

**Senator Scott K. Jenkins** proposes the following substitute bill:

**PROCUREMENT REVISIONS**

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Scott K. Jenkins**

House Sponsor: \_\_\_\_\_

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**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;



- 26           ▶ modifies requirements for the content of a request for proposals;
- 27           ▶ 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-102](#), as renumbered and amended by Laws of Utah 2012, Chapter 347
- 73 [63G-6a-103](#), as last amended by Laws of Utah 2013, Chapter 445
- 74 [63G-6a-104](#), as repealed and reenacted by Laws of Utah 2013, Chapter 445
- 75 [63G-6a-106](#), as last amended by Laws of Utah 2013, Chapter 445
- 76 [63G-6a-107](#), as last amended by Laws of Utah 2013, Chapter 445
- 77 [63G-6a-108](#), as last amended by Laws of Utah 2013, Chapter 445
- 78 [63G-6a-204](#), as last amended by Laws of Utah 2013, Chapter 445
- 79 [63G-6a-303](#), as last amended by Laws of Utah 2013, Chapter 445
- 80 [63G-6a-402](#), as last amended by Laws of Utah 2013, Chapter 445
- 81 [63G-6a-403](#), as last amended by Laws of Utah 2013, Chapter 445
- 82 [63G-6a-404](#), as last amended by Laws of Utah 2013, Chapter 445
- 83 [63G-6a-406](#), as last amended by Laws of Utah 2013, Chapter 445
- 84 [63G-6a-408](#), as last amended by Laws of Utah 2013, Chapter 445
- 85 [63G-6a-603](#), as last amended by Laws of Utah 2013, Chapter 445
- 86 [63G-6a-606](#), as last amended by Laws of Utah 2013, Chapter 445
- 87 [63G-6a-607](#), as last amended by Laws of Utah 2013, Chapter 445

- 88            [63G-6a-609](#), as last amended by Laws of Utah 2013, Chapter 445
- 89            [63G-6a-611](#), as last amended by Laws of Utah 2013, Chapter 445
- 90            [63G-6a-612](#), as last amended by Laws of Utah 2013, Chapter 445
- 91            [63G-6a-703](#), as last amended by Laws of Utah 2013, Chapter 445
- 92            [63G-6a-704](#), as last amended by Laws of Utah 2013, Chapter 445
- 93            [63G-6a-707](#), as last amended by Laws of Utah 2013, Chapter 445
- 94            [63G-6a-708](#), as last amended by Laws of Utah 2013, Chapter 445
- 95            [63G-6a-709](#), as last amended by Laws of Utah 2013, Chapter 445
- 96            [63G-6a-709.5](#), as enacted by Laws of Utah 2013, Chapter 445
- 97            [63G-6a-802](#), as last amended by Laws of Utah 2013, Chapter 445
- 98            [63G-6a-904](#), as last amended by Laws of Utah 2013, Chapter 445
- 99            [63G-6a-1103](#), as last amended by Laws of Utah 2013, Chapter 445
- 100           [63G-6a-1105](#), as renumbered and amended by Laws of Utah 2012, Chapter 347
- 101           [63G-6a-1204](#), as last amended by Laws of Utah 2013, Chapter 445
- 102           [63G-6a-1205](#), as last amended by Laws of Utah 2013, Chapter 445
- 103           [63G-6a-1206](#), as last amended by Laws of Utah 2013, Chapter 445
- 104           [63G-6a-1402](#), as last amended by Laws of Utah 2012, Chapter 330 and renumbered and
- 105 amended by Laws of Utah 2012, Chapter 347
- 106           [63G-6a-1503](#), as last amended by Laws of Utah 2013, Chapter 445
- 107           [63G-6a-1505](#), as renumbered and amended by Laws of Utah 2012, Chapter 347
- 108           [63G-6a-1602](#), as last amended by Laws of Utah 2012, Chapter 91 and renumbered and
- 109 amended by Laws of Utah 2012, Chapter 347 and last amended by Coordination
- 110 Clause, Laws of Utah 2012, Chapter 347
- 111           [63G-6a-1603](#), as last amended by Laws of Utah 2013, Chapter 445
- 112           [63G-6a-1702](#), as last amended by Laws of Utah 2013, Chapter 445
- 113           [63G-6a-1703](#), as last amended by Laws of Utah 2013, Chapter 445
- 114           [63G-6a-1706](#), as enacted by Laws of Utah 2012, Chapter 347 and last amended by
- 115 Coordination Clause, Laws of Utah 2012, Chapter 347
- 116           [63G-6a-1802](#), as last amended by Laws of Utah 2013, Chapter 445
- 117           [63G-6a-1902](#), as last amended by Laws of Utah 2013, Chapter 445
- 118           [63G-6a-1903](#), as last amended by Laws of Utah 2013, Chapter 445

119           **63G-6a-1904**, as last amended by Laws of Utah 2013, Chapter 445  
120           **63G-6a-1906**, as last amended by Laws of Utah 2012, Chapter 91 and renumbered and  
121 amended by Laws of Utah 2012, Chapter 347 and last amended by Coordination  
122 Clause, Laws of Utah 2012, Chapter 347  
123           **63G-6a-1907**, as last amended by Laws of Utah 2012, Chapter 91 and renumbered and  
124 amended by Laws of Utah 2012, Chapter 347 and last amended by Coordination  
125 Clause, Laws of Utah 2012, Chapter 347  
126           **63G-6a-1910**, as last amended by Laws of Utah 2013, Chapter 445  
127           **63G-6a-2103**, as last amended by Laws of Utah 2013, Chapter 445  
128           **63G-6a-2105**, as last amended by Laws of Utah 2013, Chapter 445  
129           **67-16-4**, as last amended by Laws of Utah 2013, Chapter 445  
130           **67-16-5**, as last amended by Laws of Utah 2013, Chapter 445  
131           **67-16-5.3**, as last amended by Laws of Utah 2013, Chapter 445  
132           **67-16-5.6**, as last amended by Laws of Utah 2013, Chapter 445  
133           **67-16-6**, as last amended by Laws of Utah 2013, Chapter 445

134 ENACTS:

135           **63G-6a-109**, Utah Code Annotated 1953  
136           **63G-6a-2401**, Utah Code Annotated 1953  
137           **63G-6a-2402**, Utah Code Annotated 1953  
138           **63G-6a-2403**, Utah Code Annotated 1953  
139           **63G-6a-2404**, Utah Code Annotated 1953  
140           **63G-6a-2405**, Utah Code Annotated 1953  
141           **63G-6a-2406**, Utah Code Annotated 1953  
142           **63G-6a-2407**, Utah Code Annotated 1953

143 REPEALS AND REENACTS:

144           **63G-6a-1202**, as last amended by Laws of Utah 2013, Chapter 445

145 RENUMBERS AND AMENDS:

146           **63G-6a-707.5**, (Renumbered from 63G-6a-705, as last amended by Laws of Utah 2013,  
147 Chapter 445)

148 REPEALS:

149           **63G-6a-1803**, as last amended by Laws of Utah 2012, Chapter 91 and renumbered and

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

152 **63G-6a-1905**, as last amended by Laws of Utah 2013, Chapter 445

153 **63G-6a-2301**, as enacted by Laws of Utah 2012, Chapter 347

154 **63G-6a-2302**, as last amended by Laws of Utah 2013, Chapter 445

155 **63G-6a-2304.5**, as enacted by Laws of Utah 2013, Chapter 445

156 **63G-6a-2305**, as last amended by Laws of Utah 2013, Chapter 445

157 **63G-6a-2306**, as last amended by Laws of Utah 2013, Chapter 445

158 **63G-6a-2307**, as last amended by Laws of Utah 2013, Chapter 445

159 **63G-6a-2308**, as enacted by Laws of Utah 2013, Chapter 445

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

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

163 **11-13-315. Taxed interlocal entity.**

164 (1) As used in this section:

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

166 (b) "Public asset" means:

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

168 (ii) tax revenue;

169 (iii) state funds; or

170 (iv) public funds.

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

172 (A) is not exempt from a tax or fee in lieu of taxes imposed in accordance with Part 3,

173 Project Entity Provisions;

174 (B) does not receive a payment of funds from a federal agency or office, state agency or

175 office, political subdivision, or other public agency or office other than a payment that does not

176 materially exceed the greater of the fair market value and the cost of a service provided or

177 property conveyed by the project entity; and

178 (C) does not receive, expend, or have the authority to compel payment from tax

179 revenue.

180 (ii) Before and on May 1, 2014, "taxed interlocal entity" includes an interlocal entity

181 that:

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

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

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

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

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

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

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

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

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

202 (5) Notwithstanding any other provision of law, a taxed interlocal entity's governing  
203 body, as described in Section 11-13-206, shall determine and direct the use of an asset by the  
204 taxed interlocal entity.

205 (6) ~~(a)~~ A taxed interlocal entity is not subject to the provisions of Title 63G, Chapter  
206 6a, Utah Procurement Code.

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

209 (7) (a) A taxed interlocal entity is not a participating local entity as defined in Section  
210 63A-3-401.

211 (b) For each fiscal year of a taxed interlocal entity, the taxed interlocal entity shall

212 provide:

213 (i) the taxed interlocal entity's financial statements for and as of the end of the fiscal  
214 year and the prior fiscal year, including the taxed interlocal entity's balance sheet as of the end  
215 of the fiscal year and the prior fiscal year, and the related statements of revenues and expenses  
216 and of cash flows for the fiscal year; and

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

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

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

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

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

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

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

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

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

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

238 **11-39-103. Requirements for undertaking a building improvement or public**  
239 **works project -- Request for bids -- Authority to reject bids.**

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



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

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

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

251 (ii) publishing notice in accordance with Section 45-1-101, at least five days before  
252 opening the bids; and

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

255 (i) the lowest responsive responsible bidder; or

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

258 (A) offers design-build services; and

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

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

264 (b) (i) The cost of a building improvement or public works project may not be divided  
265 to avoid:

266 (A) exceeding the bid limit; and

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

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

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

273 (b) If the local entity rejects all bids submitted but still intends to undertake the

274 building improvement or public works project, the local entity shall again request bids by  
275 following the procedure provided in Subsection (1)(a).

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

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

281 **11-39-107. Procurement code.**

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

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

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

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

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

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

292 (c) design-build, as defined in Section 63G-6a-103, if the local entity consults with a  
293 professional engineer licensed under Title 58, Chapter 22, Professional Engineers and  
294 Professional Land Surveyors Licensing Act, or an architect licensed under Title 58, Chapter 3a,  
295 Architects Licensing Act, who has design-build experience and is employed by or under  
296 contract with the local entity.

297 ~~[(3) For a public works project only and that costs \$1,000,000 or more, in consultation~~  
298 ~~with a professional engineer licensed under Title 58, Chapter 22, Professional Engineers and~~  
299 ~~Professional Land Surveyors Licensing Act, who has design-build experience and is employed~~  
300 ~~by or is under contract with the owner, the following may enter into a contract for design-build,~~  
301 ~~as defined in Section 63G-6a-103, and adopt the procedures and follow the provisions of the~~  
302 ~~procurement code for the procurement of and as the procedures and provisions relate to a~~  
303 ~~design-build:]~~

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

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

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

307 ~~[(4)]~~ (3) (a) In seeking bids and awarding a contract for a building improvement or  
 308 public works project, a county or a municipal legislative body may elect to follow the  
 309 provisions of the procurement code, as the county or municipal legislative body considers  
 310 appropriate under the circumstances, for specification preparation, source selection, or contract  
 311 formation.

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

316 (c) An election under Subsection ~~[(4)]~~ (3)(a) may be made on a case-by-case basis,  
 317 unless the county or municipality has previously adopted the ~~[provisions of Title 63G, Chapter~~  
 318 ~~6a, Utah Procurement Code]~~ procurement code.

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

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

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

322 ~~[(5)]~~ (4) If the estimated cost of the building improvement or public works project  
 323 proposed by a local district or special service district exceeds the bid limit, the governing body  
 324 of the local district or special service district may, if it determines to proceed with the building  
 325 improvement or public works project, use the competitive procurement procedures of the  
 326 procurement code in place of the comparable provisions of this chapter.

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

328 **52-4-205. Purposes of closed meetings -- Certain issues prohibited in closed**  
 329 **meetings.**

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

331 (a) except as provided in Subsection (3), discussion of the character, professional  
 332 competence, or physical or mental health of an individual;

333 (b) strategy sessions to discuss collective bargaining;

334 (c) strategy sessions to discuss pending or reasonably imminent litigation;

335 (d) strategy sessions to discuss the purchase, exchange, or lease of real property,

336 including any form of a water right or water shares, if public discussion of the transaction  
337 would:

338 (i) disclose the appraisal or estimated value of the property under consideration; or

339 (ii) prevent the public body from completing the transaction on the best possible terms;

340 (e) strategy sessions to discuss the sale of real property, including any form of a water  
341 right or water shares, if:

342 (i) public discussion of the transaction would:

343 (A) disclose the appraisal or estimated value of the property under consideration; or

344 (B) prevent the public body from completing the transaction on the best possible terms;

345 (ii) the public body previously gave public notice that the property would be offered for  
346 sale; and

347 (iii) the terms of the sale are publicly disclosed before the public body approves the  
348 sale;

349 (f) discussion regarding deployment of security personnel, devices, or systems;

350 (g) investigative proceedings regarding allegations of criminal misconduct;

351 (h) as relates to the Independent Legislative Ethics Commission, conducting business  
352 relating to the receipt or review of ethics complaints;

353 (i) as relates to an ethics committee of the Legislature, a purpose permitted under  
354 Subsection [52-4-204\(1\)\(a\)\(iii\)\(C\)](#);

355 (j) as relates to the Independent Executive Branch Ethics Commission created in  
356 Section [63A-14-202](#), conducting business relating to an ethics complaint;

357 (k) as relates to a county legislative body, discussing commercial information as  
358 defined in Section [59-1-404](#);

359 (l) as relates to the Utah Higher Education Assistance Authority and its appointed  
360 board of directors, discussing fiduciary or commercial information as defined in Section  
361 [53B-12-102](#); [or]

362 (m) deliberations, not including any information gathering activities, of:

363 (i) an evaluation committee, appointed under Subsection [63G-6a-707\(3\)](#), that is subject  
364 to this chapter because it is a public body, during the process of evaluating responses to a  
365 solicitation;

366 (ii) a protest officer, as defined in Section [63G-6a-103](#), that is subject to this chapter

367 because the protest officer is a public body, in making a decision on a protest under Title 63G,  
368 Chapter 6a, Part 16, Controversies and Protests; or

369 (n) the purpose of considering information that is designated as a trade secret, as  
370 defined in Section 13-24-2, or that, if disclosed publicly, could reasonably be expected to result  
371 in an unfair competitive injury to the person who submitted the information or impair the  
372 public body's ability to obtain similar necessary information in the future, if:

373 (i) the meeting is held to discuss a procurement, as defined in Section 63G-6a-103;

374 (ii) the public body is acting as the head of a procurement unit, as defined in Section  
375 63G-6a-103; and

376 (iii) the public body needs to review or discuss the information in order to properly  
377 conduct a procurement under Title 63G, Chapter 6a, Utah Procurement Code;

378 (o) the purpose of discussing information that is required to be kept from being  
379 publicly disclosed under Title 63G, Chapter 6a, Utah Procurement Code, if the public body is  
380 discussing the information in the course of fulfilling its role and responsibilities in the  
381 procurement process under Title 63G, Chapter 6a, Utah Procurement Code; or

382 ~~[(m)]~~ (p) a purpose for which a meeting is required to be closed under Subsection (2).

383 (2) The following meetings shall be closed:

384 (a) a meeting of the Health and Human Services Interim Committee to review a fatality  
385 review report described in Subsection 62A-16-301(1)(a), and the responses to the report  
386 described in Subsections 62A-16-301(2) and (4);

387 (b) a meeting of the Child Welfare Legislative Oversight Panel to:

388 (i) review a fatality review report described in Subsection 62A-16-301(1)(a), and the  
389 responses to the report described in Subsections 62A-16-301(2) and (4); or

390 (ii) review and discuss an individual case, as described in Subsection 62A-4a-207(5);

391 and

392 (c) a meeting of a conservation district as defined in Section 17D-3-102 for the purpose  
393 of advising the Natural Resource Conservation Service of the United States Department of  
394 Agriculture on a farm improvement project if the discussed information is protected  
395 information under federal law.

396 (3) In a closed meeting, a public body may not:

397 (a) interview a person applying to fill an elected position;

398 (b) discuss filling a midterm vacancy or temporary absence governed by Title 20A,  
 399 Chapter 1, Part 5, Candidate Vacancy and Vacancy and Temporary Absence in Elected Office;  
 400 or

401 (c) discuss the character, professional competence, or physical or mental health of the  
 402 person whose name was submitted for consideration to fill a midterm vacancy or temporary  
 403 absence governed by Title 20A, Chapter 1, Part 5, Candidate Vacancy and Vacancy and  
 404 Temporary Absence in Elected Office.

