding a protest or a
 2797 contract controversy within 30 calendar days after the day on which a written request for a final
 2798 decision is filed with the protest officer, or within a longer period as may be agreed upon by the
 2799 parties, the protester, prospective contractor, or contractor may proceed as if an adverse
 2800 decision had been received.

2801 [(6)] (8) Except for a controversy described in Section 63G-6a-1905, a determination
 2802 under this section by the protest officer regarding an issue of fact may not be overturned on
 2803 appeal unless the decision is arbitrary and capricious or clearly erroneous.

2804 Section 51. Section 63G-6a-1702 is amended to read:

2805 **63G-6a-1702. Appeal to Utah State Procurement Policy Board -- Appointment of**
 2806 **procurement appeals panel -- Proceedings.**

2807 (1) This part applies to all procurement units other than:

- 2808 (a) a legislative procurement unit;
- 2809 (b) a judicial procurement unit;
- 2810 (c) a county or municipality; or
- 2811 (d) a public transit district.

2812 (2) (a) [A] Subject to Section 63G-6a-1703, a party to a protest involving a
 2813 procurement unit other than a procurement unit described in Subsection (1) may appeal the
 2814 protest decision to the board by[:(a)] filing a written notice of appeal with the chair of the
 2815 board within seven days after:

- 2816 (i) the day on which the written decision described in Section 63G-6a-1603 is:
 2817 (A) personally served on the party or the party's representative; or
 2818 (B) emailed or mailed to the address or email address of record provided by the party
 2819 under Subsection 63G-6a-1602(3); or

2820 (ii) the day on which the 30-day period described in Subsection 63G-6a-1603[(5)](7)
 2821 ends, if a written decision is not issued before the end of the 30-day period[;].

2822 (b) [~~including in the filing document the person's~~] A notice of appeal under Subsection
 2823 (2)(a) shall:

2824 (i) include the address of record and email address of record of the party filing the
 2825 notice of appeal; and

2826 (ii) be accompanied by a copy of any written protest decision.

2827 ~~[(c) at the time that the notice of appeal described in Subsection (2)(a) is filed,~~
 2828 ~~complying with the requirements of Section [63G-6a-1703](#) regarding the posting of a security~~
 2829 ~~deposit or a bond.]~~

2830 (3) A person may not base an appeal under this section on a ground not specified in the
 2831 person's protest under Section [63G-6a-1602](#).

2832 ~~[(3)]~~ (4) A person may not appeal from a protest described in Section [63G-6a-1602](#),
 2833 unless:

2834 (a) a decision on the protest has been issued; or

2835 (b) a decision is not issued and the 30-day period described in Subsection
 2836 [63G-6a-1603](#)(5), or a longer period agreed to by the parties, has passed.

2837 ~~[(4)]~~ (5) The chair of the board or a designee of the chair who is not employed by the
 2838 procurement unit responsible for the solicitation, contract award, or other action complained of:

2839 (a) shall, within seven days after the day on which the chair receives a timely written
 2840 notice of appeal under Subsection (2), and if all the requirements of Subsection (2) and Section
 2841 [63G-6a-1703](#) have been met, appoint:

2842 (i) a procurement appeals panel to hear and decide the appeal, consisting of at least
 2843 three individuals, each of whom shall be:

2844 (A) a member of the board; or

2845 (B) a designee of a member appointed under Subsection (4)(a)(i)(A), if the designee is
 2846 approved by the chair; and

2847 (ii) one of the members of the procurement appeals panel to be the chair of the panel;

2848 (b) may:

2849 (i) appoint the same procurement appeals panel to hear more than one appeal; or

2850 (ii) appoint a separate procurement appeals panel for each appeal; ~~[and]~~

2851 (c) may not appoint a person to a procurement appeals panel if the person is employed
 2852 by the procurement unit responsible for the solicitation, contract award, or other action
 2853 complained of~~[-];~~ and

2854 (d) shall, at the time the procurement appeals panel is appointed, provide appeals panel
 2855 members with a copy of the protest officer's written decision and all other records and other
 2856 evidence that the protest officer relied on in reaching the decision.

2857 ~~[(5)]~~ (6) A procurement appeals panel described in Subsection ~~[(4)]~~ (5) shall:

- 2858 (a) consist of an odd number of members;
- 2859 (b) [~~except as provided in Subsection (6);~~] conduct an informal proceeding on the
- 2860 appeal within 60 days after the day on which the procurement appeals panel is appointed[;]:
- 2861 (i) unless all parties stipulate to a later date; and
- 2862 (ii) subject to Subsection (8);
- 2863 (c) at least seven days before the proceeding, mail, email, or hand-deliver a written
- 2864 notice of the proceeding to the parties to the appeal; and
- 2865 (d) within seven days after the day on which the proceeding ends:
- 2866 (i) issue a written decision on the appeal; and
- 2867 (ii) mail, email, or hand-deliver the written decision on the appeal to the parties to the
- 2868 appeal and to the protest officer.
- 2869 (7) Deliberations of a procurement appeals panel in making its decision on an appeal
- 2870 may be held in a closed meeting, as provided in Title 52, Chapter 4, Open and Public Meetings
- 2871 Act.
- 2872 [~~(6)~~] (8) A procurement appeals panel may continue a procurement appeals proceeding
- 2873 beyond the 60-day period described in Subsection [~~(5)~~] (6)(b) if the procurement appeals panel
- 2874 determines that the continuance is in the interests of justice.
- 2875 [~~(7)~~] (9) A procurement appeals panel:
- 2876 (a) shall, subject to Subsection (9)(c), consider the appeal based solely on:
- 2877 (i) the protest decision;
- 2878 (ii) the record considered by the person who issued the protest decision; and
- 2879 (iii) if a protest hearing was held, the record of the protest hearing;
- 2880 (b) may not take additional evidence; [~~and~~]
- 2881 (c) notwithstanding Subsection (9)(b), may, during an informal hearing, ask questions
- 2882 and receive responses regarding the appeal, the protest decision, or the record in order to assist
- 2883 the panel to understand the appeal, the protest decision, and the record; and
- 2884 [~~(e)~~] (d) shall uphold the decision of the protest officer, unless the decision is arbitrary
- 2885 and capricious or clearly erroneous.
- 2886 [~~(8)~~] (10) If a procurement appeals panel determines that the decision of the protest
- 2887 officer is arbitrary and capricious or clearly erroneous, the procurement appeals panel:
- 2888 (a) shall remand the matter to the protest officer, to cure the problem or render a new

2889 decision;

2890 (b) may recommend action that the protest officer should take; and

2891 (c) may not order that:

2892 (i) a contract be awarded to a certain person;

2893 (ii) a contract or solicitation be cancelled; or

2894 (iii) any other action be taken other than the action described in Subsection ~~[(8)]~~

2895 (10)(a).

2896 ~~[(9)]~~ (11) The board shall make rules relating to the conduct of an appeals proceeding,

2897 including rules that provide for:

2898 (a) expedited proceedings; and

2899 (b) electronic participation in the proceedings by panel members and participants.

2900 ~~[(10)]~~ (12) The Rules of Evidence do not apply to an appeals proceeding.

2901 Section 52. Section **63G-6a-1703** is amended to read:

2902 **63G-6a-1703. Requirement to post a security deposit or bond -- Exceptions --**

2903 **Forfeiture of security deposit or bond.**

2904 (1) Except as provided by rule made under Subsection (2)(a), a person who files ~~[an]~~ a

2905 notice of appeal under Section 63G-6a-1702 shall, at the time that the notice of appeal is filed

2906 and before the expiration of the time provided under Subsection 63G-6a-1702(2) for filing a

2907 notice of appeal, pay a security deposit or post a bond with the office of the protest officer in

2908 ~~[an]~~ the amount [that is the greater] of:

2909 ~~[(a) for the appeal of a debarment or suspension, \$1,000;]~~

2910 ~~[(b) for any type of procurement, \$1,000;]~~

2911 ~~[(c)]~~ (a) (i) for an appeal relating to an invitation for bids, 5% of the estimated total

2912 contract value, based on:

2913 ~~[(i)]~~ (A) the lowest responsible and responsive bid amount for the entire term of the

2914 contract, excluding any renewal period, if the bid opening has occurred; [or]

2915 ~~[(ii) the estimated contract cost, established in accordance with Subsection (2)(b), if the~~

2916 ~~bid opening has not yet occurred;]~~

2917 (B) the total budget for the procurement item for the entire term of the contract,

2918 excluding any renewal period, if bids are based on unit or rate pricing; or

2919 (C) if the contract is being rebid, the historical usage and amount spent on the contract

2920 over the life of the contract; or

2921 ~~[(d)]~~ (ii) for an appeal relating to a request for proposals, 5% of the estimated total
 2922 contract value, based on:

2923 ~~[(i)]~~ (A) the lowest cost proposed in a response to a request for proposals, considering
 2924 the entire term of the contract, excluding any renewal period, if the opening of proposals has
 2925 occurred; [or]

2926 ~~[(ii) the estimated contract cost, established in accordance with Subsection (2)(b), if the~~
 2927 ~~opening of proposals has not occurred; or]~~

2928 ~~[(e) for a type of procurement other than an invitation for bids or a request for~~
 2929 ~~proposals, the amount established in accordance with Subsection (2).]~~

2930 ~~[(2) The board shall make rules, in accordance with Title 63G, Chapter 3, Utah~~
 2931 ~~Administrative Rulemaking Act, that establish:]~~

2932 ~~[(a) circumstances and procedures under which the requirement for paying a security~~
 2933 ~~deposit or posting a bond may be waived or reduced on grounds, including:]~~

2934 ~~[(i) that the person filing the appeal is impecunious;]~~

2935 ~~[(ii) circumstances where certain small purchases are involved; or]~~

2936 ~~[(iii) other grounds determined by the Division of Purchasing and General Services to~~
 2937 ~~be appropriate; and]~~

2938 ~~[(b) the method used to determine:]~~

2939 ~~[(i) the estimated contract cost described in Subsections (1)(c)(ii) and (1)(d)(ii); and]~~

2940 ~~[(ii) the amount described in Subsection (1)(e).]~~

2941 ~~[(3) The chair of the board shall dismiss a protest filed under Section 63G-6a-1702 if~~
 2942 ~~the actual or prospective bidder, offeror, or contractor fails to timely pay the security deposit or~~
 2943 ~~post the bond required under Subsection (1).]~~

2944 (B) the total budget for the procurement item over the entire term of the contract,
 2945 excluding any renewal period, if opened cost proposals are based on unit or rate pricing; or

2946 (C) if the contract is being reissued, the historical usage and amount spent on the
 2947 contract over the life of the contract that is being reissued; or

2948 (b) \$20,000, for an appeal:

2949 (i) relating to any type of procurement process other than an invitation for bids or
 2950 request for proposals;

2951 (ii) relating to an invitation for bids or request for proposals, if the estimated total
2952 contract value cannot be determined; or

2953 (iii) of a debarment or suspension.

2954 [~~4~~] (2) The chair of the board shall:

2955 (a) retain the security deposit or bond until the protest and any appeal of the protest
2956 decision is final;

2957 (b) as it relates to a security deposit:

2958 (i) deposit the security deposit into an interest-bearing account; and

2959 (ii) after any appeal of the protest decision becomes final, return the security deposit
2960 and the interest it accrues to the person who paid the security deposit, unless the security
2961 deposit is forfeited to the General Fund under Subsection [~~5~~] (3); and

2962 (c) as it relates to a bond:

2963 (i) retain the bond until the protest and any appeal of the protest decision becomes
2964 final; and

2965 (ii) after the protest and any appeal of the protest decision becomes final, return the
2966 bond to the person who posted the bond, unless the bond is forfeited to the General Fund under
2967 Subsection [~~5~~] (3).