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

406 **63B-2-102. Maximum amount -- Projects authorized.**

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

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

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

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

418 CAPITAL IMPROVEMENTS

419	1	Alterations, Repairs, and Improvements	\$8,413,900
420		TOTAL IMPROVEMENTS	\$8,413,900

421 CAPITAL FACILITIES CONSTRUCTION

422			ESTIMATED OPERATIONS AND MAINTENANCE COSTS
	PROJECT PRIORITY	PROJECT DESCRIPTION	AMOUNT FUNDED

423	1	Corrections - Northern Utah Community Corrections Center Phase II	\$2,729,700	\$158,000
424	2	University of Utah Marriot Library Phase II	\$10,200,000	\$881,600
425	3	Ogden Courts Building Phase II	\$12,096,000	\$340,000
426	4	Utah National Guard - Southeast Utah Armory Phase II	\$397,800	\$70,500
427	5	Southern Utah University Library Phase II	\$7,004,400	\$427,000
428	6	Utah Valley Special Events Center Phase II	\$11,845,300	\$536,900
429	7	Salt Lake Community College - Land	\$1,300,000	\$0
430	8	Tax Commission Building	\$14,224,000	\$812,000
431	9	Dixie College Business Building	\$2,823,300	\$187,800
432	10	Salt Lake Community College South City 3rd Floor and Boiler	\$4,009,500	\$257,600
433	11	Public Education - Deaf and Blind Classrooms	\$3,456,100	\$124,800
434		TOTAL CONSTRUCTION	\$70,086,100	
435		TOTAL IMPROVEMENTS AND CONSTRUCTION	\$78,500,000	

- 436 (d) For purposes of this section, operations and maintenance costs:
- 437 (i) are estimates only;
- 438 (ii) may include any operations and maintenance costs already funded in existing
- 439 agency budgets; and
- 440 (iii) are not commitments by this Legislature or future Legislatures to fund those
- 441 operations and maintenance costs.
- 442 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
- 443 constitute a limitation on the amount that may be expended for any project.
- 444 (b) The board may revise these estimates and redistribute the amount estimated for a

445 project among the projects authorized.

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

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

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

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

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

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

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

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

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

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

469 **63B-3-102. Maximum amount -- Projects authorized.**

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

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

474 (b) These costs may include the cost of acquiring land, interests in land, easements and  
475 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities



476 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or  
 477 convenient to the facilities, interest estimated to accrue on these bonds during the period to be  
 478 covered by construction of the projects plus a period of six months after the end of the  
 479 construction period and all related engineering, architectural, and legal fees.

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

481 CAPITAL IMPROVEMENTS

482	1	Alterations, Repairs, and Improvements	\$5,000,000
483		TOTAL IMPROVEMENTS	\$5,000,000

484 CAPITAL AND ECONOMIC DEVELOPMENT

485			ESTIMATED OPERATIONS AND MAINTENANCE COSTS
	PRIORITY PROJECT	PROJECT DESCRIPTION	AMOUNT FUNDED
486	1	University of Utah Marriott Library Phase III (Final)	\$13,811,500 \$881,600
487	2	Bridgerland Applied Technology Center Utah State University Space	\$2,400,000 \$0
488	3	Weber State University - Heat Plant	\$2,332,100 \$9,600
489	4	Department of Human Services - Division of Youth Corrections renamed in 2003 to the Division of Juvenile Justice Services	\$4,180,000 \$400,000
490	5	Snow College - Administrative Services/Student Center	\$3,885,100 \$224,500
491	6	Ogden Weber Applied Technology Center - Metal Trades Building Design and Equipment Purchase	\$750,000 \$0

492	7	Department of Corrections B-Block Remodel	\$1,237,100	\$72,000
493	8	Utah State University - Old Main Phase III Design	\$550,000	\$0
494	9	Department of Corrections - 144 bed Uintah Expansion	\$6,700,000	\$168,800
495	10	Southern Utah University Administrative Services/Student Center	\$5,630,400	\$314,200
496	11	Anasazi Museum	\$760,200	\$8,500
497	12	Hill Air Force Base - Easements Purchase	\$9,500,000	\$0
498	13	Signetics Building Remodel	\$2,000,000	\$0
499	14	Antelope Island Visitors Center	\$750,000	\$30,000
500	15	State Fair Park - Master Study	\$150,000	\$0
501	16	Utah National Guard - Draper Land	\$380,800	\$0
502	17	Davis Applied Technology Center - Design	\$325,000	\$0
503	18	Palisade State Park - Land and Park Development	\$800,000	\$0
504	19	Department of Human Services - Cedar City Land	\$80,000	\$0
505	20	Department of Human Services - Clearfield Land	\$163,400	\$0
506	21	Electronic technology, equipment, and hardware	\$2,500,000	\$0
507		TOTAL CAPITAL AND ECONOMIC DEVELOPMENT	\$58,885,600	
508		TOTAL IMPROVEMENTS AND CAPITAL AND ECONOMIC DEVELOPMENT	\$63,885,600	

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

- 510 (i) are estimates only;
- 511 (ii) may include any operations and maintenance costs already funded in existing  
512 agency budgets; and
- 513 (iii) are not commitments by this Legislature or future Legislatures to fund those  
514 operations and maintenance costs.
- 515 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not  
516 constitute a limitation on the amount that may be expended for any project.
- 517 (b) The board may revise these estimates and redistribute the amount estimated for a  
518 project among the projects authorized.
- 519 (c) The commission, by resolution and in consultation with the board, may delete one  
520 or more projects from this list if the inclusion of that project or those projects in the list could  
521 be construed to violate state law or federal law or regulation.
- 522 (4) (a) The division may enter into agreements related to these projects before the  
523 receipt of proceeds of bonds issued under this chapter.
- 524 (b) The division shall make those expenditures from unexpended and unencumbered  
525 building funds already appropriated to the Capital Projects Fund.
- 526 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds  
527 of bonds issued under this chapter.
- 528 (d) The commission may, by resolution, make any statement of intent relating to that  
529 reimbursement that is necessary or desirable to comply with federal tax law.
- 530 (5) (a) For those projects for which only partial funding is provided in Subsection (2),  
531 it is the intent of the Legislature that the balance necessary to complete the projects be  
532 addressed by future Legislatures, either through appropriations or through the issuance or sale  
533 of bonds.
- 534 (b) For those phased projects, the division may enter into contracts for amounts not to  
535 exceed the anticipated full project funding but may not allow work to be performed on those  
536 contracts in excess of the funding already authorized by the Legislature.
- 537 (c) Those contracts shall contain a provision for termination of the contract for the  
538 convenience of the state [~~as required by Section 63G-6a-1202~~].
- 539 (d) It is also the intent of the Legislature that this authorization to the division does not  
540 bind future Legislatures to fund projects initiated from this authorization.

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

542 **63B-4-102. Maximum amount -- Projects authorized.**

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

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

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

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

554 CAPITAL IMPROVEMENTS

555 Alterations, Repairs, and Improvements \$7,200,000

556 TOTAL IMPROVEMENTS \$7,200,000

557 CAPITAL AND ECONOMIC DEVELOPMENT

558			ESTIMATED OPERATIONS AND MAINTENANCE COSTS
	PROJECT DESCRIPTION	AMOUNT FUNDED	
559	Corrections - Uinta IVA	\$11,300,000	\$212,800
560	Utah County Youth Correctional Facility	\$6,650,000	\$245,000
561	Ogden Weber Applied Technology Center - Metal Trades	\$5,161,000	\$176,000
562	Project Reserve Fund	\$3,500,000	None
563	Weber State University - Browning Center Remodel	\$3,300,000	None
564	Heber Wells Building Remodel	\$2,000,000	None

565	Higher Education Davis County - Land Purchase	\$1,600,000	None
566	National Guard -- Provo Armory	\$1,500,000	\$128,000
567	Department of Natural Resources - Pioneer Trails Visitor Center	\$900,000	\$65,000
568	Higher Education Design Projects	\$800,000	Varies depending upon projects selected
569	Salt Lake Community College - South Valley Planning	\$300,000	None
570	Division of Youth Corrections renamed in 2003 to the Division of Juvenile Justice Services - Logan Land Purchase	\$120,000	None
571	TOTAL CAPITAL AND ECONOMIC DEVELOPMENT		\$37,131,000
572	TOTAL IMPROVEMENTS AND CAPITAL AND ECONOMIC DEVELOPMENT		\$44,331,000

573 (d) For purposes of this section, operations and maintenance costs:  
 574 (i) are estimates only;  
 575 (ii) may include any operations and maintenance costs already funded in existing  
 576 agency budgets; and  
 577 (iii) are not commitments by this Legislature or future Legislatures to fund those  
 578 operations and maintenance costs.

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

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

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

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

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

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

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

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

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

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

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

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

606 **63B-5-102. Maximum amount -- Projects authorized.**

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

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

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

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

618	CAPITAL IMPROVEMENTS	
619	Alterations, Repairs, and Improvements	\$7,600,000
620	TOTAL IMPROVEMENTS	\$7,600,000

621 CAPITAL AND ECONOMIC DEVELOPMENT

622	PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATIONS AND MAINTENANCE COSTS
623	Corrections - Gunnison (192 Beds)	\$13,970,000	\$210,000
624	University of Utah -- Gardner Hall	\$7,361,000	\$203,900
625	Weber State University Davis Campus -- Land Purchase	\$771,000	None
626	Department of Workforce Services Cedar City -- Land Purchase	\$148,000	None
627	Utah State University Eastern Durrant School -- Land Purchase	\$400,000	None
628	State Hospital - Forensic Design (200 beds)	\$750,000	\$575,000
629	TOTAL CAPITAL AND ECONOMIC DEVELOPMENT	\$23,400,000	
630	TOTAL IMPROVEMENTS AND CAPITAL AND ECONOMIC DEVELOPMENT	\$31,000,000	

- 631 (d) For purposes of this section, operations and maintenance costs:
- 632 (i) are estimates only;
- 633 (ii) may include any operations and maintenance costs already funded in existing
- 634 agency budgets; and
- 635 (iii) are not commitments by this Legislature or future Legislatures to fund those
- 636 operations and maintenance costs.
- 637 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not

638 constitute a limitation on the amount that may be expended for any project.

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

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

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

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

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

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

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

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

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

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

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

664 **63B-6-102. Maximum amount -- Projects authorized.**

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

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



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

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

676 CAPITAL AND ECONOMIC DEVELOPMENT		677 ESTIMATED OPERATIONS	
678 PROJECT DESCRIPTION	679 AMOUNT FUNDED	680 AND MAINTENANCE	
681 Youth Corrections - Carbon / Emery (18 beds)	\$2,298,100	\$70,000	
682 State Hospital - 100 bed Forensic Facility	\$13,800,700	\$320,600	
683 Utah State University - Widtsoe Hall	\$23,986,700	\$750,200	
684 Davis Applied Technology Center - Medical/Health Tech Addition	\$6,344,900	\$144,000	
685 Southern Utah University -- Physical Education Building (Design)	\$1,100,000	\$456,100	
686 Salt Lake Community College -- High Technology Building, 90th So. Campus (Design)	\$1,165,000	\$718,500	
687 Department of Natural Resources - Antelope Island Road	\$3,600,000	None	
688 Youth Corrections - Region 1 72 Secured Bed Facility	\$1,500,000	None	
689 Department of Natural Resources - Dead Horse Point Visitors Center	\$1,350,000	\$5,700	
690 TOTAL CAPITAL AND ECONOMIC DEVELOPMENT	\$55,145,400		

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

- 689 (i) are estimates only;
- 690 (ii) may include any operations and maintenance costs already funded in existing  
691 agency budgets; and
- 692 (iii) are not commitments by this Legislature or future Legislatures to fund those  
693 operations and maintenance costs.
- 694 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not  
695 constitute a limitation on the amount that may be expended for any project.
- 696 (b) The board may revise these estimates and redistribute the amount estimated for a  
697 project among the projects authorized.
- 698 (c) The commission, by resolution and in consultation with the board, may delete one  
699 or more projects from this list if the inclusion of that project or those projects in the list could  
700 be construed to violate state law or federal law or regulation.
- 701 (4) (a) The division may enter into agreements related to these projects before the  
702 receipt of proceeds of bonds issued under this chapter.
- 703 (b) The division shall make those expenditures from unexpended and unencumbered  
704 building funds already appropriated to the Capital Projects Fund.
- 705 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds  
706 of bonds issued under this chapter.
- 707 (d) The commission may, by resolution, make any statement of intent relating to that  
708 reimbursement that is necessary or desirable to comply with federal tax law.
- 709 (5) (a) For those projects for which only partial funding is provided in Subsection (2),  
710 it is the intent of the Legislature that the balance necessary to complete the projects be  
711 addressed by future Legislatures, either through appropriations or through the issuance or sale  
712 of bonds.
- 713 (b) For those phased projects, the division may enter into contracts for amounts not to  
714 exceed the anticipated full project funding but may not allow work to be performed on those  
715 contracts in excess of the funding already authorized by the Legislature.
- 716 (c) Those contracts shall contain a provision for termination of the contract for the  
717 convenience of the state [~~as required by Section 63G-6a-1202~~].
- 718 (d) It is also the intent of the Legislature that this authorization to the division does not  
719 bind future Legislatures to fund projects initiated from this authorization.

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

721 **63B-6-402. Maximum amount -- Projects authorized.**

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

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

726 (b) These costs may include:

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

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

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

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

734	PROJECT	AMOUNT
	DESCRIPTION	FUNDED
735	UTAX SYSTEMS ACQUISITION AND DEVELOPMENT	\$8,500,000

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

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

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

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

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

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

749 **63B-7-102. Maximum amount -- Projects authorized.**

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

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

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

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

PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATIONS AND MAINTENANCE
762 Southern Utah University Land Purchase	\$4,600,000	\$0
763 Salt Lake Community College High Tech Center - Jordan Campus	\$3,980,700	\$507,900
764 Children's Special Health Care Needs Clinic	\$755,400	\$247,600
765 Youth Corrections - 2 @ 32 beds (Vernal / Logan)	\$419,500	\$276,000
766 Corrections - Gunnison 288 bed and Lagoon Expansion	\$8,425,600	\$0
767 University of Utah - Cowles Building	\$445,500	\$101,700
768 Utah Valley State College - Technical Building	\$1,166,300	\$391,000
769 Sevier Valley Applied Technology Center - Shop Expansion	\$3,014,300	\$443,300
770 Division of Parks and Recreation Statewide Restrooms	\$1,000,000	\$22,700

771	Murray Highway Patrol Office	\$2,300,000	\$81,000
772	Department of Workforce Services - Davis County Employment Center	\$2,780,000	\$128,100
773	State Hospital - Rampton II	\$1,600,000	\$462,000
774	Courts - 4th District Land - Provo	\$1,368,000	\$0
775	Dixie College - Land	\$1,000,000	\$0
776	TOTAL CAPITAL AND ECONOMIC DEVELOPMENT	\$32,855,300	

- 777 (d) For purposes of this section, operations and maintenance costs:
- 778 (i) are estimates only;
- 779 (ii) may include any operations and maintenance costs already funded in existing
- 780 agency budgets; and
- 781 (iii) are not commitments by this Legislature or future Legislatures to fund those
- 782 operations and maintenance costs.
- 783 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
- 784 constitute a limitation on the amount that may be expended for any project.
- 785 (b) The board may revise these estimates and redistribute the amount estimated for a
- 786 project among the projects authorized.
- 787 (c) The commission, by resolution and in consultation with the board, may delete one
- 788 or more projects from this list if the inclusion of that project or those projects in the list could
- 789 be construed to violate state law or federal law or regulation.
- 790 (4) (a) The division may enter into agreements related to these projects before the
- 791 receipt of proceeds of bonds issued under this chapter.
- 792 (b) The division shall make those expenditures from unexpended and unencumbered
- 793 building funds already appropriated to the Capital Projects Fund.
- 794 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
- 795 of bonds issued under this chapter.
- 796 (d) The commission may, by resolution, make any statement of intent relating to that
- 797 reimbursement that is necessary or desirable to comply with federal tax law.
- 798 (5) (a) For those projects for which only partial funding is provided in Subsection (2),

799 it is the intent of the Legislature that the balance necessary to complete the projects be  
 800 addressed by future Legislatures, either through appropriations or through the issuance or sale  
 801 of bonds.

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

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

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

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

810 **63B-7-402. Maximum amount -- Projects authorized.**

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

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

815 (b) These costs may include:

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

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

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

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

823	PROJECT	AMOUNT
	DESCRIPTION	FUNDED
824	UTAX SYSTEMS ACQUISITION AND DEVELOPMENT	\$15,650,000

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

827 (4) (a) For this project, for which only partial funding is provided in Subsection (2), it

828 is the intent of the Legislature that the balance necessary to complete the project be addressed  
829 by future Legislatures, either through appropriations or through the issuance or sale of bonds.