2968 [~~5~~] (3) A security deposit that is paid, or a bond that is posted, under this section shall
2969 forfeit to the General Fund if:

2970 (a) the person who paid the security deposit or posted the bond fails to ultimately
2971 prevail on appeal; and

2972 (b) the procurement appeals panel finds that the protest or appeal is frivolous or that its
2973 primary purpose is to harass or cause a delay.

2974 Section 53. Section **63G-6a-1706** is amended to read:

2975 **63G-6a-1706. Dismissal of an appeal not filed in compliance with requirements.**

2976 (1) The chair of the board shall dismiss an appeal filed under Section [63G-6a-1702](#) if
2977 the person filing the appeal fails to comply with any of the requirements of Subsection
2978 [63G-6a-1702](#)(2) or Section [63G-6a-1703](#).

2979 (2) A procurement appeals panel may dismiss an appeal that is assigned to the
2980 procurement appeals panel if the appeal is not filed in accordance with the requirements of this
2981 chapter.

2982 Section 54. Section **63G-6a-1802** is amended to read:

2983 **63G-6a-1802. Appeal to Utah Court of Appeals -- Jurisdiction of district court.**

2984 [~~(1) (a) Subject to Subsection (2), a person who receives an adverse decision, or a~~
2985 ~~procurement unit, may appeal a decision of a procurement appeals panel to the Utah Court of~~
2986 ~~Appeals within seven days after the day on which the decision is issued.]~~

2987 (1) (a) (i) A person may appeal:

2988 (A) an adverse decision by a procurement appeals panel; or

2989 (B) a dismissal by the board chair under Subsection [63G-6a-1706\(1\)](#).

2990 (ii) Subject to Subsection (2), a procurement unit may appeal an adverse decision by a
2991 procurement appeals panel.

2992 (b) An appeal under Subsection (1)(a) shall be made to the Utah Court of Appeals
2993 within seven days after the date of the decision or dismissal.

2994 [~~(b)~~] (c) A person who receives an adverse decision in a protest relating to a legislative
2995 procurement unit, a judicial procurement unit, a local government procurement unit, or a public
2996 transit district may appeal the decision to the Utah Court of Appeals within seven days after the
2997 day on which the decision is issued.

2998 (2) A procurement unit may not appeal the decision of a procurement appeals panel,
2999 unless the appeal is:

3000 (a) recommended by the protest officer involved; and

3001 (b) except for a procurement unit that is not represented by the attorney general's
3002 office, approved by the attorney general.

3003 (3) The Utah Court of Appeals:

3004 (a) shall consider the appeal as an appellate court;

3005 (b) may not hear the matter as a trial de novo; and

3006 (c) may not overturn a finding or decision of the protest officer or a procurement
3007 appeals panel, unless the finding or decision is arbitrary and capricious or clearly erroneous.

3008 (4) The Utah Court of Appeals is encouraged to:

3009 (a) give an appeal made under Subsection (1) priority; and

3010 (b) consider the appeal and render a decision in an expeditious manner.

3011 (5) The district court shall have original jurisdiction in a cause of action between a
3012 contractor and a procurement unit for any cause of action that arises under, or in relation to, an

3013 existing contract between the contractor and a procurement unit.

3014 Section 55. Section **63G-6a-1903** is amended to read:

3015 **63G-6a-1903. Effect of timely protest or appeal.**

3016 In the event of a timely protest under Subsection **63G-6a-1602**(1), or a timely appeal of
3017 the protest under Section **63G-6a-1702** or **63G-6a-1802**, a procurement unit, other than a
3018 legislative procurement unit, a judicial procurement unit, a local government procurement unit,
3019 or a public transit district, may not proceed further with the solicitation or with the award of the
3020 contract until:

3021 (1) all administrative and judicial remedies are exhausted;

3022 (2) for a protest under Section **63G-6a-1602** or an appeal under Section **63G-6a-1702**:

3023 (a) the chief procurement officer, after consultation with the attorney general's office

3024 and the head of the using agency, makes a written determination that award of the contract

3025 without delay is necessary to protect substantial interests of the state;

3026 (b) the head of [~~the purchasing agency~~] a procurement unit with independent

3027 procurement authority, after consultation with the procurement unit's attorney [~~general's office~~],

3028 makes a written determination that award of the contract without delay is necessary to protect

3029 substantial interests of the state; or

3030 (c) for a procurement unit that is not represented by the attorney general's office, the

3031 procurement unit, after consulting with the attorney for the procurement unit, makes a written

3032 determination that award of the contract without delay is necessary to protect substantial

3033 interests of the procurement unit; or

3034 (3) for an appeal under Section **63G-6a-1802**, or an appeal to a higher court than

3035 district court:

3036 (a) the chief procurement officer, after consultation with the attorney general's office

3037 and the head of the using agency, makes a written determination that award of the contract

3038 without delay is in the best interest of the state;

3039 (b) the head of [~~the purchasing agency~~] a procurement unit with independent

3040 procurement authority, after consultation with the procurement unit's attorney general's office,

3041 makes a written determination that award of the contract without delay is in the best interest of

3042 the state; or

3043 (c) for a procurement unit that is not represented by the attorney general's office, the

3044 procurement unit, after consulting with the attorney for the procurement unit, makes a written
 3045 determination that award of the contract without delay is necessary to protect the best interest
 3046 of the procurement unit.

3047 Section 56. Section **63G-6a-2103** is amended to read:

3048 **63G-6a-2103. Purchases between procurement units.**

3049 (1) [~~Upon request, a~~] (a) A procurement unit may [make services available to],
 3050 without using a standard procurement process, purchase from another procurement unit[;
 3051 including:] a procurement item that the other procurement unit itself produces or provides.

3052 [~~(a) standard forms;~~]

3053 [~~(b) printed manuals;~~]

3054 [~~(c) qualified products lists;~~]

3055 [~~(d) source information;~~]

3056 [~~(e) common use commodities listings;~~]

3057 [~~(f) supplier prequalification information;~~]

3058 [~~(g) supplier performance ratings;~~]

3059 [~~(h) debarred and suspended bidders lists;~~]

3060 [~~(i) forms for invitation for bids, requests for proposals, instructions to bidders, general~~
 3061 ~~contract provisions, and contract forms; or]~~

3062 [~~(j) contracts or published summaries of contracts, including price and time of delivery~~
 3063 ~~information.]~~

3064 [(2) ~~A procurement unit may provide technical services to another procurement unit,~~
 3065 ~~including:]~~

3066 [~~(a) development of specifications;~~]

3067 [~~(b) development of quality assurance test methods, including receiving, inspection,~~
 3068 ~~and acceptance procedures;~~]

3069 [~~(c) use of testing and inspection facilities; or]~~

3070 [~~(d) use of personnel training programs.]~~

3071 [(3) ~~Procurement units may enter into contractual arrangements and]~~

3072 (b) Subject to Section 63G-6a-2105, Subsection (1)(a) does not authorize a
 3073 procurement unit to purchase from another procurement unit a procurement item that the other
 3074 procurement unit acquires by a procurement.

3075 (2) A procurement unit may publish a schedule of costs or fees for [the services
3076 provided under Subsections (1) and (2)] procurement items available for purchase by another
3077 procurement unit.

3078 Section 57. Section **63G-6a-2105** is amended to read:

3079 **63G-6a-2105. Participation of a public entity or a procurement unit in**
3080 **agreements or contracts of procurement units -- Cooperative purchasing -- State**
3081 **cooperative contracts.**

3082 (1) The chief procurement officer may, in accordance with the requirements of this
3083 chapter, enter into a cooperative procurement, and a contract that is awarded as a result of a
3084 cooperative procurement, with:

3085 (a) another state;

3086 [~~(b) an external procurement unit; or~~]

3087 (b) a cooperative purchasing organization; or

3088 (c) a public entity [~~in Utah~~] inside or outside [of Utah] the state.

3089 (2) A public entity or, as permitted under federal law, an agency of the federal
3090 government, may obtain a procurement item from a state cooperative contract or a contract
3091 awarded by the chief procurement officer under Subsection (1), without signing a participating
3092 addendum if the [~~quote, invitation for bids, or request for proposals used~~] solicitation issued by
3093 the chief procurement officer to obtain the contract includes a statement indicating that the
3094 resulting contract will be issued [~~on behalf of a~~] for the benefit of public [entity in Utah]
3095 entities and, as applicable, agencies of the federal government.

3096 (3) Except as provided in Section **63G-6a-408**, or as otherwise provided in this chapter,
3097 an executive branch procurement unit may not obtain a procurement item from a source other
3098 than a state cooperative contract or a contract awarded by the chief procurement officer under
3099 Subsection (1), if the procurement item is available under a state cooperative contract or a
3100 contract awarded by the chief procurement officer under Subsection (1).

3101 (4) A Utah procurement unit may:

3102 (a) contract with the federal government without going through a standard procurement
3103 process or an exception to a standard procurement process, described in Part 8, Exceptions to
3104 Procurement Requirements, if the procurement item obtained under the contract is provided:

3105 (i) directly by the federal government and not by a person contracting with the federal

3106 government; or

3107 (ii) by a person under contract with the federal government that obtained the contract in
3108 a manner that substantially complies with the provisions of this chapter;

3109 (b) participate in, sponsor, conduct, or administer a cooperative procurement with
3110 another Utah procurement unit or another public entity in Utah, if:

3111 (i) each party unit involved in the cooperative procurement enters into an agreement
3112 describing the rights and duties of each party;

3113 (ii) the procurement is conducted, and the contract awarded, in accordance with the
3114 requirements of this chapter;

3115 (iii) the [~~request for quotes, the invitation for bids, or the request for proposals~~]
3116 solicitation:

3117 (A) clearly indicates that the procurement is a cooperative procurement; and

3118 (B) identifies each party that may purchase under the resulting contract; and

3119 (iv) each party involved in the cooperative procurement signs a participating addendum
3120 describing its rights and obligations in relation to the resulting contract; or

3121 (c) purchase under, or otherwise participate in, an agreement or contract of [~~an external~~
3122 procurement unit] a cooperative purchasing organization, if:

3123 (i) each party involved in the cooperative procurement enters into an agreement
3124 describing the rights and duties of each party;

3125 (ii) the procurement was conducted in accordance with the requirements of this
3126 chapter;

3127 (iii) the [~~request for quotes, the invitation for bids, or the request for proposals~~]
3128 solicitation:

3129 (A) clearly indicates that the procurement is a cooperative procurement; and

3130 (B) identifies each party that may purchase under the resulting contract; and

3131 (iv) each party involved in the cooperative procurement signs a participating addendum
3132 describing its rights and obligations in relation to the resulting contract.

3133 (5) A procurement unit may not obtain a procurement item under a contract that results
3134 from a cooperative procurement described in Subsection (4), if the procurement unit:

3135 (a) is not identified under Subsection (4)(b)(iii)(B) or (4)(c)(iii)(B); or

3136 (b) does not sign a participating addendum to the contract as required by this section.

3137 (6) A procurement unit, other than a legislative procurement unit or a judicial
3138 procurement unit, may not obtain a procurement item under a contract held by the United
3139 States General Services Administration, unless, based upon documentation provided by the
3140 procurement unit, the Director of the State Division of Purchasing and General Services
3141 determines in writing that the United States General Services Administration procured the
3142 contract in a manner that substantially complies with the provisions of this chapter.