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

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

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

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

838 **63B-8-102. Maximum amount -- Projects authorized.**

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

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

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

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

PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATIONS AND MAINTENANCE
851 Southern Utah University - Physical Education Building	\$2,493,200	\$447,744
852 Utah Valley State College - Information Sciences Building	\$29,000,000	\$721,875

853	University of Utah - Cowles Building Renovation	\$7,268,500	\$140,217
854	Vernal District Court	\$4,539,500	\$149,989
855	Salt Lake Community College - Applied Education Center	\$4,200,000	\$281,784
856	TOTAL CAPITAL AND ECONOMIC DEVELOPMENT	\$47,501,200	

- 857 (d) For purposes of this section, operations and maintenance costs:
- 858 (i) are estimates only;
- 859 (ii) may include any operations and maintenance costs already funded in existing
- 860 agency budgets; and
- 861 (iii) are not commitments by this Legislature or future Legislatures to fund those
- 862 operations and maintenance costs.
- 863 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
- 864 constitute a limitation on the amount that may be expended for any project.
- 865 (b) The board may revise these estimates and redistribute the amount estimated for a
- 866 project among the projects authorized.
- 867 (c) The commission, by resolution and in consultation with the board, may delete one
- 868 or more projects from this list if the inclusion of that project or those projects in the list could
- 869 be construed to violate state law or federal law or regulation.
- 870 (4) (a) The division may enter into agreements related to these projects before the
- 871 receipt of proceeds of bonds issued under this chapter.
- 872 (b) The division shall make those expenditures from unexpended and unencumbered
- 873 building funds already appropriated to the Capital Projects Fund.
- 874 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
- 875 of bonds issued under this chapter.
- 876 (d) The commission may, by resolution, make any statement of intent relating to that
- 877 reimbursement that is necessary or desirable to comply with federal tax law.
- 878 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
- 879 it is the intent of the Legislature that the balance necessary to complete the projects be
- 880 addressed by future Legislatures, either through appropriations or through the issuance or sale



881 of bonds.

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

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

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

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

890 **63B-8-402. Maximum amount -- Projects authorized.**

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

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

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

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

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

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

905 (i) are estimates only;

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

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

909 operations and maintenance costs.

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

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

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

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

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

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

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

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

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

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

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

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

937 **63B-9-103. Other capital facility authorizations and intent language.**

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

939 (a) Utah State University use institutional funds to plan, design, and construct a

940 renovation and expansion of the Edith Bowen School under the direction of the director of the  
941 Division of Facilities Construction and Management unless supervisory authority has been  
942 delegated;

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

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

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

948 (a) the University of Utah use institutional funds to plan, design, and construct a  
949 College of Science Math Center under the direction of the director of the Division of Facilities  
950 Construction 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 university may request state funds for operations and maintenance to the extent  
953 that the university is able to demonstrate to the Board of Regents that the facility meets  
954 approved academic and training purposes under Board of Regents policy R710.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1000 (a) Salt Lake Community College may lease land at the Jordan campus to Jordan  
1001 School District for the construction and operation of an Applied Technology Education Center;

1002 (b) the oversight and inspection of the construction comply with Section [63A-5-206](#);

1003 (c) no state funds be used for any portion of this project; and

1004 (d) the college may not request state funds for operations and maintenance.

1005 (11) It is the intent of the Legislature that:

1006 (a) the Department of Transportation exchange its maintenance station at Kimball  
1007 Junction for property located near Highway 40 in Summit County; and

1008 (b) the Department of Transportation use federal funds, rent paid by the Salt Lake  
1009 Organizing Committee for the use of the maintenance station, and any net proceeds resulting  
1010 from the exchange of property to construct a replacement facility under the direction of the  
1011 director of the Division of Facilities Construction and Management unless supervisory  
1012 authority has been delegated.

1013 (12) It is the intent of the Legislature that:

1014 (a) the Department of Transportation sell surplus property in Utah County;

1015 (b) the Department of Transportation use funds from that sale to remodel existing  
1016 space and add an addition to the Region 3 Complex; and

1017 (c) the project cost not exceed the funds received through sale of property.

1018 (13) It is the intent of the Legislature that the Department of Workforce Services use  
1019 proceeds from property sales to purchase additional property adjacent to its state-owned facility  
1020 in Logan.

1021 (14) (a) It is the intent of the Legislature that, because only partial funding is provided  
1022 for the Heat Plant/Infrastructure Project at Utah State University, the balance necessary to  
1023 complete this project be addressed by future Legislatures, either through appropriations or  
1024 through the issuance of bonds.

1025 (b) (i) In compliance with Section [63A-5-207](#), the division may enter into contracts for  
1026 amounts not to exceed the anticipated full project funding but may not allow work to be  
1027 performed on those contracts in excess of the funding already authorized by the Legislature.

1028 (ii) Those contracts shall contain a provision for termination of the contract for the  
1029 convenience of the state [~~as required by Section [63G-6a-1202](#)].~~

1030 (c) It is also the intent of the Legislature that this authorization to the division does not  
1031 bind future Legislatures to fund the Heat Plant/Infrastructure Project at Utah State University.

1032 Section 16. Section **63B-11-202** is amended to read:

1033 **63B-11-202. Maximum amount -- Projects authorized.**

1034 (1) (a) The total amount of bonds issued under this part may not exceed \$21,250,000.

1035 (b) When Utah State University certifies to the commission that the university has  
 1036 obtained reliable commitments, convertible to cash, of \$5,000,000 or more in nonstate funds to  
 1037 construct an addition to the new engineering building and demolish the existing engineering  
 1038 classroom building, the commission may issue and sell general obligation bonds in a total  
 1039 amount not to exceed \$6,100,000.

1040 (c) When the University of Utah certifies to the commission that the university has  
 1041 obtained reliable commitments, convertible to cash, of \$13,000,000 or more in nonstate funds  
 1042 to construct a new engineering building, the commission may issue and sell general obligation  
 1043 bonds in a total amount not to exceed \$15,150,000.

1044 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide  
 1045 funds to pay all or part of the cost of acquiring and constructing the projects listed in this  
 1046 Subsection (2).

1047 (b) These costs may include the cost of acquiring land, interests in land, easements and  
 1048 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities  
 1049 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or  
 1050 convenient to the facilities, interest estimated to accrue on these bonds during the period to be  
 1051 covered by construction of the projects plus a period of six months after the end of the  
 1052 construction period, and all related engineering, architectural, and legal fees.

1053 (c) For the division, proceeds shall be provided for the following:

PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATING AND MAINTENANCE COSTS
1055 1. Utah State University Engineering Building Renovation	\$5,943,500	\$425,000
1056 2. University of Utah New Engineering Building	\$15,000,000	\$489,000
1057 COSTS OF ISSUANCE	\$306,500	

1058 TOTAL CAPITAL AND ECONOMIC DEVELOPMENT \$21,250,000

1059 (d) For purposes of this section, operations and maintenance costs:

1060 (i) are estimates only;

1061 (ii) may include any operations and maintenance costs already funded in existing  
1062 agency budgets; and

1063 (iii) are not commitments by this Legislature or future Legislatures to fund those  
1064 operations and maintenance costs.

1065 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not  
1066 constitute a limitation on the amount that may be expended for any project.

1067 (b) The board may revise these estimates and redistribute the amount estimated for a  
1068 project among the projects authorized.

1069 (c) The commission, by resolution and in consultation with the board, may delete one  
1070 or more projects from this list if the inclusion of that project or those projects in the list could  
1071 be construed to violate state law or federal law or regulation.

1072 (4) (a) The division may enter into agreements related to these projects before the  
1073 receipt of proceeds of bonds issued under this chapter.

1074 (b) The division shall make those expenditures from unexpended and unencumbered  
1075 building funds already appropriated to the Capital Projects Fund.

1076 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds  
1077 of bonds issued under this chapter.

1078 (d) The commission may, by resolution, make any statement of intent relating to that  
1079 reimbursement that is necessary or desirable to comply with federal tax law.

1080 (5) (a) For those projects for which only partial funding is provided in Subsection (2),  
1081 it is the intent of the Legislature that the balance necessary to complete the projects be  
1082 addressed by future Legislatures, either through appropriations or through the issuance or sale  
1083 of bonds.

1084 (b) For those phased projects, the division may enter into contracts for amounts not to  
1085 exceed the anticipated full project funding but may not allow work to be performed on those  
1086 contracts in excess of the funding already authorized by the Legislature.

1087 (c) Those contracts shall contain a provision for termination of the contract for the  
1088 convenience of the state [~~as required by Section 63G-6a-1202~~].

1089 (d) It is also the intent of the Legislature that this authorization to the division does not  
1090 bind future Legislatures to fund projects initiated from this authorization.

1091 Section 17. Section **63F-1-205** is amended to read:

1092 **63F-1-205. Approval of acquisitions of information technology.**

1093 (1) (a) Except as provided in Title 63M, Chapter 1, Part 26, Government Procurement  
1094 Private Proposal Program, in accordance with Subsection (2), the chief information officer  
1095 shall approve the acquisition by an executive branch agency of:

1096 (i) information technology equipment;

1097 (ii) telecommunications equipment;

1098 (iii) software;

1099 (iv) services related to the items listed in Subsections (1)(a)(i) through (iii); and

1100 (v) data acquisition.

1101 (b) The chief information officer may negotiate the purchase, lease, or rental of private  
1102 or public information technology or telecommunication services or facilities in accordance with  
1103 this section.

1104 (c) Where practical, efficient, and economically beneficial, the chief information  
1105 officer shall use existing private and public information technology or telecommunication  
1106 resources.

1107 (d) Notwithstanding another provision of this section, an acquisition authorized by this  
1108 section shall comply with rules made by the applicable rulemaking authority under Title 63G,  
1109 Chapter 6a, Utah Procurement Code.

1110 (2) Before negotiating a purchase, lease, or rental under Subsection (1) for an amount  
1111 that exceeds the value established by the chief information officer by rule in accordance with  
1112 Section **63F-1-206**, the chief information officer shall:

1113 (a) conduct an analysis of the needs of executive branch agencies and subscribers of  
1114 services and the ability of the proposed information technology or telecommunications services  
1115 or supplies to meet those needs; and

1116 (b) for purchases, leases, or rentals not covered by an existing statewide contract,  
1117 provide in writing to the chief procurement officer in the Division of Purchasing and General  
1118 Services that:

1119 (i) the analysis required in Subsection (2)(a) was completed; and



1120 (ii) based on the analysis, the proposed purchase, lease, rental, or master contract of  
1121 services, products, or supplies is practical, efficient, and economically beneficial to the state  
1122 and the executive branch agency or subscriber of services.

1123 (3) In approving an acquisition described in Subsections (1) and (2), the chief  
1124 information officer shall:

1125 (a) establish by administrative rule, in accordance with Section 63F-1-206, standards  
1126 under which an agency must obtain approval from the chief information officer before  
1127 acquiring the items listed in Subsections (1) and (2);

1128 (b) for those acquisitions requiring approval, determine whether the acquisition is in  
1129 compliance with:

1130 (i) the executive branch strategic plan;

1131 (ii) the applicable agency information technology plan;

1132 (iii) the budget for the executive branch agency or department as adopted by the  
1133 Legislature; and

1134 (iv) Title 63G, Chapter 6a, Utah Procurement Code; and

1135 (c) in accordance with Section 63F-1-207, require coordination of acquisitions between  
1136 two or more executive branch agencies if it is in the best interests of the state.

1137 (4) (a) Each executive branch agency shall provide the chief information officer with  
1138 complete access to all information technology records, documents, and reports:

1139 (i) at the request of the chief information officer; and

1140 (ii) related to the executive branch agency's acquisition of any item listed in Subsection  
1141 (1).

1142 (b) Beginning July 1, 2006 and in accordance with administrative rules established by  
1143 the department under Section 63F-1-206, no new technology projects may be initiated by an  
1144 executive branch agency or the department unless the technology project is described in a  
1145 formal project plan and the business case analysis has been approved by the chief information  
1146 officer and agency head. The project plan and business case analysis required by this  
1147 Subsection (4) shall be in the form required by the chief information officer, and shall include:

1148 (i) a statement of work to be done and existing work to be modified or displaced;

1149 (ii) total cost of system development and conversion effort, including system analysis  
1150 and programming costs, establishment of master files, testing, documentation, special

1151 equipment cost and all other costs, including overhead;  
1152 (iii) savings or added operating costs that will result after conversion;  
1153 (iv) other advantages or reasons that justify the work;  
1154 (v) source of funding of the work, including ongoing costs;  
1155 (vi) consistency with budget submissions and planning components of budgets; and  
1156 (vii) whether the work is within the scope of projects or initiatives envisioned when the  
1157 current fiscal year budget was approved.

1158 (5) (a) The chief information officer and the Division of Purchasing and General  
1159 Services shall work cooperatively to establish procedures under which the chief information  
1160 officer shall monitor and approve acquisitions as provided in this section.

1161 (b) The procedures established under this section shall include at least the written  
1162 certification required by Subsection ~~63G-6a-303(5)~~(1)(e).

1163 Section 18. Section **63G-6a-102** is amended to read:

1164 **63G-6a-102. Purpose of chapter.**

1165 The underlying purposes and policies of this chapter are:

1166 (1) to simplify, clarify, and modernize the law governing procurement ~~[by this]~~ in the  
1167 state;

1168 (2) to ensure the fair and equitable treatment of all persons who deal with the  
1169 procurement system ~~[of this state]~~;

1170 (3) to provide increased economy in state procurement activities; and

1171 (4) to foster effective broad-based competition within the free enterprise system.

1172 Section 19. Section **63G-6a-103** is amended to read:

1173 **63G-6a-103. Definitions.**

1174 As used in this chapter:

1175 (1) "Architect-engineer services" means:

1176 (a) professional services within the scope of the practice of architecture as defined in

1177 Section ~~58-3a-102~~; ~~[or]~~

1178 (b) professional engineering as defined in Section ~~58-22-102[-]~~; or

1179 (c) master planning and programming services.

1180 (2) "Bidder" means a person who responds to an invitation for bids.

1181 (3) "Change directive" means a written order signed by the procurement officer that

1182 directs the contractor to suspend work or make changes, as authorized by contract, without the  
1183 consent of the contractor.

1184 (4) "Change order" means a written alteration in specifications, delivery point, rate of  
1185 delivery, period of performance, price, quantity, or other provisions of a contract, upon mutual  
1186 agreement of the parties to the contract.

1187 (5) "Chief procurement officer" means the chief procurement officer appointed under  
1188 Subsection [63G-6a-302\(1\)](#).

1189 (6) "Conducting procurement unit" means a procurement unit that conducts all aspects  
1190 of a procurement:

1191 (a) except:

1192 (i) reviewing a solicitation to verify that it is in proper form; and

1193 (ii) causing the publication of a notice of a solicitation; and

1194 (b) including:

1195 (i) preparing any solicitation document;

1196 (ii) appointing an evaluation committee;

1197 (iii) conducting the evaluation process, except as provided in Subsection

1198 [63G-6a-707\(5\)\(b\)](#) relating to scores calculated for costs of proposals;

1199 (iv) selecting and recommending the person to be awarded a contract;

1200 (v) negotiating the terms and conditions of a contract, subject to the issuing  
1201 procurement unit's approval; and

1202 (vi) administering a contract.

1203 [~~6~~] (7) (a) "Construction" means the process of building, renovating, altering,  
1204 improving, or repairing a public building or public work.

1205 (b) "Construction" does not include the routine operation, routine repair, or routine  
1206 maintenance of an existing structure, building, or real property.

1207 [~~7~~] (8) (a) "Construction manager/general contractor" means a contractor who enters  
1208 into a contract for the management of a construction project when the contract allows the  
1209 contractor to subcontract for additional labor and materials that are not included in the  
1210 contractor's cost proposal submitted at the time of the procurement of the contractor's services.

1211 (b) "Construction manager/general contractor" does not include a contractor whose  
1212 only subcontract work not included in the contractor's cost proposal submitted as part of the

1213 procurement of the contractor's services is to meet subcontracted portions of change orders  
1214 approved within the scope of the project.

1215 ~~[(8)]~~ (9) "Contract" means an agreement for the procurement or disposal of a  
1216 procurement item.

1217 ~~[(9)]~~ (10) "Contractor" means a person who is awarded a contract with a procurement  
1218 unit.

1219 ~~[(10)]~~ (11) "Cooperative procurement" means procurement conducted by, or on behalf  
1220 of[;]:

1221 (a) more than one procurement unit[;]; or [by]

1222 (b) a procurement unit [~~and an external procurement unit.~~] and a cooperative  
1223 purchasing organization.

1224 ~~[(11)]~~ (12) "Cost-plus-a-percentage-of-cost contract" means a contract where the  
1225 contractor is paid a percentage over and above the contractor's actual expenses or costs.

1226 ~~[(12)]~~ (13) "Cost-reimbursement contract" means a contract under which a contractor  
1227 is reimbursed for costs which are allowed and allocated in accordance with the contract terms  
1228 and the provisions of this chapter, and a fee, if any.

1229 ~~[(13)]~~ (14) "Days" means calendar days, unless expressly provided otherwise.

1230 ~~[(14)]~~ (15) "Definite quantity contract" means a fixed price contract that provides for  
1231 the supply of a specified amount of goods over a specified period, with deliveries scheduled  
1232 according to a specified schedule.

1233 ~~[(15)]~~ (16) "Design-build" means the procurement of architect-engineer services and  
1234 construction by the use of a single contract with the design-build provider.

1235 ~~[(16)]~~ (17) "Director" means the director of the division.

1236 ~~[(17)]~~ (18) "Established catalogue price" means the price included in a catalogue, price  
1237 list, schedule, or other form that:

1238 (a) is regularly maintained by a manufacturer or contractor;

1239 (b) is either published or otherwise available for inspection by customers; and

1240 (c) states prices at which sales are currently or were last made to a significant number  
1241 of any category of buyers or buyers constituting the general buying public for the supplies or  
1242 services involved.

1243 ~~[(18)]~~ (19) "Fixed price contract" means a contract that provides a price, for each

1244 procurement item obtained under the contract, that is not subject to adjustment except to the  
1245 extent that:

1246 (a) the contract provides, under circumstances specified in the contract, for an  
1247 adjustment in price that is not based on cost to the contractor; or

1248 (b) an adjustment is required by law.