3143 (7) The chief procurement officer may award a regional contract for a procurement
3144 item in accordance with the requirements of this chapter, despite a state cooperative contract
3145 for the same procurement item, if awarding the regional contract is practicable.

3146 Section 58. Section **63G-6a-2401** is enacted to read:

3147 **Part 24. Unlawful Conduct and Penalties**

3148 **63G-6a-2401. Title.**

3149 This part is known as "Unlawful Conduct and Penalties."

3150 Section 59. Section **63G-6a-2402** is enacted to read:

3151 **63G-6a-2402. Definitions.**

3152 As used in this part:

3153 (1) "Contract administration professional" means a person under contract with a
3154 procurement unit to:

3155 (a) assist in developing a solicitation or grant;

3156 (b) assist in the procurement process; or

3157 (c) supervise or oversee, or assist in supervising or overseeing, the administration or
3158 management of a contract or grant.

3159 (2) "Contribution":

3160 (a) means a voluntary gift or donation of money, service, or anything else of value, to a
3161 public entity for the public entity's use and not for the primary use of an individual employed
3162 by the public entity; and

3163 (b) includes:

3164 (i) a philanthropic donation;

3165 (ii) admission to a seminar, vendor fair, charitable event, fundraising event, or similar
3166 event that relates to the function of the public entity;

3167 (iii) the purchase of a booth or other display space at an event sponsored by the public

- 3168 entity or a group of which the public entity is a member; and
- 3169 (iv) the sponsorship of an event that is organized by the public entity.
- 3170 (3) "Family member" means a father, mother, husband, wife, son, daughter, sister,
- 3171 brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law,
- 3172 sister-in-law, son-in-law, or daughter-in-law.
- 3173 (4) "Governing body" means an administrative, advisory, executive, or legislative body
- 3174 of the state or a political subdivision of the state that:
- 3175 (a) is created by the Utah Constitution, statute, rule, ordinance, or resolution;
- 3176 (b) consists of two or more individuals;
- 3177 (c) expends, disburses, or is supported in whole or in part by tax revenue; and
- 3178 (d) is vested with authority to make decisions regarding the public's business.
- 3179 (5) "Gratuity":
- 3180 (a) means anything of value given:
- 3181 (i) without anything provided in exchange; or
- 3182 (ii) in excess of the market value of that which is provided in exchange;
- 3183 (b) includes:
- 3184 (i) a gift or favor;
- 3185 (ii) money;
- 3186 (iii) a loan at an interest rate below the market rate or with terms that are more
- 3187 advantageous to the borrower than terms offered generally on the market;
- 3188 (iv) anything of value provided with an award, other than a certificate, plaque, or
- 3189 trophy;
- 3190 (v) employment;
- 3191 (vi) admission to an event;
- 3192 (vii) a meal, lodging, or travel;
- 3193 (viii) entertainment for which a charge is normally made; and
- 3194 (ix) a raffle, drawing for a prize, or lottery; and
- 3195 (c) does not include:
- 3196 (i) an item, including a meal in association with a training seminar, that is:
- 3197 (A) included in a contract or grant; or
- 3198 (B) provided in the proper performance of a requirement of a contract or grant;

- 3199 (ii) an item requested to evaluate properly the award of a contract or grant;
3200 (iii) a rebate, coupon, discount, airline travel award, dividend, or other offering
3201 included in the price of a procurement item;
3202 (iv) a meal provided by an organization or association, including a professional or
3203 educational association, an association of vendors, or an association comprised of public
3204 agencies or public entities, that does not, as an organization or association, respond to
3205 solicitations;
3206 (v) a product sample submitted to a public entity to assist the public entity to evaluate a
3207 solicitation;
3208 (vi) a political campaign contribution;
3209 (vii) an item generally available to the public; or
3210 (viii) anything of value that one public agency provides to another public agency.
3211 (6) "Hospitality gift":
3212 (a) means a token gift of minimal value, including a pen, pencil, stationery, toy, pin,
3213 trinket, snack, beverage, or appetizer, given for promotional or hospitality purposes; and
3214 (b) does not include money, a meal, admission to an event for which a charge is
3215 normally made, entertainment for which a charge is normally made, travel, or lodging.
3216 (7) "Kickback" means anything of value given in exchange for favorable treatment in a
3217 procurement or the administration of a contract or grant.
3218 (8) "Procurement" has the same meaning as defined in Section [63G-6a-103](#), but also
3219 includes the awarding of a grant.
3220 (9) "Procurement professional":
3221 (a) means an individual who:
3222 (i) by title or primary responsibility, has procurement decision making authority; and
3223 (ii) is assigned to be engaged in, or is engaged in:
3224 (A) the procurement process; or
3225 (B) the process of administering a contract or grant, including enforcing contract or
3226 grant compliance, approving contract or grant payments, or approving contract or grant change
3227 orders or amendments; and
3228 (b) excludes any individual who, by title or primary responsibility, does not have
3229 procurement decision making authority and who is not assigned to be engaged in and is not

3230 engaged in the procurement process or the process of administering a contract or grant,
 3231 including:

3232 (i) an individual holding an elective office;
 3233 (ii) a member of a governing body;
 3234 (iii) a chief executive of a public entity or a chief assistant or deputy of the chief
 3235 executive, if the chief executive, chief assistant, or deputy, respectively, has a variety of duties
 3236 and responsibilities beyond the management of the procurement process or the contract or grant
 3237 administration process;

3238 (iv) the superintendent, business administrator, principal, or vice principal of a school
 3239 district or charter school, or the chief assistant or deputy of the superintendent, business
 3240 administrator, principal, or vice principal;

3241 (v) a university or college president, vice president, business administrator, or dean;
 3242 (vi) a chief executive of a local district, as defined in Section 17B-1-102, special
 3243 service district, as defined in Section 17D-1-102, or a political subdivision created under Title
 3244 11, Chapter 13, Interlocal Cooperation Act;

3245 (vii) an employee of a public entity with:
 3246 (A) an annual budget of \$1,000,000 or less; or
 3247 (B) no more than four full-time employees; and

3248 (viii) an executive director or director of an executive branch procurement unit who:
 3249 (A) by title or primary responsibility, does not have procurement decision making
 3250 authority; and

3251 (B) is not assigned to engage in, and is not engaged in, the procurement process.