1249 ~~[(19)]~~ (20) "Fixed price contract with price adjustment" means a fixed price contract  
1250 that provides for an upward or downward revision of price, precisely described in the contract,  
1251 that:

1252 (a) is based on the consumer price index or another commercially acceptable index,  
1253 source, or formula; and

1254 (b) is not based on a percentage of the cost to the contractor.

1255 ~~[(20)]~~ (21) (a) "Grant" means furnishing, by a public entity or by any other public or  
1256 private source, financial or other assistance to a person to support a program authorized by law.

1257 (b) "Grant" does not include:

1258 (i) an award whose primary purpose is to procure an end product or procurement item;

1259 or

1260 (ii) a contract that is awarded as a result of a procurement or a procurement process.

1261 ~~[(21)]~~ (22) "Head of a procurement unit" means:

1262 (a) as it relates to a legislative procurement unit, any person designated by rule made  
1263 by the applicable rulemaking authority;

1264 (b) as it relates to an executive branch procurement unit:

1265 (i) the director of a division; or

1266 (ii) any other person designated by the board, by rule;

1267 (c) as it relates to a judicial procurement unit:

1268 (i) the Judicial Council; or

1269 (ii) any other person designated by the Judicial Council, by rule;

1270 (d) as it relates to a local government procurement unit:

1271 (i) the legislative body of the local government procurement unit; or

1272 (ii) any other person designated by the local government procurement unit;

1273 (e) as it relates to a local district, the board of trustees of the local district or a designee  
1274 of the board of trustees;

1275 (f) as it relates to a special service district, the governing body of the special service  
1276 district or a designee of the governing body;

1277 (g) as it relates to a local building authority, the board of directors of the local building  
1278 authority or a designee of the board of directors;

1279 (h) as it relates to a conservation district, the board of supervisors of the conservation  
1280 district or a designee of the board of supervisors;

1281 (i) as it relates to a public corporation, the board of directors of the public corporation  
1282 or a designee of the board of directors;

1283 (j) as it relates to a school district or any school or entity within a school district, the  
1284 board of the school district, or the board's designee;

1285 (k) as it relates to a charter school, the individual or body with executive authority over  
1286 the charter school, or the individual's or body's designee;

1287 (l) as it relates to an institution of higher education of the state, the president of the  
1288 institution of higher education, or the president's designee; or

1289 (m) as it relates to a public transit district, the board of trustees or a designee of the  
1290 board of trustees.

1291 ~~[(22)]~~ (23) "Indefinite quantity contract" means a fixed price contract that:

1292 (a) is for an indefinite amount of procurement items to be supplied as ordered by a  
1293 procurement unit; and

1294 (b) (i) does not require a minimum purchase amount; or

1295 (ii) provides a maximum purchase limit.

1296 ~~[(23)]~~ (24) "Independent procurement authority" means authority granted to a  
1297 procurement unit[;] under Subsection ~~[63G-6a-108(2), to engage in a procurement without~~  
1298 ~~oversight or control of the division]~~ 63G-6a-106(4)(a).

1299 ~~[(24)]~~ (25) "Invitation for bids" includes all documents, including documents that are  
1300 attached or incorporated by reference, used for soliciting bids to provide a procurement item to  
1301 a procurement unit.

1302 ~~[(25)]~~ (26) "Issuing procurement unit" means a procurement unit that:

1303 ~~[(a) the division, if the division issues the invitation for bids or the request for~~  
1304 ~~proposals; or]~~

1305 ~~[(b) the procurement unit, with independent procurement authority, that issues the~~

1306 invitation for bids or the request for proposals:]

1307 (a) reviews a solicitation to verify that it is in proper form;

1308 (b) causes the notice of a solicitation to be published; and

1309 (c) negotiates the terms and conditions of a contract.

1310 [~~(26)~~] (27) "Labor hour contract" is a contract where:

1311 (a) the supplies and materials are not provided by, or through, the contractor; and

1312 (b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and  
1313 profit for a specified number of labor hours or days.

1314 [~~(27)~~] (28) "Multiple award contracts" means the award of a contract for an indefinite  
1315 quantity of a procurement item to more than one bidder or offeror.

1316 [~~(28)~~] (29) "Multiyear contract" means a contract that extends beyond a one-year  
1317 period, including a contract that permits renewal of the contract, without competition, beyond  
1318 the first year of the contract.

1319 [~~(29)~~] (30) "Municipality" means a city or a town.

1320 [~~(30)~~] (31) "Offeror" means a person who responds to a request for proposals.

1321 [~~(31)~~] (32) "Preferred bidder" means a bidder that is entitled to receive a reciprocal  
1322 preference under the requirements of this chapter.

1323 [~~(32)~~] (33) (a) "Procure" or "procurement" means buying, purchasing, renting, leasing,  
1324 leasing with an option to purchase, or otherwise acquiring a procurement item.

1325 (b) "Procure" or "procurement" includes all functions that pertain to the obtaining of a  
1326 procurement item, including:

1327 (i) the description of requirements;

1328 (ii) the selection process;

1329 (iii) solicitation of sources;

1330 (iv) the preparation for soliciting a procurement item; and

1331 (v) the award of a contract~~[-and].~~

1332 [~~(vi) all phases of contract administration.~~]

1333 [~~(33)~~] (34) "Procurement item" means a supply, a service, construction, or technology.

1334 [~~(34)~~] (35) "Procurement officer" means:

1335 (a) as it relates to a procurement unit with independent procurement authority:

1336 (i) the head of the procurement unit;

- 1337 (ii) a designee of the head of the procurement unit; or
- 1338 (iii) a person designated by rule made by the applicable rulemaking authority; or
- 1339 (b) as it relates to the division or a procurement unit without independent procurement
- 1340 authority, the chief procurement officer.

1341 [~~35~~] (36) "Professional service" means a service that requires a high degree of

1342 specialized knowledge and discretion in the performance of the service, including:

- 1343 (a) legal services;
- 1344 (b) consultation services;
- 1345 (c) architectural services;
- 1346 (d) engineering;
- 1347 (e) design;
- 1348 (f) underwriting;
- 1349 (g) bond counsel;
- 1350 (h) financial advice;
- 1351 (i) construction management;
- 1352 (j) medical services;
- 1353 (k) psychiatric services; or
- 1354 (l) counseling services.

1355 [~~36~~] (37) "Protest officer" means:

- 1356 (a) as it relates to the division or a procurement unit with independent procurement
- 1357 authority:

- 1358 (i) the head of the procurement unit;
- 1359 (ii) a designee of the head of the procurement unit; or
- 1360 (iii) a person designated by rule made by the applicable rulemaking authority; or
- 1361 (b) as it relates to a procurement unit without independent procurement authority, the
- 1362 chief procurement officer or the chief procurement officer's designee.

1363 [~~37~~] (38) "Request for information" means a nonbinding process where a

1364 procurement unit requests information relating to a procurement item.

1365 [~~38~~] (39) "Request for proposals" includes all documents, including documents that

1366 are attached or incorporated by reference, used for soliciting proposals to provide a

1367 procurement item to a procurement unit.



1368 (40) "Request for statement of qualifications" means all documents used to solicit  
1369 information about the qualifications of the person interested in responding to a potential  
1370 procurement, including documents attached or incorporated by reference.

1371 [~~(39)~~] (41) "Requirements contract" means a contract:

1372 (a) where a contractor agrees to provide a procurement unit's entire requirements for  
1373 certain procurement items at prices specified in the contract during the contract period; and

1374 (b) that:

1375 (i) does not require a minimum purchase amount; or

1376 (ii) provides a maximum purchase limit.

1377 [~~(40)~~] (42) "Responsible" means [that a bidder or offeror: (a) is] being capable, in all  
1378 respects, of: [to fully perform the contract requirements solicited in an invitation for bids or a  
1379 request for proposals; and]

1380 [~~(b) has the integrity and reliability to ensure good faith performance.]~~

1381 (a) meeting all the requirements of a solicitation; and

1382 (b) fully performing all the requirements of the contract resulting from the solicitation,  
1383 including being financially solvent with sufficient financial resources to perform the contract.

1384 [~~(41)~~] (43) "Responsive" means [that a bidder or offeror submits a response to an  
1385 invitation for bids or a request for proposals that conforms] conforming in all material respects  
1386 to the invitation for bids or request for proposals.

1387 [~~(42)~~] (44) "Sealed" means manually or electronically sealed and submitted bids or  
1388 proposals.

1389 [~~(43)~~] (45) (a) "Services" means the furnishing of labor, time, or effort by a contractor,  
1390 not involving the delivery of a specific end product other than a report that is incidental to the  
1391 required performance.

1392 (b) "Services" does not include an employment agreement or a collective bargaining  
1393 agreement.

1394 (46) "Sole source contract" means a contract resulting from a sole source procurement.

1395 (47) "Sole source procurement" means a procurement without competition pursuant to  
1396 a determination under Subsection [63G-6a-802\(2\)\(a\)](#) that there is only one source for the  
1397 procurement item.

1398 (48) "Solicitation" means an invitation for bids, request for proposals, notice of a sole

1399 source procurement, request for statement of qualifications, request for information, or any  
1400 document used to obtain bids, proposals, pricing, qualifications, or information for the purpose  
1401 of entering into a procurement contract.

1402 [~~44~~] (49) "Specification" means any description of the physical or functional  
1403 characteristics, or nature of a procurement item included in an invitation for bids or a request  
1404 for proposals, or otherwise specified or agreed to by a procurement unit, including a description  
1405 of:

1406 (a) a requirement for inspecting or testing a procurement item; or

1407 (b) preparing a procurement item for delivery.

1408 [~~45~~] (50) "Standard procurement process" means one of the following methods of  
1409 obtaining a procurement item:

1410 (a) bidding, as described in Part 6, Bidding;

1411 (b) request for proposals, as described in Part 7, Request for Proposals; or

1412 (c) small purchases, in accordance with the requirements established under Section

1413 [63G-6a-408](#).

1414 [~~46~~] (51) "State cooperative contract" means a contract awarded by the division for  
1415 and in behalf of all public entities.

1416 (52) "Statement of qualifications" means a written statement submitted to a  
1417 procurement unit in response to a request for statement of qualifications.

1418 [~~47~~] (53) (a) "Subcontractor" means a person under contract with a contractor or  
1419 another subcontractor to provide services or labor for design or construction.

1420 (b) "Subcontractor" includes a trade contractor or specialty contractor.

1421 (c) "Subcontractor" does not include a supplier who provides only materials,  
1422 equipment, or supplies to a contractor or subcontractor.

1423 [~~48~~] (54) "Supplies" means all property, including equipment, materials, and printing.

1424 [~~49~~] (55) "Tie bid" means that the lowest responsive and responsible bids are  
1425 identical in price.

1426 [~~50~~] (56) "Time and materials contract" means a contract where the contractor is  
1427 paid:

1428 (a) the actual cost of direct labor at specified hourly rates;

1429 (b) the actual cost of materials and equipment usage; and

1430 (c) an additional amount, expressly described in the contract, to cover overhead and  
1431 profit, that is not based on a percentage of the cost to the contractor.

1432 Section 20. Section **63G-6a-104** is amended to read:

1433 **63G-6a-104. Definitions of government entities.**

1434 As used in this chapter:

1435 (1) "Applicable rulemaking authority" means:

1436 (a) as it relates to a legislative procurement unit, the Legislative Management  
1437 Committee, which shall adopt a policy establishing requirements applicable to a legislative  
1438 procurement unit;

1439 (b) as it relates to a judicial procurement unit, the Judicial Council;

1440 (c) as it relates to an executive branch procurement unit, except to the extent provided  
1441 in Subsections (1)(d) through (g), the board;

1442 (d) as it relates to the State Building Board, created in Section **63A-5-101**, the State  
1443 Building Board, but only to the extent that the rules relate to procurement authority expressly  
1444 granted to the State Building Board by statute;

1445 (e) as it relates to the Division of Facilities Construction and Management, created in  
1446 Section **63A-5-201**, the director of the Division of Facilities Construction and Management,  
1447 but only to the extent that the rules relate to procurement authority expressly granted to the  
1448 Division of Facilities Construction and Management by statute;

1449 (f) as it relates to the Office of the Attorney General, the attorney general, but only to  
1450 the extent that the rules relate to procurement authority expressly granted to the attorney  
1451 general by statute;

1452 (g) as it relates to the Department of Transportation, created in Section **72-1-201**, the  
1453 executive director of the Department of Transportation, but only to the extent that the rules  
1454 relate to procurement authority expressly granted to the Department of Transportation by  
1455 statute;

1456 (h) as it relates to a local government procurement unit, the legislative body of the local  
1457 government procurement unit, not as a delegation of authority from the Legislature, but under  
1458 the local government procurement unit's own legislative authority;

1459 (i) as it relates to a school district or a public school, the Utah State Procurement Policy  
1460 Board, except to the extent that a school district makes its own nonadministrative rules, with

1461 respect to a particular subject, that do not conflict with the provisions of this chapter;

1462 (j) as it relates to a state institution of higher education, the State Board of Regents;

1463 (k) as it relates to a public transit district, the chief executive of the public transit

1464 district;

1465 (l) as it relates to a local district or a special service district:

1466 (i) before ~~[May 13, 2014]~~ January 1, 2015, the board of trustees of the local district or

1467 the governing body of the special service district; or

1468 (ii) on or after ~~[May 13, 2014]~~ January 1, 2015, the board, except to the extent that the

1469 board of trustees of the local district or the governing body of the special service district makes

1470 its own rules:

1471 (A) with respect to a subject addressed by board rules; or

1472 (B) that are in addition to board rules; or

1473 (m) as it relates to a procurement unit, other than a procurement unit described in

1474 Subsections (1)(a) through (l), the board.

1475 (2) "Board" means the Utah State Procurement Policy Board, created in Section

1476 [63G-6a-202](#).

1477 (3) "Building board" means the State Building Board created in Section [63A-5-101](#).

1478 (4) "Conservation district" is as defined in Section [17D-3-102](#).

1479 (5) "Cooperative purchasing organization" means an organization, association, or

1480 alliance of purchasers established to combine purchasing power in order to obtain the best

1481 value for the purchasers by engaging in procurements in accordance with Section [63G-6a-2105](#).

1482 ~~[(5)]~~ (6) "Division" means the Division of Purchasing and General Services.

1483 ~~[(6)]~~ (7) "Educational procurement unit" means:

1484 (a) a school district;

1485 (b) a public school, including a local school board or a charter school;

1486 (c) Utah Schools for the Deaf and Blind;

1487 (d) the Utah Education Network; or

1488 (e) an institution of higher education of the state.

1489 ~~[(7)]~~ (8) "Executive branch procurement unit" means each department, division, office,

1490 bureau, agency, or other organization within the state executive branch, including the division

1491 and the attorney general's office.

- 1492            [~~(8) "External procurement unit" means:~~]  
1493            [~~(a) a buying organization not located in this state which, if located in this state, would~~  
1494 ~~qualify as a procurement unit; or]~~  
1495            [~~(b) an agency of the United States.]~~  
1496            (9) "Judicial procurement unit" means:  
1497            (a) the Utah Supreme Court;  
1498            (b) the Utah Court of Appeals;  
1499            (c) the Judicial Council;  
1500            (d) a state judicial district; or  
1501            (e) each office, committee, subcommittee, or other organization within the state  
1502 judicial branch.  
1503            (10) "Legislative procurement unit" means:  
1504            (a) the Legislature;  
1505            (b) the Senate;  
1506            (c) the House of Representatives;  
1507            (d) a staff office of an entity described in Subsection (10)(a), (b), or (c); or  
1508            (e) each office, committee, subcommittee, or other organization within the state  
1509 legislative branch.  
1510            (11) "Local building authority" is as defined in Section [17D-2-102](#).  
1511            (12) "Local district" is as defined in Section [17B-1-102](#).  
1512            (13) "Local government procurement unit" means:  
1513            (a) a county or municipality, and each office or agency of the county or municipality,  
1514 unless the county or municipality adopts its own procurement code by ordinance;  
1515            (b) a county or municipality, and each office or agency of the county or municipality,  
1516 that has adopted this entire chapter by ordinance; or  
1517            (c) a county or municipality, and each office or agency of the county or municipality,  
1518 that has adopted a portion of this chapter by ordinance, to the extent that the term is used in the  
1519 adopted portion of this chapter.  
1520            (14) (a) "Procurement unit" means:  
1521            (i) a legislative procurement unit;  
1522            (ii) an executive branch procurement unit;

- 1523 (iii) a judicial procurement unit;
- 1524 (iv) an educational procurement unit;
- 1525 (v) a local government procurement unit;
- 1526 (vi) a local district;
- 1527 (vii) a special service district;
- 1528 (viii) a local building authority;
- 1529 (ix) a conservation district;
- 1530 (x) a public corporation; or
- 1531 (xi) a public transit district.
- 1532 (b) "Procurement unit" does not include a political subdivision created under Title 11,
- 1533 Chapter 13, Interlocal Cooperation Act.
- 1534 (15) "Public corporation" is as defined in Section [63E-1-102](#).
- 1535 (16) "Public entity" means any state government entity or a political subdivision of the
- 1536 state, including:
  - 1537 (a) a procurement unit;
  - 1538 (b) a municipality or county, regardless of whether the municipality or county has
  - 1539 adopted this chapter or any part of this chapter; and
  - 1540 (c) any other government entity located in Utah that expends public funds.
- 1541 (17) "Public transit district" means a public transit district organized under Title 17B,
- 1542 Chapter 2a, Part 8, Public Transit District Act.
- 1543 (18) "Special service district" is as defined in Section [17D-1-102](#).
- 1544 Section 21. Section **63G-6a-106** is amended to read:
- 1545 **63G-6a-106. Specific statutory authority -- Limitations on authority of chief**
- 1546 **procurement officer and division.**
- 1547 [~~(1) The procurement authority given to a procurement unit under the following~~
- 1548 ~~provisions shall be retained, and shall be applied only to the extent described in those~~
- 1549 ~~provisions:]~~
- 1550 (1) A procurement unit with procurement authority under the following provisions has
- 1551 independent procurement authority to the extent of the applicable provisions and for the
- 1552 procurement items specified in the applicable provisions:
- 1553 (a) Title 53B, State System of Higher Education;

1554 (b) Title 63A, Chapter 5, State Building Board - Division of Facilities Construction  
1555 and Management;

1556 (c) Title 67, Chapter 5, Attorney General;

1557 (d) Title 72, Transportation Code; and

1558 (e) Title 78A, Chapter 5, District ~~Courts~~ Court.