3252 (10) "Public agency" has the same meaning as defined in Section 11-13-103.

3253 Section 60. Section **63G-6a-2403** is enacted to read:

3254 **63G-6a-2403. Applicability.**

3255 (1) This part applies to each public entity.

3256 (2) A procurement professional is subject to this part at all times during:

3257 (a) the procurement process; and
 3258 (b) the administration of a contract or grant.

3259 (3) A contract administration professional is subject to this part at all times during the
 3260 period the contract administration professional is:

- 3261 (a) under contract with a procurement unit; and
3262 (b) involved in:
3263 (i) the procurement process; or
3264 (ii) the administration of a contract or grant.
3265 (4) Except for Section 63G-6a-2408, this part does not apply to:
3266 (a) an individual described in Subsection 63G-6a-2402(9)(b); or
3267 (b) any other officer, employee, or official representative of a procurement unit who is
3268 not a procurement professional or contract administration professional.
3269 (5) The other subsections of this section do not affect the applicability or effect of any
3270 other ethics, bribery, or other law.
3271 Section 61. Section **63G-6a-2404** is enacted to read:
3272 **63G-6a-2404. Unlawful conduct -- Exceptions -- Classification of offenses.**
3273 (1) (a) It is unlawful for a person who has or is seeking a contract with or a grant from
3274 a public entity knowingly to give, or offer, promise, or pledge to give, a gratuity or kickback to:
3275 (i) the public entity;
3276 (ii) a procurement professional or contract administration professional; or
3277 (iii) an individual who the person knows is a family member of an individual described
3278 in Subsection (1)(a)(ii).
3279 (b) A person is not guilty of unlawful conduct under Subsection (1)(a) for:
3280 (i) giving or offering, promising, or pledging to give a contribution to a public entity,
3281 unless done with the intent to induce the public entity, in exchange, to:
3282 (A) award a contract or grant;
3283 (B) make a procurement decision; or
3284 (C) take an action relating to the administration of a contract or grant; or
3285 (ii) giving or offering, promising, or pledging to give something of value to an
3286 organization to which a procurement professional or contract administration professional
3287 belongs, unless done with the intent to induce a public entity, in exchange, to:
3288 (A) award a contract or grant;
3289 (B) make a procurement decision; or
3290 (C) take an action relating to the administration of a contract or grant.
3291 (2) (a) It is unlawful for a procurement professional or contract administration

3292 professional, or a family member of either, knowingly to receive or accept, offer or agree to
3293 receive or accept, or ask for a promise or pledge of, a gratuity or kickback from a person who
3294 has or is seeking a contract with or a grant from a public entity.

3295 (b) An individual is not guilty of unlawful conduct under Subsection (2)(a) for
3296 receiving or accepting, offering or agreeing to receive or accept, or asking for a promise or
3297 pledge of a contribution on behalf of a public entity, unless done with the intent that the public
3298 entity, in exchange:

3299 (i) award a contract or grant;

3300 (ii) make a procurement decision; or

3301 (iii) take an action relating to the administration of a contract or grant.

3302 (3) Notwithstanding Subsections (1) and (2), it is not unlawful for a person to give or
3303 receive, offer to give or receive, or promise or pledge to give or ask for a promise or pledge of,
3304 a hospitality gift, if:

3305 (a) the total value of the hospitality gift is less than \$10; and

3306 (b) the aggregate value of all hospitality gifts from the person to the recipient in a
3307 calendar year is less than \$50.

3308 (4) A person who engages in the conduct made unlawful under Subsection (1) or (2) is
3309 guilty of:

3310 (a) a second degree felony, if the total value of the gratuity or kickback is \$1,000 or
3311 more;

3312 (b) a third degree felony, if the total value of the gratuity or kickback is \$250 or more
3313 but less than \$1,000;

3314 (c) a class A misdemeanor, if the total value of the gratuity or kickback is \$100 or more
3315 but less than \$250; and

3316 (d) a class B misdemeanor, if the total value of the gratuity or kickback is less than
3317 \$100.

3318 (5) The criminal sanctions described in Subsection (4) do not preclude the imposition
3319 of other penalties for conduct made unlawful under this part, in accordance with other
3320 applicable law, including:

3321 (a) dismissal from employment or other disciplinary action;

3322 (b) for an elected officer listed in Section [77-6-1](#), removal from office as provided in

3323 Title 77, Chapter 6, Removal by Judicial Proceedings;

3324 (c) requiring the public officer or employee to return the value of the unlawful gratuity
3325 or kickback; and

3326 (d) any other civil penalty provided by law.

3327 Section 62. Section **63G-6a-2405** is enacted to read:

3328 **63G-6a-2405. Classification of offenses for unlawfully dividing procurement.**

3329 A person who engages in the conduct made unlawful under Subsection [63G-6a-408\(8\)](#)
3330 is guilty of:

3331 (1) a second degree felony, if the value of the procurement before being divided is
3332 \$1,000,000 or more;

3333 (2) a third degree felony, if the value of the procurement before being divided is
3334 \$250,000 or more but less than \$1,000,000;

3335 (3) a class A misdemeanor, if the value of the procurement before being divided is
3336 \$100,000 or more but less than \$250,000; or

3337 (4) a class B misdemeanor, if the value of the procurement before being divided is less
3338 than \$100,000.

3339 Section 63. Section **63G-6a-2406** is enacted to read:

3340 **63G-6a-2406. Discretion to declare contract or grant void -- Limitations.**

3341 (1) Subject to Subsection (2), the governing body or chief executive officer of a public
3342 entity that awards a contract or grant to a person who engages in conduct made unlawful under
3343 this part may, in the sole discretion of the governing body or chief executive officer, declare the
3344 contract or grant to be void and unenforceable, unless:

3345 (a) the contract or grant contemplates the issuance of a bond or other obligation and the
3346 bond has been issued or obligation incurred; or

3347 (b) a third party has substantially changed its position in reliance upon the contract or
3348 grant.

3349 (2) Declaring a contract or grant void under Subsection (1) does not affect the
3350 obligation of a procurement unit to pay for a contractor's proper performance completed under
3351 the contract or grant or the value the contractor provides to the public entity under the contract
3352 or grant before the contract or grant is declared void.

3353 (3) Subsection (1) applies only to a procurement with respect to which:

3354 (a) public notice is provided on or after July 1, 2014, if public notice of the
3355 procurement is required; or

3356 (b) the initial contact between the public entity and the potential contractor, for
3357 purposes of the procurement, occurs on or after July 1, 2014, if public notice of the
3358 procurement is not required.

3359 Section 64. Section **63G-6a-2407** is enacted to read:

3360 **63G-6a-2407. Authority of conducting procurement unit with respect to**
3361 **evaluation committee.**

3362 Nothing in this part restricts a conducting procurement unit from:

3363 (1) requiring an evaluation committee member to disclose a conflict of interest; or

3364 (2) removing an evaluation committee member for having a conflict of interest.

3365 Section 65. Section **63G-6a-2408** is enacted to read:

3366 **63G-6a-2408. Duty to report unlawful conduct.**

3367 (1) An officer or employee of a procurement unit shall notify the attorney general or
3368 other appropriate prosecuting attorney if the officer or employee has actual knowledge that a
3369 person has engaged in:

3370 (a) conduct made unlawful under this part; or

3371 (b) conduct, including bid rigging, improperly steering a contract to a favored vendor,
3372 exercising undue influence on an individual involved in the procurement process, or
3373 participating in collusion or other anticompetitive practices, made unlawful under other
3374 applicable law.

3375 (2) An officer or employee who fails to comply with the requirement of Subsection (1)
3376 is subject to any applicable disciplinary action or civil penalty identified in Subsection
3377 [63G-6a-2404\(5\)](#).

3378 Section 66. Section **67-16-4** is amended to read:

3379 **67-16-4. Improperly disclosing or using private, controlled, or protected**
3380 **information -- Using position to secure privileges or exemptions -- Accepting employment**
3381 **which would impair independence of judgment or ethical performance -- Exception.**

3382 (1) Except as provided in Subsection (3), it is an offense for a public officer, public
3383 employee, or legislator to:

3384 (a) accept employment or engage in any business or professional activity that he might

3385 reasonably expect would require or induce him to improperly disclose controlled information
3386 that he has gained by reason of his official position;

3387 (b) disclose or improperly use controlled, private, or protected information acquired by
3388 reason of his official position or in the course of official duties in order to further substantially
3389 the officer's or employee's personal economic interest or to secure special privileges or
3390 exemptions for himself or others;

3391 (c) use or attempt to use his official position to:

3392 (i) further substantially the officer's or employee's personal economic interest; or

3393 (ii) secure special privileges or exemptions for himself or others;

3394 (d) accept other employment that he might expect would impair his independence of
3395 judgment in the performance of his public duties; or

3396 (e) accept other employment that he might expect would interfere with the ethical
3397 performance of his public duties.

3398 (2) (a) Subsection (1) does not apply to the provision of education-related services to
3399 public school students by public education employees acting outside their regular employment.

3400 (b) The conduct referred to in Subsection (2)(a) is subject to Section [53A-1-402.5](#).

3401 (3) This section does not apply to a public officer, public employee, or legislator who
3402 engages in conduct that constitutes a violation of this section to the extent that the public
3403 officer, public employee, or legislator is chargeable, for the same conduct, under Section
3404 [~~63G-6a-2304.5~~] [63G-6a-2404](#) or Section [76-8-105](#).

3405 Section 67. Section **67-16-5** is amended to read:

3406 **67-16-5. Accepting gift, compensation, or loan -- When prohibited.**

3407 (1) As used in this section, "economic benefit tantamount to a gift" includes:

3408 (a) a loan at an interest rate that is substantially lower than the commercial rate then
3409 currently prevalent for similar loans; and

3410 (b) compensation received for private services rendered at a rate substantially
3411 exceeding the fair market value of the services.

3412 (2) Except as provided in Subsection (4), it is an offense for a public officer or public
3413 employee to knowingly receive, accept, take, seek, or solicit, directly or indirectly for himself
3414 or another a gift of substantial value or a substantial economic benefit tantamount to a gift:

3415 (a) that would tend improperly to influence a reasonable person in the person's position

3416 to depart from the faithful and impartial discharge of the person's public duties;

3417 (b) that the public officer or public employee knows or that a reasonable person in that
3418 position should know under the circumstances is primarily for the purpose of rewarding the
3419 public officer or public employee for official action taken; or

3420 (c) if the public officer or public employee recently has been, is now, or in the near
3421 future may be involved in any governmental action directly affecting the donor or lender,
3422 unless a disclosure of the gift, compensation, or loan and other relevant information has been
3423 made in the manner provided in Section [67-16-6](#).

3424 (3) Subsection (2) does not apply to:

3425 (a) an occasional nonpecuniary gift, having a value of not in excess of \$50;

3426 (b) an award publicly presented in recognition of public services;

3427 (c) any bona fide loan made in the ordinary course of business; or

3428 (d) a political campaign contribution.