1559 (2) Except as otherwise provided in Sections 63G-6a-105 and 63G-6a-107, a  
1560 procurement unit shall conduct a procurement in accordance with this chapter.

1561 (3) (a) The Department of Transportation may make rules governing the procurement  
1562 of highway construction or improvement.

1563 (b) The applicable rulemaking authority for a public transit district may make rules  
1564 governing the procurement of a transit construction project or a transit improvement project.

1565 (c) This Subsection (3) supersedes Subsections (1) and (2).

1566 ~~[(4) Except to the extent otherwise agreed to in a memorandum of understanding  
1567 between the division and the following entities, the authority of the chief procurement officer  
1568 and of the division does not extend to a procurement unit with independent procurement  
1569 authority:]~~

1570 ~~[(5) An entity described in Subsection (4) may, without supervision, interference, or  
1571 involvement by the chief procurement officer or the division, but consistent with the  
1572 requirements of this chapter:]~~

1573 (4) (a) A procurement unit listed in Subsection (4)(b) may, without the supervision,  
1574 interference, oversight, control, or involvement of the division or the chief procurement officer,  
1575 but in accordance with the requirements of this chapter:

1576 ~~[(a)]~~ (i) engage in a standard procurement process;

1577 ~~[(b)]~~ (ii) procure an item under an exception, as provided in this chapter, to the  
1578 requirement to use a standard procurement process; or

1579 ~~[(c)]~~ (iii) otherwise engage in an act authorized or required by this chapter.

1580 (b) The procurement units to which Subsection (4)(a) applies are:

1581 (i) a legislative procurement unit;

1582 (ii) a judicial procurement unit;

1583 (iii) an educational procurement unit;

1584 (iv) a local government procurement unit;

- 1585 (v) a conservation district;
- 1586 (vi) a local building authority;
- 1587 (vii) a local district;
- 1588 (viii) a public corporation;
- 1589 (ix) a special service district;
- 1590 (x) a public transit district; and
- 1591 (xi) a procurement unit referred to in Subsection (1), to the extent authorized in
- 1592 Subsection (1).

1593 (c) A procurement unit with independent procurement authority shall comply with the  
1594 requirements of this chapter.

1595 (d) Notwithstanding Subsection (4)(a), a procurement unit with independent  
1596 procurement authority may agree in writing with the division to extend the authority of the  
1597 division or the chief procurement officer to the procurement unit, as provided in the agreement.

1598 ~~[(6)]~~ (5) (a) The attorney general may, in accordance with the provisions of this  
1599 chapter, but without involvement by the division or the chief procurement officer:

- 1600 ~~[(a)]~~ (i) retain outside counsel; or
- 1601 ~~[(b)]~~ (ii) procure litigation support services, including retaining an expert witness.
- 1602 ~~[(7) An entity described in Subsection (4)]~~

1603 (b) A procurement unit with independent procurement authority that is not represented  
1604 by the attorney general's office may, in accordance with the provisions of this chapter, but  
1605 without involvement by the division or the chief procurement officer:

- 1606 ~~[(a)]~~ (i) retain outside counsel; or
- 1607 ~~[(b)]~~ (ii) procure litigation support services, including retaining an expert witness.
- 1608 ~~[(8)]~~ (b) The state auditor's office may, in accordance with the provisions of this

1609 chapter, but without involvement by the division or the chief procurement officer, procure audit  
1610 services.

1611 ~~[(9)]~~ (7) The state treasurer may, in accordance with the provisions of this chapter, but  
1612 without involvement by the division or the chief procurement officer, procure:

- 1613 (a) deposit and investment services; and
- 1614 (b) services related to issuing bonds.

1615 Section 22. Section ~~63G-6a-107~~ is amended to read:



1616 **63G-6a-107. Exemptions from chapter -- Compliance with federal law.**

1617 (1) Except for Part ~~[23]~~ 24, Unlawful Conduct and Penalties, the provisions of this  
1618 chapter ~~[are not applicable]~~ do not apply to:

1619 (a) funds administered under the Percent-for-Art Program of the Utah Percent-for-Art  
1620 Act;

1621 (b) grants awarded by the state or contracts between the state and any of the following:

1622 (i) an educational procurement unit;

1623 (ii) a conservation district;

1624 (iii) a local building authority;

1625 (iv) a local district;

1626 (v) a public corporation;

1627 (vi) a special service district;

1628 (vii) a public transit district; or

1629 (viii) two or more of the entities described in Subsections (1)(b)(i) through (vii), acting  
1630 under legislation that authorizes intergovernmental cooperation;

1631 (c) medical supplies or medical equipment, including service agreements for medical  
1632 equipment, obtained through a purchasing consortium by the Utah State Hospital, the Utah  
1633 State Developmental Center, the University of Utah Hospital, or any other hospital owned by  
1634 the state or a political subdivision of the state, if:

1635 (i) the consortium uses a competitive procurement process; and

1636 (ii) the chief administrative officer of the hospital makes a written finding that the  
1637 prices for purchasing medical supplies and medical equipment through the consortium are  
1638 competitive with market prices; or

1639 (d) goods purchased for resale~~[-or]~~ to the public.

1640 ~~[(e) any action taken by a majority of both houses of the Legislature.]~~

1641 ~~[(2)(a) Notwithstanding Subsection (1), the provisions of Part 23, Unlawful Conduct  
1642 and Penalties, are not applicable to an entity described in Subsection (1)(b)(ii), (iii), (iv), (vi),  
1643 (vii), or (viii).]~~

1644 ~~[(b)]~~ (2) This chapter does not prevent a procurement unit from complying with the  
1645 terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

1646 (3) This chapter does not apply to any action taken by a majority of both houses of the

1647 Legislature.

1648 ~~[(3)]~~ (4) Notwithstanding any conflicting provision of this chapter, when a  
 1649 procurement involves the expenditure of federal assistance, federal contract funds, local  
 1650 matching funds, or federal financial participation funds, the procurement unit shall comply  
 1651 with mandatory applicable federal law and regulations not reflected in this chapter.

1652 ~~[(4)]~~ (5) This chapter does not supersede the requirements for retention or withholding  
 1653 of construction proceeds and release of construction proceeds as provided in Section [13-8-5](#).

1654 Section 23. Section **63G-6a-108** is amended to read:

1655 **63G-6a-108. Limitations on and responsibility of executive branch procurement**  
 1656 **units.**

1657 (1) ~~[Except as provided in Subsection (2), a]~~ An executive branch procurement unit  
 1658 may not engage in a procurement unless:

1659 (a) the procurement is made under the direction and control of the division; or

1660 ~~[(b) the division, pursuant to rules made by the board, permits the procurement unit to~~  
 1661 ~~make the procurement on its own.]~~

1662 ~~[(2) Subsection (1) does not apply to the following procurement units, all of which~~  
 1663 ~~have independent procurement authority:]~~

1664 ~~[(a) a legislative procurement unit;]~~

1665 ~~[(b) a judicial procurement unit;]~~

1666 ~~[(c) an educational procurement unit;]~~

1667 ~~[(d) a local government procurement unit;]~~

1668 ~~[(e) a conservation district;]~~

1669 ~~[(f) a local building authority;]~~

1670 ~~[(g) a local district;]~~

1671 ~~[(h) a public corporation;]~~

1672 ~~[(i) a special service district;]~~

1673 ~~[(j) the Utah Housing Corporation; or]~~

1674 ~~[(k) a public transit district.]~~

1675 ~~[(3) A procurement unit with independent procurement authority is not exempt from~~  
 1676 ~~complying with the requirements of this chapter.]~~

1677 (b) the procurement is made under Section [63G-6a-106](#).

1678 (2) An executive branch procurement unit that conducts any part of a procurement  
1679 under this chapter is responsible to conduct that part of the procurement in compliance with  
1680 this chapter.

1681 Section 24. Section **63G-6a-109** is enacted to read:

1682 **63G-6a-109. Issuing procurement unit and conducting procurement unit.**

1683 (1) With respect to a procurement by an executive branch procurement unit:

1684 (a) the division is the issuing procurement unit; and

1685 (b) the executive branch procurement unit is the conducting procurement unit and is  
1686 responsible to ensure that the procurement is conducted in compliance with this chapter.

1687 (2) With respect to a procurement by any other procurement unit, the procurement unit  
1688 is both the issuing procurement unit and the conducting procurement unit.

1689 Section 25. Section **63G-6a-204** is amended to read:

1690 **63G-6a-204. Applicability of rules and regulations of Utah State Procurement**  
1691 **Policy Board and State Building Board -- Report to interim committee.**

1692 (1) Except as provided in Subsection (2), rules made by the board under this chapter  
1693 shall govern all procurement units for which the board is the applicable rulemaking authority.

1694 (2) The building board rules governing procurement of construction, architect-engineer  
1695 services, and leases apply to the procurement of construction, architect-engineer services, and  
1696 leases of real property by the Division of Facilities Construction and Management.

1697 (3) An applicable rulemaking authority may make its own rules, consistent with this  
1698 chapter, governing procurement by a person over which the applicable rulemaking authority  
1699 has rulemaking authority.

1700 (4) The board shall make a report on or before July 1 of each year to a legislative  
1701 interim committee, designated by the Legislative Management Committee created under  
1702 Section [36-12-6](#), on the establishment, implementation, and enforcement of the rules made  
1703 under Section [63G-6a-203](#).

1704 (5) Notwithstanding Subsection [63G-3-301\(13\)\(b\)](#), an applicable rulemaking authority  
1705 is ~~is~~ ~~[, on or before May 13, 2014,]~~ required to initiate rulemaking proceedings, for rules required  
1706 to be made under this chapter ~~[, on or before:~~

1707 (a) May 13, 2014, if the applicable rulemaking authority is the board; or

1708 (b) January 1, 2015, for each other applicable rulemaking authority.

1709 Section 26. Section **63G-6a-303** is amended to read:

1710 **63G-6a-303. Duties of chief procurement officer.**

1711 (1) Except as otherwise specifically provided in this chapter, the chief procurement  
1712 officer serves as the central procurement officer of the state and shall:

1713 ~~[(+)]~~ (a) adopt office policies governing the internal functions of the division;

1714 ~~[(2)]~~ (b) procure or supervise each procurement over which the chief procurement  
1715 officer has authority;

1716 ~~[(3)]~~ (c) establish and maintain programs for the inspection, testing, and acceptance of  
1717 each procurement item over which the chief procurement officer has authority;

1718 ~~[(4)]~~ (d) prepare statistical data concerning each procurement and procurement usage  
1719 of a state procurement unit;

1720 ~~[(5)]~~ (e) ensure that:

1721 ~~[(a)]~~ (i) before approving a procurement not covered by an existing statewide contract  
1722 for information technology or telecommunications supplies or services, the chief information  
1723 officer and the agency have stated in writing to the division that the needs analysis required in  
1724 Section **63F-1-205** was completed, unless the procurement is approved in accordance with  
1725 Title 63M, Chapter 1, Part 26, Government Procurement Private Proposal Program; and

1726 ~~[(b)]~~ (ii) the oversight authority required by Subsection (5)(a) is not delegated outside  
1727 the division; ~~[and]~~

1728 ~~[(6)]~~ (f) provide training to procurement units and to persons who do business with  
1729 procurement units[-];

1730 (g) if the chief procurement officer determines that a procurement over which the chief  
1731 procurement officer has authority is out of compliance with this chapter or board rules:

1732 (i) correct or amend the procurement to bring it into compliance; or

1733 (ii) cancel the procurement, if:

1734 (A) it is not feasible to bring the procurement into compliance; or

1735 (B) the chief procurement officer determines that it is in the best interest of the state to  
1736 cancel the procurement; and

1737 (h) if the chief procurement officer determines that a contract over which the chief  
1738 procurement officer has authority is out of compliance with this chapter or board rules, correct  
1739 or amend the contract to bring it into compliance or cancel the contract:

1740 (i) if the chief procurement officer determines that correcting, amending, or canceling  
1741 the contract is in the best interest of the state; and

1742 (ii) after consultation with the attorney general's office.

1743 (2) The chief procurement officer may:

1744 (a) correct, amend, or cancel a procurement as provided in Subsection (1)(g) at any  
1745 stage of the procurement process; and

1746 (b) correct, amend, or cancel a contract as provided in Subsection (1)(h) at any time  
1747 during the term of the contract.

1748 Section 27. Section **63G-6a-402** is amended to read:

1749 **63G-6a-402. Procurement unit required to comply with Utah Procurement Code**  
1750 **and applicable rules -- Rulemaking authority -- Reporting.**

1751 (1) Except as otherwise provided in Section **63G-6a-107**, Section **63G-6a-403**, Part 8,  
1752 Exceptions to Procurement Requirements, or elsewhere in this chapter, a procurement unit may  
1753 not obtain a procurement item, unless:

1754 (a) if the procurement unit is the division or a procurement unit with independent  
1755 procurement authority, the procurement unit:

1756 (i) uses a standard procurement process or an exception to a standard procurement  
1757 process, described in Part 8, Exceptions to Procurement Requirements; and

1758 (ii) complies with:

1759 (A) the requirements of this chapter; and

1760 (B) the rules made pursuant to this chapter by the applicable rulemaking authority;

1761 (b) if the procurement unit is a county, a municipality, or the Utah Housing  
1762 Corporation, the procurement unit complies with:

1763 (i) the requirements of this chapter that are adopted by the procurement unit; and

1764 (ii) all other procurement requirements that the procurement unit is required to comply  
1765 with; or

1766 (c) if the procurement unit is not a procurement unit described in ~~[Subsections]~~  
1767 Subsection (1)(a) or (b), the procurement unit:

1768 (i) obtains the procurement item under the direction and approval of the division,  
1769 unless otherwise provided by a rule made by the board;

1770 (ii) uses a standard procurement process; and

- 1771 (iii) complies with:
- 1772 (A) the requirements of this chapter; and
- 1773 (B) the rules made pursuant to this chapter by the applicable rulemaking authority.
- 1774 (2) Subject to Subsection (3), the applicable rulemaking authority shall make rules
- 1775 relating to the management and control of procurements and procurement procedures by a
- 1776 procurement unit.
- 1777 (3) (a) Rules made under Subsection (2) shall ensure compliance with the federal
- 1778 contract prohibition provisions of the Sudan Accountability and Divestment Act of 2007 (Pub.
- 1779 L. No. 110-174) that prohibit contracting with a person doing business in Sudan.
- 1780 (b) The State Building Board rules governing procurement of construction,
- 1781 architect-engineer services, and leases apply to the procurement of construction,
- 1782 architect-engineer services, and leases of real property by the Division of Facilities
- 1783 Construction and Management.
- 1784 (4) An applicable rulemaking authority that is subject to Title 63G, Chapter 3, Utah
- 1785 Administrative Rulemaking Act, shall make the rules described in this chapter in accordance
- 1786 with the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 1787 (5) The State Building Board shall make a report on or before July 1 of each year to a
- 1788 legislative interim committee, designated by the Legislative Management Committee created
- 1789 under Section 36-12-6, on the establishment, implementation, and enforcement of the rules
- 1790 made by the State Building Board under this chapter.

1791 Section 28. Section **63G-6a-403** is amended to read:

1792 **63G-6a-403. Prequalification of potential vendors.**

1793 (1) [~~(a)~~] As used in this section[~~,"vendor" means~~]:

1794 (a) "Closed-ended prequalification process" means a process to prequalify potential

1795 vendors under this section that is characterized by:

1796 (i) a short, specified period of time during which potential vendors may be

1797 prequalified; and

1798 (ii) a specified date at which prequalifications expire.

1799 (b) "Open-ended prequalification process" means a process to prequalify vendors and

1800 potential vendors under this section that is characterized by an indeterminate period of time

1801 during any part of which vendors or potential vendors may be prequalified and the

1802 prequalification of previously prequalified vendors or potential vendors may be periodically  
1803 renewed.

1804 (c) "Vendor" means:

1805 (i) a bidder;

1806 (ii) an offeror; or

1807 (iii) a contractor, including an architect or an engineer.

1808 ~~[(b)]~~ (2) A procurement unit may, in accordance with this section:

1809 ~~[(i)]~~ (a) using a closed-ended prequalification process or an open-ended

1810 prequalification process:

1811 (i) prequalify potential vendors to provide any procurement item or type of

1812 procurement item specified by the procurement unit; [and] or

1813 (ii) rank architects, engineers, or other professional service providers to begin the fee

1814 negotiation process, as provided in this chapter; and

1815 ~~[(ii)]~~ (b) limit participation in ~~[an invitation for bids, a request for proposals, or an~~

1816 ~~approved vendor list]~~ a standard procurement process to the prequalified potential vendors for

1817 the specified procurement item or type of procurement item.

1818 ~~[(2)]~~ (3) To prequalify potential vendors ~~[to provide a specified type of procurement~~

1819 ~~item]~~ or rank professional service providers, a procurement unit shall issue a request for

1820 statement of qualifications.

1821 ~~[(3)]~~ (4) A procurement unit that issues a request for statement of qualifications:

1822 (a) shall:

1823 ~~[(a)]~~ (i) publish the request for statement of qualifications in accordance with the

1824 requirements of Section ~~[63G-6a-402]~~ 63G-6a-406; and

1825 ~~[(b)]~~ (ii) state in the request for statement of qualifications:

1826 ~~[(i)]~~ (A) the procurement item or type of procurement item to which the request for  
1827 statement of qualifications relates;

1828 ~~[(ii)]~~ (B) the scope of work to be performed;

1829 ~~[(iii)]~~ (C) the instructions and ~~[the]~~ deadline for ~~[providing information in response to~~  
1830 ~~the request for]~~ submitting a statement of qualifications;

1831 ~~[(iv)]~~ (D) the ~~[minimum]~~ criteria ~~[for prequalification]~~ by which the procurement unit  
1832 will evaluate statements of qualifications;

1833 (E) whether the prequalification process is a closed-ended prequalification process or  
1834 an open-ended prequalification process;

1835 ~~[(v)]~~ (F) if the prequalification process is a closed-ended prequalification process, the  
1836 period of time during which the list of prequalified potential vendors will remain in effect,  
1837 which may not be longer than 18 months after the list of prequalified potential vendors is made  
1838 available to the public under Subsection ~~[(8)]~~ (11)(b); ~~and]~~

1839 (G) if the prequalification process is an open-ended prequalification process, when a  
1840 potential vendor may submit a statement of qualifications for the potential vendor to be  
1841 considered for inclusion on the list of prequalified potential vendors; and

1842 ~~[(vi)]~~ (H) that a procurement unit may limit participation in an invitation for bids or a  
1843 request for proposals~~[-, during the time period described in Subsection (3)(b)(v)],~~ to the  
1844 potential vendors that are prequalified to provide the specified procurement item or type of  
1845 procurement item~~[-]; and~~

1846 (b) may request the person submitting a statement of qualifications to provide:

1847 (i) basic information about the person;

1848 (ii) the person's experience and work history;

1849 (iii) information about the person's management and staff;

1850 (iv) information about the person's licenses, certifications, and other qualifications;

1851 (v) any applicable performance ratings;

1852 (vi) financial statements reporting the person's financial condition; and

1853 (vii) any other pertinent information.

1854 (5) (a) In order to renew a prequalification, a vendor or potential vendor that has been  
1855 previously prequalified through an open-ended prequalification process shall submit a  
1856 statement of qualifications no more than 18 months after the previous prequalification of that  
1857 vendor or potential vendor.

1858 (b) A previously prequalified vendor or potential vendor submitting a statement of  
1859 qualifications under Subsection (5)(a) shall comply with all requirements applicable at that  
1860 time to a potential vendor seeking prequalification for the first time.

1861 (6) A procurement unit may at any time modify prequalification requirements of an  
1862 open-ended prequalification process.

1863 ~~[(4)]~~ (7) The ~~[minimum]~~ criteria described in Subsection ~~[(3)(b)(iv)]~~ (4)(a)(ii)(D):



1864 (a) shall include the prequalification requirements unique to the procurement;

1865 (b) may include performance rating criteria; and

1866 (c) may not be so restrictive that the criteria unreasonably limit competition.

1867 ~~[(5)]~~ (8) A procurement unit may, before making a final list of prequalified vendors,  
1868 request additional information to clarify responses made to the request for statement of  
1869 qualifications.

1870 ~~[(6)]~~ (9) A potential vendor shall be included on the list of prequalified potential  
1871 vendors if the potential vendor:

1872 (a) submits a timely, responsive response to the request for statement of qualifications;  
1873 and

1874 (b) meets the [~~minimum~~] criteria for qualification described in Subsection ~~[(3)(b)(iv)]~~  
1875 (4)(a)(ii)(D).

1876 ~~[(7)]~~ (10) If a request for statement of qualifications will result in only one potential  
1877 vendor being placed on the list of prequalified potential vendors:

1878 (a) the procurement unit shall cancel the request for statement of qualifications; and

1879 (b) the list may not be used by the procurement unit.

1880 ~~[(8)]~~ (11) The procurement unit shall:

1881 (a) before making the list of prequalified potential vendors available to the public,  
1882 provide each potential vendor who provided information in response to the request, but who  
1883 did not meet the minimum qualifications for placement on the list, a written justification  
1884 statement describing why the potential vendor did not meet the criteria for inclusion on the list;  
1885 and

1886 (b) [~~within 30 days after the day of the deadline described in Subsection (3)(b)(iii),~~]  
1887 make the list of prequalified potential vendors available to the public[-] within 30 days after:

1888 (i) completing the evaluation process, if the prequalification process is a closed-ended  
1889 prequalification process; or

1890 (ii) updating the list of prequalified potential vendors, if the prequalification process is  
1891 an open-ended prequalification process.

1892 Section 29. Section **63G-6a-404** is amended to read:

1893 **63G-6a-404. Approved vendor list.**

1894 (1) (a) As used in this section, "vendor" [is] has the same meaning as defined in

1895 [~~Subsection~~] Section 63G-6a-403~~[(1)(a)]~~.

1896 (b) The process described in this section may not be used for construction projects that  
1897 cost more than an amount specified by the applicable rulemaking authority.

1898 (c) The division or a procurement unit with independent procurement authority may  
1899 compile a list of approved vendors from which procurement items may be obtained.

1900 (2) An approved vendor list may only be compiled from timely, responsive responses  
1901 received under Section 63G-6a-403 or the process described in Part 15, Architect-Engineer  
1902 Services.

1903 (3) In order to ensure equal treatment of vendors on an approved vendor list, for  
1904 services other than the services described in Subsection (4) or (5) the procurement unit shall  
1905 use one of the following methods in an unbiased manner:

1906 (a) a rotation system, organized alphabetically, numerically, or randomly;

1907 (b) assigning vendors to a specified geographical area; or

1908 (c) classifying each vendor based on each vendor's particular expertise, qualifications,  
1909 or field.

1910 (4) (a) For a construction project that costs less than the amount established by the  
1911 applicable rulemaking authority, under Subsection (1)(b), a procurement unit shall select a  
1912 potential construction contractor from an approved potential contractor list, using an invitation  
1913 for bids or a request for proposals.

1914 (b) For architectural or engineering services for a construction project described in  
1915 Subsection (4)(a), a procurement unit shall select a potential contractor from an approved  
1916 potential contractor list:

1917 (i) using a rotation system, organized alphabetically, numerically, or randomly;

1918 (ii) assigning a potential contractor to a specified geographical area; or

1919 (iii) classifying each potential contractor based on the potential contractor's field or  
1920 area of expertise.

1921 (5) A procurement unit may not use an approved vendor list described in this section  
1922 for a construction project with a cost that is equal to or greater than the amount established by  
1923 the applicable rulemaking authority under Subsection (1)(b).

1924 (6) (a) After selecting a potential contractor under Subsection (4)(b), a procurement  
1925 unit shall enter into fee negotiations with the potential contractor.

1926 (b) If, after good faith negotiations, the procurement unit and the potential contractor  
1927 are unable to negotiate a fee that is acceptable to both parties, the procurement unit shall select  
1928 another contractor under Subsection (4)(b) and enter into fee negotiations with that potential  
1929 contractor.

1930 Section 30. Section **63G-6a-406** is amended to read:

1931 **63G-6a-406. Public notice of certain solicitations.**

1932 (1) The division or a procurement unit with independent procurement authority that  
1933 issues [~~an invitation for bids, a request for proposals, or a notice of sole source procurement~~] a  
1934 solicitation required to be published in accordance with this section, shall provide public notice  
1935 that includes:

1936 (a) [~~for an invitation for bids or a request for proposals,~~] the name of the [~~issuing~~]  
1937 conducting procurement unit;

1938 (b) the name of the procurement unit acquiring the procurement item;

1939 (c) [~~for an invitation for bids or a request for proposals,~~] information on how to contact  
1940 the issuing procurement unit [~~in relation to the invitation for bids or request for proposals~~];

1941 [~~(d) for a notice of sole source procurement, contact information and other information~~  
1942 ~~relating to contesting, or obtaining additional information in relation to, the sole source~~  
1943 ~~procurement;~~]

1944 [~~(e) for an invitation for bids or a request for proposals, the date of the opening and~~  
1945 ~~closing of the invitation for bids or request for proposals;~~]

1946 [~~(f) for a notice of sole source procurement, the earliest date that the procurement unit~~  
1947 ~~may make the sole source procurement;~~]

1948 (d) the date of the opening and closing of the solicitation;

1949 [(g)] (e) information on how to obtain a copy of the [invitation for bids, request for  
1950 proposals, or further information related to the sole source procurement; and] procurement  
1951 documents;

1952 [(h)] (f) a general description of the procurement items that will be obtained through  
1953 the standard procurement process or sole source procurement[-]; and

1954 (g) for a notice of a sole source procurement;

1955 (i) contact information and other information relating to contesting or obtaining  
1956 additional information relating to the sole source procurement; and

1957 (ii) the earliest date that the procurement unit may make the sole source procurement.

1958 (2) Except as provided in Subsection (4), [~~for an invitation for bids or a request for~~  
1959 ~~proposals,~~] the issuing procurement unit shall publish the notice described in Subsection (1)[  
1960 ~~using at least one of the following methods]:~~

1961 (a) at least seven days before the day of the deadline for submission of a bid or other  
1962 response[~~, publish the notice:~~]; and

1963 (b) (i) in a newspaper of general circulation in the state; [or]

1964 (ii) in a newspaper of local circulation in the area:

1965 (A) directly impacted by the procurement; or

1966 (B) over which the procurement unit has jurisdiction; [or]

1967 [~~(b) at least seven consecutive days before the day of the deadline for submission of a~~  
1968 ~~bid or other response, publish the notice:~~]

1969 [(i)] (iii) on the main website for the issuing procurement unit or the procurement unit  
1970 acquiring the procurement item; or

1971 [(ii)] (iv) on a state website that is owned, managed by, or provided under contract  
1972 with, the division for posting a public procurement notice.

1973 (3) Except as provided in Subsection (4), for a sole source procurement for which  
1974 notice is required to be published in accordance with this section, the issuing procurement unit  
1975 [~~making the sole source procurement~~] shall publish the notice described in Subsection (1)[  
1976 ~~using at least one of the following methods]:~~

1977 (a) at least seven days before the [~~day on which the procurement unit makes the~~  
1978 ~~acquisition of the sole source procurement,~~ publish the notice:] item; and

1979 (b) (i) in a newspaper of general circulation in the state; [or]

1980 (ii) in a newspaper of local circulation in the area:

1981 (A) directly impacted by the procurement; or

1982 (B) over which the procurement unit has jurisdiction; [or]

1983 [~~(b) at least seven consecutive days before the day on which the procurement unit~~  
1984 ~~makes the sole source procurement, publish the notice:~~]

1985 [(i)] (iii) on the main website for the procurement unit acquiring the procurement item;  
1986 or

1987 [(ii)] (iv) on a state website that is owned by, managed by, or provided under contract

1988 with, the division for posting a procurement notice.

1989 (4) An issuing procurement unit [~~or the procurement unit making a sole source~~  
1990 ~~procurement~~] may reduce the seven-day period described in Subsection (2) or (3), if the  
1991 procurement officer or the procurement officer's designee signs a written statement that:

1992 (a) states that a shorter time is needed; and

1993 (b) [~~as it relates to an invitation for bids or a request for proposals,~~] determines that  
1994 competition from multiple sources may be obtained within the shorter period of time.

1995 (5) (a) An issuing procurement unit shall make a copy of [~~an invitation for bids or a~~  
1996 ~~request for proposals~~] the solicitation documents available for public inspection at the main  
1997 office of the issuing procurement unit or on the website described in Subsection (2)(b) until the  
1998 award of the contract or the cancellation of the procurement.

1999 (b) A procurement unit [~~making~~] issuing a sole source procurement shall make a copy  
2000 of information related to the sole source procurement available for public inspection at the  
2001 main office of the procurement unit or on the website described in Subsection (3)(b) until the  
2002 award of the contract or the cancellation of the procurement.

2003 (c) A procurement unit shall maintain all records in accordance with Part 20, Records.  
2004 Section 31. Section **63G-6a-408** is amended to read:

2005 **63G-6a-408. Small purchases.**

2006 (1) As used in this section:

2007 (a) "Annual cumulative threshold" means the maximum total annual amount,  
2008 established by the applicable rulemaking authority under Subsection (2)(a)(i), that a  
2009 procurement unit may expend to obtain procurement items from the same source under this  
2010 section.

2011 (b) "Individual procurement threshold" means the maximum amount, established by  
2012 the applicable rulemaking authority under Subsection (2)(a)(ii), for which a procurement unit  
2013 may purchase a procurement item under this section.

2014 (c) "Single procurement aggregate threshold" means the maximum total amount,  
2015 established by the applicable rulemaking authority under Subsection (2)(a)(iii), that a  
2016 procurement unit may expend to obtain multiple procurement items from one source at one  
2017 time under this section.

2018 (2) The applicable rulemaking authority may make rules governing small purchases,

2019 including:

2020 (a) establishing expenditure thresholds, including:

2021 (i) an annual cumulative threshold;

2022 (ii) an individual procurement threshold; and

2023 (iii) a single procurement aggregate threshold;

2024 (b) establishing procurement requirements relating to the thresholds described in

2025 Subsection (2)(a); and

2026 (c) the use of electronic, telephone, or written quotes.

2027 (3) Expenditures made under this section by a procurement unit may not exceed a

2028 threshold established by the applicable rulemaking authority, unless the chief procurement

2029 officer or the head of a procurement unit with independent procurement authority gives written

2030 authorization to exceed the threshold that includes the reasons for exceeding the threshold.

2031 (4) Except as provided in Subsection (5), an executive branch procurement unit may

2032 not obtain a procurement item through a small purchase standard procurement process if the

2033 procurement item may be obtained through a state cooperative contract or a contract awarded

2034 by the chief procurement officer under Subsection [63G-6a-2105\(1\)](#).

2035 (5) Subsection (4) does not apply if:

2036 (a) the procurement item is obtained for an unanticipated, urgent or unanticipated,

2037 emergency condition, including:

2038 (i) an item needed to avoid stopping a public construction project;

2039 (ii) an immediate repair to a facility or equipment; or

2040 (iii) another emergency condition; or

2041 (b) the chief procurement officer or the head of a procurement unit that is an executive

2042 branch procurement unit with independent procurement authority:

2043 (i) determines in writing that it is in the best interest of the procurement unit to obtain

2044 an individual procurement item outside of the state contract, comparing:

2045 (A) the contract terms and conditions applicable to the procurement item under the

2046 state contract with the contract terms and conditions applicable to the procurement item if the

2047 procurement item is obtained outside of the state contract;

2048 (B) the maintenance and service applicable to the procurement item under the state

2049 contract with the maintenance and service applicable to the procurement item if the

2050 procurement item is obtained outside of the state contract;

2051 (C) the warranties applicable to the procurement item under the state contract with the  
2052 warranties applicable to the procurement item if the procurement item is obtained outside of  
2053 the state contract;

2054 (D) the quality of the procurement item under the state contract with the quality of the  
2055 procurement item if the procurement item is obtained outside of the state contract; and

2056 (E) the cost of the procurement item under the state contract with the cost of the  
2057 procurement item if the procurement item is obtained outside of the state contract;

2058 (ii) for a procurement item that, if defective in its manufacture, installation, or  
2059 performance, may result in serious physical injury, death, or substantial property damage,  
2060 determines in writing that the terms and conditions, relating to liability for injury, death, or  
2061 property damage, available from the source other than the contractor who holds the state  
2062 contract, are similar to, or better than, the terms and conditions available under the state  
2063 contract; and

2064 (iii) grants an exception, in writing, to the requirement described in Subsection (4).

2065 (6) Except as otherwise expressly provided in this section, a procurement unit:

2066 (a) may not use the small purchase standard procurement process described in this  
2067 section for ongoing, continuous, and regularly scheduled procurements that exceed the annual  
2068 cumulative threshold; and

2069 (b) shall make its ongoing, continuous, and regularly scheduled procurements that  
2070 exceed the annual cumulative threshold through a contract awarded through another standard  
2071 procurement process described in this chapter or an applicable exception to another standard  
2072 procurement process, described in Part 8, Exceptions to Procurement Requirements.

2073 (7) This section does not prohibit regularly scheduled payments for a procurement item  
2074 obtained under another provision of this chapter.