3429 (4) This section does not apply to a public officer or public employee who engages in
3430 conduct that constitutes a violation of this section to the extent that the public officer or public
3431 employee is chargeable, for the same conduct, under Section [~~[63G-6a-2304.5](#)~~] [63G-6a-2404](#) or
3432 Section [76-8-105](#).

3433 Section 68. Section [67-16-5.3](#) is amended to read:

3434 **[67-16-5.3. Requiring donation, payment, or service to government agency in](#)**
3435 **[exchange for approval -- When prohibited.](#)**

3436 (1) Except as provided in Subsection (3), it is an offense for a public officer, public
3437 employee, or legislator to demand from any person as a condition of granting any application or
3438 request for a permit, approval, or other authorization, that the person donate personal property,
3439 money, or services to any agency.

3440 (2) (a) Subsection (1) does not apply to any donation of property, funds, or services to
3441 an agency that is:

3442 (i) expressly required by statute, ordinance, or agency rule;

3443 (ii) mutually agreed to between the applicant and the entity issuing the permit,
3444 approval, or other authorization;

3445 (iii) made voluntarily by the applicant; or

3446 (iv) a condition of a consent decree, settlement agreement, or other binding instrument

3447 entered into to resolve, in whole or in part, an actual or threatened agency enforcement action.

3448 (b) If a person donates property, funds, or services to an agency, the agency shall, as
3449 part of the permit or other written authorization:

3450 (i) identify that a donation has been made;

3451 (ii) describe the donation;

3452 (iii) certify, in writing, that the donation was voluntary; and

3453 (iv) place that information in its files.

3454 (3) This section does not apply to a public officer, public employee, or legislator who
3455 engages in conduct that constitutes a violation of this section to the extent that the public
3456 officer, public employee, or legislator is chargeable, for the same conduct, under Section
3457 [~~63G-6a-2304.5~~] [63G-6a-2404](#) or Section [76-8-105](#).

3458 Section 69. Section ~~67-16-5.6~~ is amended to read:

3459 **67-16-5.6. Offering donation, payment, or service to government agency in**
3460 **exchange for approval -- When prohibited.**

3461 (1) Except as provided in Subsection (3), it is an offense for any person to donate or
3462 offer to donate personal property, money, or services to any agency on the condition that the
3463 agency or any other agency approve any application or request for a permit, approval, or other
3464 authorization.

3465 (2) (a) Subsection (1) does not apply to any donation of property, funds, or services to
3466 an agency that is:

3467 (i) otherwise expressly required by statute, ordinance, or agency rule;

3468 (ii) mutually agreed to between the applicant and the entity issuing the permit,
3469 approval, or other authorization;

3470 (iii) a condition of a consent decree, settlement agreement, or other binding instrument
3471 entered into to resolve, in whole or in part, an actual or threatened agency enforcement action;
3472 or

3473 (iv) made without condition.

3474 (b) The person making the donation of property, funds, or services shall include with
3475 the donation a signed written statement certifying that the donation is made without condition.

3476 (c) The agency receiving the donation shall place the signed written statement in its
3477 files.

3478 (3) This section does not apply to a person who engages in conduct that constitutes a
3479 violation of this section to the extent that the person is chargeable, for the same conduct, under
3480 Section [~~63G-6a-2304.5~~] 63G-6a-2404 or Section 76-8-105.

3481 Section 70. Section **67-16-6** is amended to read:

3482 **67-16-6. Receiving compensation for assistance in transaction involving an**
3483 **agency -- Filing sworn statement.**

3484 (1) Except as provided in Subsection (5), it is an offense for a public officer or public
3485 employee to receive or agree to receive compensation for assisting any person or business
3486 entity in any transaction involving an agency unless the public officer or public employee files
3487 a sworn, written statement containing the information required by Subsection (2) with:

- 3488 (a) the head of the officer or employee's own agency;
3489 (b) the agency head of the agency with which the transaction is being conducted; and
3490 (c) the state attorney general.

3491 (2) The statement shall contain:

- 3492 (a) the name and address of the public officer or public employee involved;
3493 (b) the name of the public officer's or public employee's agency;
3494 (c) the name and address of the person or business entity being or to be assisted; and
3495 (d) a brief description of:
3496 (i) the transaction as to which service is rendered or is to be rendered; and
3497 (ii) the nature of the service performed or to be performed.

3498 (3) The statement required to be filed under Subsection (1) shall be filed within 10
3499 days after the date of any agreement between the public officer or public employee and the
3500 person or business entity being assisted or the receipt of compensation, whichever is earlier.

3501 (4) The statement is public information and shall be available for examination by the
3502 public.

3503 (5) This section does not apply to a public officer or public employee who engages in
3504 conduct that constitutes a violation of this section to the extent that the public officer or public
3505 employee is chargeable, for the same conduct, under Section [~~63G-6a-2304.5~~] 63G-6a-2404 or
3506 Section 76-8-105.

3507 Section 71. **Repealer.**

3508 This bill repeals:

3509 Section **63G-6a-2301**, Title.
3510 Section **63G-6a-2302**, Duty to report factual information to attorney general.
3511 Section **63G-6a-2304.5**, Gratuities -- Kickbacks -- Unlawful use of position or
3512 **influence.**
3513 Section **63G-6a-2305**, Penalties for artificially dividing a purchase.
3514 Section **63G-6a-2306**, Penalties.
3515 Section **63G-6a-2307**, Contract awarded in relation to criminal conduct void.
3516 Section **63G-6a-2308**, Exemption.
3517 Section 72. **Effective date.**
3518 If approved by two-thirds of all the members elected to each house, this bill takes effect
3519 upon approval by the governor, or the day following the constitutional time limit of Utah
3520 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
3521 the date of veto override.

Legislative Review Note
as of 2-5-14 12:11 PM

Office of Legislative Research and General Counsel