2075 (8) (a) It is unlawful for a person to intentionally or knowingly divide a procurement  
2076 into one or more smaller procurements with the intent to make a procurement:

2077 [~~(a)~~] (i) qualify as a small purchase, if, before dividing the procurement, it would not  
2078 have qualified as a small purchase; or

2079 [~~(b)~~] (ii) meet a threshold established by rule made by the applicable rulemaking  
2080 authority, if, before dividing the procurement, it would not have met the threshold.

2081 (b) A person who engages in the conduct made unlawful under Subsection (8)(a) is  
2082 guilty of:

2083 (i) a second degree felony, if the value of the procurement before being divided is  
2084 \$1,000,000 or more;

2085 (ii) a third degree felony, if the value of the procurement before being divided is  
2086 \$250,000 or more but less than \$1,000,000;

2087 (iii) a class A misdemeanor, if the value of the procurement before being divided is  
2088 \$100,000 or more but less than \$250,000; or

2089 (iv) a class B misdemeanor, if the value of the procurement before being divided is less  
2090 than \$100,000.

2091 (9) A division of a procurement that is prohibited under Subsection (8) includes doing  
2092 any of the following with the intent or knowledge described in Subsection (8):

2093 (a) making two or more separate purchases;

2094 (b) dividing an invoice or purchase order into two or more invoices or purchase orders;

2095 or

2096 (c) making smaller purchases over a period of time.

2097 (10) A person who violates Subsection (8) is subject to the criminal penalties described  
2098 in Section [~~63G-6a-2305~~] [63G-6a-2405](#).

2099 (11) The Division of Finance within the Department of Administrative Services may  
2100 conduct an audit of an executive branch procurement unit to verify compliance with the  
2101 requirements of this section.

2102 (12) An executive branch procurement unit may not make a small purchase after  
2103 January 1, 2014, unless the chief procurement officer certifies that the person responsible for  
2104 procurements in the procurement unit has satisfactorily completed training on this section and  
2105 the rules made under this section.

2106 Section 32. Section ~~63G-6a-603~~ is amended to read:

2107 **~~63G-6a-603. Invitation for bids -- Contents -- Notice.~~**

2108 (1) The bidding standard procurement process begins when the [~~division or a~~  
2109 ~~procurement unit with independent procurement authority~~] issuing procurement unit issues an  
2110 invitation for bids.

2111 (2) An invitation for bids shall:



- 2112 (a) state the period of time during which bids will be accepted;
- 2113 (b) describe the manner in which a bid shall be submitted;
- 2114 (c) state the place where a bid shall be submitted; and
- 2115 (d) include, or incorporate by reference:
  - 2116 (i) a description of the procurement items sought;
  - 2117 (ii) the objective criteria that will be used to evaluate the bids; and
  - 2118 (iii) the required contractual terms and conditions.

2119 (3) An issuing procurement unit shall publish an invitation for bids in accordance with  
2120 the requirements of Section [63G-6a-406](#).

2121 Section 33. Section **63G-6a-606** is amended to read:

2122 **63G-6a-606. Evaluation of bids -- Award -- Cancellation -- Disqualification.**

2123 (1) [~~The division or a~~] A procurement unit [~~with independent procurement authority~~]  
2124 that conducts a procurement using a bidding standard procurement process shall evaluate each  
2125 bid using the objective criteria described in the invitation for bids, which may include:

- 2126 (a) experience;
  - 2127 (b) performance ratings;
  - 2128 (c) inspection;
  - 2129 (d) testing;
  - 2130 (e) quality;
  - 2131 (f) workmanship;
  - 2132 (g) time and manner of delivery;
  - 2133 (h) references;
  - 2134 (i) financial stability;
  - 2135 (j) cost;
  - 2136 (k) suitability for a particular purpose; or
  - 2137 (l) other objective criteria specified in the invitation for bids.
- 2138 (2) Criteria not described in the invitation for bids may not be used to evaluate a bid.
- 2139 (3) The conducting procurement unit shall:

- 2140 (a) award the contract as soon as practicable to:
  - 2141 (i) the lowest responsive and responsible bidder who meets the objective criteria
  - 2142 described in the invitation for bids; or

2143 (ii) if, in accordance with Subsection (4), the procurement officer or the head of the  
2144 conducting procurement unit disqualifies the bidder described in Subsection (3)(a)(i), the next  
2145 lowest responsive and responsible bidder who meets the objective criteria described in the  
2146 invitation for bids; or

2147 (b) cancel the invitation for bids without awarding a contract.

2148 (4) In accordance with Subsection (5), the procurement officer or the head of the  
2149 conducting procurement unit may disqualify a bidder for:

2150 (a) a violation of this chapter;

2151 (b) a violation of a requirement of the invitation for bids;

2152 (c) unlawful or unethical conduct; or

2153 (d) a change in circumstance that, had the change been known at the time the bid was  
2154 submitted, would have caused the bidder to not be the lowest responsive and responsible bidder  
2155 who meets the objective criteria described in the invitation for bids.

2156 (5) A procurement officer or head of a conducting procurement unit who disqualifies a  
2157 bidder under Subsection (4) shall:

2158 (a) make a written finding, stating the reasons for disqualification; and

2159 (b) provide a copy of the written finding to the disqualified bidder.

2160 (6) If a conducting procurement unit cancels an invitation for bids without awarding a  
2161 contract, the conducting procurement unit shall make available for public inspection a written  
2162 justification for the cancellation.

2163 Section 34. Section **63G-6a-607** is amended to read:

2164 **63G-6a-607. Action when all bids are over budget.**

2165 (1) Except as provided in Subsection (2) or (3), if the fiscal officer for the conducting  
2166 procurement unit certifies that all accepted bids exceed available funds and that the lowest  
2167 responsive and responsible bidder does not exceed the available funds by more than 5%, the  
2168 procurement officer may negotiate an adjustment of the bid price and bid requirements with the  
2169 lowest responsive and responsible bidder in order to bring the bid within the amount of  
2170 available funds.

2171 (2) A procurement officer may not adjust the bid requirements under Subsection (1) if  
2172 there is a substantial likelihood that, had the adjustment been included in the invitation for  
2173 bids, a person that did not submit a bid would have submitted a responsive, responsible, and

2174 competitive bid.

2175 (3) The Division of Facilities Construction and Management is exempt from the  
2176 requirements of this section if:

2177 (a) the building board adopts rules governing procedures when all accepted bids exceed  
2178 available funds; and

2179 (b) the Division of Facilities Construction and Management complies with the rules  
2180 described in Subsection (3)(a).

2181 Section 35. Section **63G-6a-609** is amended to read:

2182 **63G-6a-609. Multiple stage bidding process.**

2183 (1) [~~The division or a~~ A procurement unit [~~with independent procurement authority~~  
2184 that conducts a procurement using a bidding standard procurement process may [~~conduct a bid~~  
2185 in] use multiple stages[;] to:

2186 (a) narrow the number of bidders who will progress to a subsequent stage;

2187 (b) prequalify bidders for subsequent stages, in accordance with Section **63G-6a-403**;

2188 (c) enter into a contract for a single procurement; or

2189 (d) award multiple contracts for a series of upcoming procurements.

2190 (2) The invitation for bids for a multiple stage bidding process shall:

2191 (a) describe the requirements for, and purpose of, each stage of the process;

2192 (b) indicate whether the procurement unit intends to award:

2193 (i) a single contract; or

2194 (ii) multiple contracts for a series of upcoming procurements; and

2195 (c) state that:

2196 (i) the first stage is for prequalification only;

2197 (ii) a bidder may not submit any pricing information in the first stage of the process;

2198 and

2199 (iii) bids in the second stage will only be accepted from a person who prequalifies in  
2200 the first stage.

2201 (3) During the first stage, the conducting procurement unit:

2202 (a) shall prequalify bidders to participate in subsequent stages, in accordance with  
2203 Section **63G-6a-403**;

2204 (b) shall prohibit the submission of pricing information until the final stage; and

2205 (c) may, before beginning the second stage, request additional information to clarify  
2206 the qualifications of the bidders who submit timely responses.

2207 (4) Contracts may only be awarded for a procurement item described in stage one of  
2208 the invitation for bids.

2209 (5) The ~~[division or a]~~ conducting procurement unit ~~[with independent procurement~~  
2210 ~~authority may conduct a bid in]~~ may use as many stages as it determines to be appropriate.

2211 (6) Except as otherwise expressly provided in this section, ~~[the division or]~~ a  
2212 procurement unit ~~[with independent procurement authority shall conduct]~~ conducting a  
2213 multiple stage bidding process ~~[in accordance]~~ under this section shall ensure compliance with  
2214 this part.

2215 (7) The applicable rulemaking authority may make rules governing the use of a  
2216 multiple stage process described in this section.

2217 Section 36. Section **63G-6a-611** is amended to read:

2218 **63G-6a-611. Invitation for bids for reverse auction -- Notice contents --**

2219 **Agreement to terms and conditions.**

2220 (1) The reverse auction bidding process begins when the ~~[division or a]~~ issuing  
2221 procurement unit ~~[with independent procurement authority]~~ issues an invitation for bids to  
2222 prequalify bidders to participate in the reverse auction.

2223 (2) The invitation for bids shall:

2224 (a) state the period of time during which bids will be accepted;

2225 (b) state that the bid will be conducted by reverse auction;

2226 (c) describe the procurement items sought;

2227 (d) describe the minimum requirements to become prequalified;

2228 (e) state the required contractual terms and conditions; and

2229 (f) describe the procedure that the ~~[division or the]~~ conducting procurement unit ~~[with~~  
2230 ~~independent procurement authority]~~ will follow in ~~[conducting]~~ the reverse auction.

2231 (3) In order to participate in a reverse auction, a bidder shall agree to:

2232 (a) the specifications, and contractual terms and conditions, of the procurement; and

2233 (b) be trained in, and abide by, the procedure that the division or the procurement unit  
2234 with independent procurement authority will follow in conducting the reverse auction.

2235 (4) The division or a procurement unit with independent procurement authority shall

2236 publish an invitation for bids for a reverse auction in accordance with the requirements of  
2237 Section 63G-6a-406.

2238 Section 37. Section 63G-6a-612 is amended to read:

2239 **63G-6a-612. Conduct of reverse auction.**

2240 (1) [~~When~~] A procurement unit conducting a reverse auction[~~-, the division or a~~  
2241 ~~procurement unit with independent procurement authority~~]:

2242 (a) may conduct the reverse auction at a physical location or by electronic means;

2243 (b) shall permit all prequalified bidders to participate in the reverse auction;

2244 (c) may not permit a bidder to participate in the reverse auction if the bidder did not  
2245 prequalify to participate in the reverse auction;

2246 (d) may not accept a bid after the time for submission of a bid has expired;

2247 (e) shall update the bids on a real time basis; and

2248 (f) shall conduct the reverse auction in a manner that permits each bidder to:

2249 (i) bid against each other; and

2250 (ii) lower the bidder's price below the lowest bid before the reverse auction closes.

2251 (2) At the end of the reverse auction, the conducting procurement unit shall:

2252 (a) award the contract as soon as practicable to the lowest responsive and responsible  
2253 bidder who meets the objective criteria described in the invitation for bids; or

2254 (b) cancel the reverse auction without awarding a contract.

2255 (3) After the reverse auction is finished, the conducting procurement [~~officer~~] unit shall  
2256 make publicly available:

2257 (a) (i) the amount of the final bid submitted by each bidder during the reverse auction;

2258 and

2259 (ii) the identity of the bidder that submitted each final bid; and

2260 (b) if practicable:

2261 (i) the amount of each bid submitted during the reverse auction; and

2262 (ii) the identity of the bidder that submitted each bid.

2263 Section 38. Section 63G-6a-703 is amended to read:

2264 **63G-6a-703. Request for proposals -- Notice -- Contents.**

2265 (1) The request for proposals standard procurement process begins when the division  
2266 or a procurement unit with independent procurement authority issues a request for proposals.

- 2267 (2) A request for proposals shall:
- 2268 (a) state the period of time during which a proposal will be accepted;
- 2269 (b) describe the manner in which a proposal shall be submitted;
- 2270 (c) state the place where a proposal shall be submitted;
- 2271 (d) include, or incorporate by reference:
- 2272 (i) a description of the procurement items sought;
- 2273 (ii) a description of the subjective and objective criteria that will be used to evaluate
- 2274 the proposal; and
- 2275 (iii) the standard contractual terms and conditions required by the authorized
- 2276 purchasing entity;
- 2277 (e) state the relative weight that will be given to each score ~~[awarded]~~ for the criteria
- 2278 described in Subsection (2)(d)(ii), including cost;
- 2279 (f) state the formula that will be used to determine the score awarded for the cost of
- 2280 each proposal;
- 2281 (g) if the request for proposals will be conducted in multiple stages, as described in
- 2282 Section [63G-6a-710](#), include a description of the stages and the criteria and scoring that will be
- 2283 used to screen offerors at each stage; and
- 2284 (h) state that discussions may be conducted with offerors who submit proposals
- 2285 determined to be reasonably susceptible of being selected for award, followed by an
- 2286 opportunity to make best and final offers, but that proposals may be accepted without
- 2287 discussions.
- 2288 (3) The division or a procurement unit with independent procurement authority shall
- 2289 publish a request for proposals in accordance with the requirements of Section [63G-6a-406](#).
- 2290 Section 39. Section **63G-6a-704** is amended to read:
- 2291 **63G-6a-704. Opening of proposals and acceptance.**
- 2292 (1) An issuing procurement unit shall ensure that proposals are opened in a manner that
- 2293 avoids disclosing the contents to competing offerors during the evaluation process.
- 2294 (2) An issuing procurement unit may not accept a proposal~~[(a)]~~ after the time for
- 2295 submission of a proposal has expired~~[; or]~~.
- 2296 ~~[(b) that is not responsive to the request for proposals.]~~
- 2297 (3) At any time during the request for proposals standard procurement process, a

2298 conducting procurement unit may reject a proposal if the conducting procurement unit  
2299 determines that:

- 2300 (a) the person submitting the proposal is not responsible; or  
2301 (b) the proposal is not responsive or does not meet mandatory minimum requirements  
2302 stated in the request for proposals.

2303 Section 40. Section **63G-6a-707** is amended to read:

2304 **63G-6a-707. Evaluation of proposals -- Evaluation committee.**

2305 (1) [~~Each proposal shall be evaluated~~] To determine which proposal provides the best  
2306 value to the procurement unit, the evaluation committee shall evaluate each responsive and  
2307 responsible proposal that has not been disqualified from consideration under the provisions of  
2308 this chapter, using the criteria described in the request for proposals, which may include:

- 2309 (a) experience;  
2310 (b) performance ratings;  
2311 (c) inspection;  
2312 (d) testing;  
2313 (e) quality;  
2314 (f) workmanship;  
2315 (g) time, manner, or schedule of delivery;  
2316 (h) references;  
2317 (i) financial [~~stability~~] solvency;  
2318 (j) suitability for a particular purpose;  
2319 (k) management plans;  
2320 (l) cost; or  
2321 (m) other subjective or objective criteria specified in the request for proposals.  
2322 (2) Criteria not described in the request for proposals may not be used to evaluate a  
2323 proposal.

2324 (3) The [~~issuing~~] conducting procurement unit shall:

- 2325 (a) appoint an evaluation committee consisting of at least three individuals; and  
2326 (b) ensure that the evaluation committee and each member of the evaluation  
2327 committee:  
2328 (i) does not have a conflict of interest with any of the offerors;

- 2329 (ii) can fairly evaluate each proposal;
- 2330 (iii) does not contact or communicate with an offeror [~~for any reason other than~~  
2331 ~~conducting the standard procurement process~~] concerning the procurement outside the official  
2332 evaluation committee process; and
- 2333 (iv) conducts the evaluation in a manner that ensures a fair and competitive process  
2334 and avoids the appearance of impropriety.
- 2335 (4) The evaluation committee may, with the approval of the head of the conducting  
2336 procurement unit, enter into discussions or conduct interviews with, or [participate in] attend  
2337 presentations by, the offerors.
- 2338 (5) (a) Except as provided in [~~Subsection (6) or~~] Subsections (5)(b) and (7), each  
2339 member of the evaluation committee is prohibited from knowing, or having access to, any  
2340 information relating to the cost, or the scoring of the cost, of a proposal until after the  
2341 evaluation committee submits its final recommended scores on all other criteria to the issuing  
2342 procurement unit.
- 2343 (b) The issuing procurement unit shall:
- 2344 (i) if applicable, assign an individual who is not a member of the evaluation committee  
2345 to calculate scores for cost based on the applicable scoring formula, weighting, and other  
2346 scoring procedures contained in the request for proposals;
- 2347 (ii) review the evaluation committee's scores and correct any errors, scoring  
2348 inconsistencies, and reported noncompliance with this chapter;
- 2349 (iii) add the scores calculated for cost, if applicable, to the evaluation committee's final  
2350 recommended scores on criteria other than cost to derive the total combined score for each  
2351 responsive and responsible proposal; and
- 2352 (iv) provide to the evaluation committee the total combined score calculated for each  
2353 responsive and responsible proposal, including any applicable cost formula, weighting, and  
2354 scoring procedures used to calculate the total combined scores.
- 2355 (c) The evaluation committee may not:
- 2356 (i) change its final recommended scores described in Subsection (5)(a) after the  
2357 evaluation committee has submitted those scores to the issuing procurement unit; or
- 2358 (ii) change cost scores calculated by the issuing procurement unit.
- 2359 (6) (a) As used in this Subsection (6), "management fee" includes only the following



2360 fees of the construction manager/general contractor:

2361 (i) preconstruction phase services;

2362 (ii) monthly supervision fees for the construction phase; and

2363 (iii) overhead and profit for the construction phase.

2364 (b) When selecting a construction manager/general contractor for a construction  
2365 project, the evaluation committee:

2366 (i) may score a construction manager/general contractor based upon criteria contained  
2367 in the solicitation, including qualifications, performance ratings, references, management plan,  
2368 certifications, and other project specific criteria described in the solicitation;

2369 (ii) may, as described in the solicitation, weight and score the management fee as a  
2370 fixed rate or as a fixed percentage of the estimated contract value;

2371 ~~[(†)]~~ (iii) may, at any time after the opening of the responses to the request for  
2372 proposals, have access to, and consider, the management fee proposed by the offerors; and

2373 ~~[(††)]~~ (iv) except as provided in Subsection (7), may not know or have access to any  
2374 other information relating to the cost of construction submitted by the offerors, until after the  
2375 evaluation committee submits its final recommended scores on all other criteria to the issuing  
2376 procurement unit.

2377 (7) Evaluation committee deliberations, not including any information gathering  
2378 activities, may be held in a closed meeting, as provided in Title 52, Chapter 4, Open and Public  
2379 Meetings Act.

2380 ~~[(7)]~~ (8) An issuing procurement unit is not required to comply with Subsection (5) if[;  
2381 ~~before opening the responses to the request for proposals;~~] the head of the issuing procurement  
2382 unit or a person designated by rule made by the applicable rulemaking authority:

2383 (a) signs a written statement:

2384 (i) indicating that, due to the nature of the proposal or other circumstances, it is in the  
2385 best interest of the procurement unit to waive compliance with Subsection (5); and

2386 (ii) describing the nature of the proposal and the other circumstances relied upon to  
2387 waive compliance with Subsection (5); and

2388 (b) makes the written statement available to the public, upon request.

2389 ~~[(8) The evaluation committee shall award scores to each responsive and responsible~~  
2390 ~~proposal that has not been disqualified from consideration under the provisions of this chapter.]~~

2391 Section 41. Section ~~63G-6a-707.5~~, which is renumbered from Section 63G-6a-705 is  
2392 renumbered and amended to read:

2393 ~~[63G-6a-705].~~ 63G-6a-707.5. Best and final offers.

2394 ~~[(1) After proposals are received and opened, the issuing procurement unit may~~  
2395 ~~conduct discussions with the offerors and allow the offerors to make best and final offers after~~  
2396 ~~the discussions.]~~

2397 (1) At any time during the evaluation process, the evaluation committee, with the  
2398 approval of the director or head of the issuing procurement unit, may:

2399 (a) request best and final offers from responsible and responsive offerors; and

2400 (b) evaluate those offers.

2401 ~~(2) [The issuing procurement unit]~~ In requesting and evaluating best and final offers  
2402 under Subsection (1), the evaluation committee shall:

2403 (a) ensure that each offeror receives fair and equal treatment with respect to the other  
2404 offerors;

2405 (b) establish a schedule and procedures for conducting discussions;

2406 (c) ensure that information in each proposal and information gathered during  
2407 discussions is not shared with other offerors until the contract is awarded;

2408 (d) ensure that auction tactics are not used in the discussion process, including  
2409 discussing and comparing the costs and features of other proposals; and

2410 (e) set a common date and time for the submission of best and final offers.

2411 (3) If an offeror chooses not to participate in a discussion or does not make a timely  
2412 best and final offer, the offer submitted by the [offerors] offeror before the conduct of  
2413 discussions shall be treated as the offeror's best and final offer.

2414 Section 42. Section ~~63G-6a-708~~ is amended to read:

2415 ~~63G-6a-708.~~ 63G-6a-708. Justification statement -- Cost-benefit analysis.

2416 (1) (a) In determining which proposal provides the best value to the procurement unit,  
2417 the evaluation committee and the conducting procurement unit shall prepare a written  
2418 justification statement that:

2419 (i) explains the score assigned to each evaluation category;

2420 (ii) explains how the proposal with the highest total combined score provides the best  
2421 value to the procurement unit in comparison to the other proposals;

2422 (iii) if applicable, includes the cost-benefit analysis described in Subsection (2) and  
2423 how the cost-benefit analysis relates to the best value to the procurement unit; and

2424 (iv) if applicable, includes the written determination described in Subsection (5).

2425 (b) An explanation under Subsection (1)(a)(i) need not address each criterion within  
2426 each category.

2427 ~~[(+)]~~ (2) If, in determining the best value to the procurement unit, the evaluation  
2428 committee awards the highest score ~~[awarded by the evaluation committee]~~, including the score  
2429 for cost, ~~[is awarded]~~ to a proposal other than the lowest cost proposal, and the difference  
2430 between the cost of the highest scored proposal and the lowest cost proposal exceeds the  
2431 greater of \$10,000 or 5% of the lowest cost proposal, the ~~[issuing procurement unit shall make]~~  
2432 evaluation committee and the conducting procurement unit shall prepare an informal written  
2433 cost-benefit analysis that:

2434 (a) explains, in general terms, the advantage to the procurement unit of awarding the  
2435 contract to the higher cost offeror; and

2436 (b) ~~[includes,]~~ except as provided in Subsection ~~[(+)(e);]~~ (5):

2437 (i) includes the estimated added financial value to the procurement unit of each  
2438 ~~[criteria]~~ criterion that justifies awarding the contract to the higher cost offeror; and

2439 ~~[(e) includes, to the extent that assigning a financial value to a particular criteria is not~~  
2440 ~~practicable, a statement describing:]~~

2441 ~~[(i) why it is not practicable to assign a financial value to the criteria; and]~~

2442 ~~[(ii) in nonfinancial terms, the advantage to the procurement unit, based on the~~  
2443 ~~particular criteria, of awarding the contract to the higher cost offeror;]~~

2444 ~~[(d)]~~ (ii) demonstrates that the value of the advantage to the procurement unit of  
2445 awarding the contract to the higher cost offeror exceeds the value of the difference between the  
2446 cost of the higher cost proposal and the cost of the lower cost proposals~~[-and]~~.

2447 ~~[(e) includes any other information required by rule made by the applicable rulemaking~~  
2448 ~~authority.]~~

2449 ~~[(2)]~~ (3) If the informal cost-benefit analysis described in Subsection ~~[(+)]~~ (2) does not  
2450 justify ~~[award of]~~ awarding the contract to the offeror that received the highest score, the  
2451 issuing procurement unit:

2452 (a) may not award the contract to the offeror that received the highest score; and

2453 (b) may award the contract to the offeror that received the next highest score, unless:

2454 (i) an informal cost-benefit analysis is required, because the difference between the  
2455 cost proposed by the offeror that received the next highest score and the lowest cost proposal  
2456 exceeds the greater of \$10,000 or 5% of the lowest cost proposal; and

2457 (ii) the informal cost-benefit analysis does not justify award of the contract to the  
2458 offeror that received the next highest score.

2459 ~~[(3)]~~ (4) If the informal cost-benefit analysis described in Subsection ~~[(1)]~~ (2) does not  
2460 justify award of the contract to the offeror, described in Subsection ~~[(2)]~~ (3), that received the  
2461 next highest score, the issuing procurement unit:

2462 (a) may not award the contract to the offeror that received the next highest score; and

2463 (b) shall continue with the process described in Subsection ~~[(2)]~~ (3) for each offeror  
2464 that received the next highest score, until the issuing procurement unit:

2465 (i) awards the contract in accordance with the provisions of this section; or

2466 (ii) cancels the request for proposals.

2467 (5) (a) The evaluation committee, with the issuing procurement unit's approval, may  
2468 waive, in whole or in part, a requirement under Subsection (2)(b) if the evaluation committee  
2469 determines in writing that assigning a financial value to a particular procurement item or  
2470 evaluation criterion is not practicable.

2471 (b) A written determination under Subsection (5)(a):

2472 (i) shall explain:

2473 (A) why it is not practicable to assign a financial value to the procurement item or  
2474 evaluation criterion; and

2475 (B) in nonfinancial terms, why awarding the contract to the higher cost offeror  
2476 provides the best value to the procurement unit; and

2477 (ii) may be included as part of the justification statement.

2478 ~~[(4)]~~ (6) (a) An issuing procurement unit is not required to make the cost-benefit  
2479 analysis described in this section for a contract with a construction manager/general contractor  
2480 if the contract is awarded based solely on the qualifications of the construction  
2481 manager/general contractor and the management fee described in Subsection ~~[63G-6a-706]~~  
2482 [63G-6a-707](#)(6).

2483 (b) The applicable rulemaking authority shall make rules that establish procedures and

2484 criteria for awarding a contract described in Subsection [~~(4)~~] (6)(a) to ensure that:

- 2485 (i) a competitive process is maintained; and  
 2486 (ii) the contract awarded is in the best interest of the procurement unit.

2487 Section 43. Section **63G-6a-709** is amended to read:

2488 **63G-6a-709. Award of contract -- Cancellation -- Disqualification.**

2489 (1) After the completion of the evaluation and scoring of proposals [~~is completed, the~~  
 2490 ~~issuing procurement unit shall:]~~ and the justification statement, including any required  
 2491 cost-benefit analysis, the evaluation committee shall submit the proposals, evaluation scores,  
 2492 and justification statement to the head of the procurement unit or designee for review and final  
 2493 determination of contract award.

2494 (2) After reviewing the proposals, evaluation scores, and justification statement,  
 2495 including any required cost-benefit analysis, the head of the issuing procurement unit or  
 2496 designee shall:

2497 (a) [~~except as provided in Section 63G-6a-708,]~~ award the contract as soon as  
 2498 practicable to:

- 2499 (i) the responsive and responsible offeror with the highest total score; or  
 2500 (ii) if, in accordance with Subsection [~~(2)~~] (3), the procurement officer or the head of  
 2501 the issuing procurement unit disqualifies the offeror described in Subsection [~~(1)~~] (2)(a)(i), the  
 2502 responsive and responsible offeror with the next highest total score; or

2503 (b) cancel the request for proposals without awarding a contract.

2504 [~~(2)~~] (3) In accordance with Subsection [~~(3)~~] (4), the procurement officer or the head of  
 2505 the issuing procurement unit may disqualify an offeror for:

2506 (a) a violation of this chapter;

2507 (b) not being responsive or responsible;

2508 [~~(b)~~] (c) a violation of a requirement of the request for proposals;

2509 [~~(c)~~] (d) unlawful or unethical conduct; or

2510 [~~(d)~~] (e) a change in circumstance that, had the change been known at the time the  
 2511 proposal was submitted, would have caused the proposal to not have the highest score.

2512 [~~(3)~~] (4) A procurement officer or head of an issuing procurement unit who disqualifies  
 2513 an offeror under Subsection [~~(2)~~] (3) shall:

2514 (a) make a written finding, stating the reasons for disqualification; and

2515 (b) provide a copy of the written finding to the disqualified offeror.

2516 [~~(4)~~] (5) If an issuing procurement unit cancels a request for proposals without  
2517 awarding a contract, the issuing procurement unit shall make available for public inspection a  
2518 written justification for the cancellation.

2519 Section 44. Section **63G-6a-709.5** is amended to read:

2520 **63G-6a-709.5. Publication of award and scores.**

2521 (1) The issuing procurement unit shall, on the next business day [~~on which~~] after the  
2522 award of a contract is announced, make available to each offeror and to the public a written  
2523 statement that includes:

2524 [~~(1)~~] (a) the name of the offeror to which the contract is awarded and the total score  
2525 awarded by the evaluation committee to that offeror;

2526 (b) the justification statement under Section 63G-6a-708, including any required  
2527 cost-benefit analysis; and

2528 [~~(2)~~] (c) the total score awarded by the evaluation committee to each offeror to which  
2529 the contract is not awarded, without identifying which offeror received which score[ ~~and~~].

2530 [~~(3)~~] ~~any cost-benefit analysis made, under Section 63G-6a-708, in relation to the~~  
2531 ~~request for proposals.]~~

2532 (2) Subsection (1)(a) does not prevent the issuing procurement unit from using codes  
2533 or another method in a statement under Subsection (1) to distinguish offerors to which the  
2534 contract is not awarded and to indicate their scores, as long as an offeror cannot be matched  
2535 with the score awarded to that offeror.

2536 Section 45. Section **63G-6a-802** is amended to read:

2537 **63G-6a-802. Award of contract without competition -- Notice -- Extension of**  
2538 **contract without engaging in standard procurement process.**

2539 (1) As used in this section:

2540 (a) "Transitional costs" mean the costs of changing from an existing provider of, or  
2541 type of, a procurement item to another provider of, or type of, procurement item.

2542 (b) "Transitional costs" include:

2543 (i) training costs;

2544 (ii) conversion costs;

2545 (iii) compatibility costs;

- 2546 (iv) system downtime;
- 2547 (v) disruption of service;
- 2548 (vi) staff time necessary to put the transition into effect;
- 2549 (vii) installation costs; and
- 2550 (viii) ancillary software, hardware, equipment, or construction costs.
- 2551 (c) "Transitional costs" do not include:
- 2552 (i) the costs of preparing for or engaging in a procurement process; or
- 2553 (ii) contract negotiation or contract drafting costs.
- 2554 (d) "Trial use contract" means a contract between a procurement unit and a vendor for
- 2555 a procurement item that the procurement unit acquires for trial use or testing to determine
- 2556 whether the procurement item will benefit the procurement unit.
- 2557 (2) The division or a procurement unit with independent procurement authority may
- 2558 award a contract for a procurement item without competition if the procurement officer, the
- 2559 head of the procurement unit, or a designee of either who is senior to the procurement officer
- 2560 or the head of the procurement unit, determines in writing that:
- 2561 (a) there is only one source for the procurement item; ~~[or]~~
- 2562 (b) the award to a specific supplier, service provider, or contractor is a condition of a
- 2563 donation that will fund the full cost of the supply, service, or construction item~~[-];~~ or
- 2564 (c) the procurement item is needed for trial use or testing to determine whether the
- 2565 procurement item will benefit the procurement unit.
- 2566 (3) Circumstances under which there is only one source for a procurement item may
- 2567 include:
- 2568 (a) where the most important consideration in obtaining a procurement item is the
- 2569 compatibility of equipment, technology, software, accessories, replacement parts, or service;
- 2570 ~~[(b) where a procurement item is needed for trial use or testing;]~~
- 2571 ~~[(c)]~~ (b) where transitional costs are unreasonable or cost prohibitive; or
- 2572 ~~[(d)]~~ (c) procurement of public utility services.
- 2573 (4) (a) ~~[The]~~ Subject to Subsection (4)(b), the applicable rulemaking authority shall
- 2574 make rules regarding the publication of notice for a sole source procurement that, at a
- 2575 minimum, require publication of notice of a sole source procurement, in accordance with
- 2576 Section 63G-6a-406, if the cost of the procurement exceeds \$50,000.

- 2577 (b) Publication of notice under Section 63G-6a-406 is not required for:  
2578 (i) the procurement of public utility services pursuant to a sole source contract; or  
2579 (ii) other sole source procurements provided by rule.
- 2580 (5) The division or a procurement unit with independent procurement authority who  
2581 awards a sole source contract on behalf of another procurement unit shall negotiate with the  
2582 contractor to ensure that the terms of the contract, including price and delivery, are in the best  
2583 interest of the procurement unit.
- 2584 (6) (a) The period of trial use or testing of a procurement item under a trial use contract  
2585 may not exceed 18 months, unless the procurement officer provides a written exception  
2586 documenting the reason for a longer period.
- 2587 (b) A trial use contract shall:
- 2588 (i) state that the purpose of the contract is strictly for the purpose of the trial use or  
2589 testing of a procurement item;
- 2590 (ii) state that the contract terminates upon completion of the trial use or testing period;  
2591 (iii) state that after the trial use or testing period the procurement unit is not obligated  
2592 to purchase or enter into a contract for the procurement item, regardless of the trial use or  
2593 testing result;
- 2594 (iv) state that any purchase of the procurement item beyond the terms of the trial use  
2595 contract will be made in accordance with this chapter; and
- 2596 (v) include, as applicable:
- 2597 (A) test schedules;  
2598 (B) deadlines and a termination date;  
2599 (C) measures that will be used to evaluate the performance of the procurement item;  
2600 (D) any fees and associated expenses or an explanation of the circumstances  
2601 warranting a waiver of those fees and expenses;
- 2602 (E) the obligations of the procurement unit and vendor;  
2603 (F) provisions regarding the ownership of the procurement item during and after the  
2604 trial use or testing period;
- 2605 (G) an explanation of the grounds upon which the contract may be terminated;  
2606 (H) a limitation of liability;  
2607 (I) a consequential damage waiver provision;



2608 (J) a statement regarding the confidentiality or nondisclosure of information;  
 2609 (K) a provision relating to any required bond or security deposit; and  
 2610 (L) other requirements unique to the procurement item for trial use or testing.  
 2611 (c) Publication of notice under Section 63G-6a-406 is not required for a procurement  
 2612 pursuant to a trial use contract.

2613 ~~[(6)]~~ (7) The division or a procurement unit with independent procurement authority  
 2614 may extend a contract for a reasonable period of time without engaging in a standard  
 2615 procurement process, if:

2616 (a) the award of a new contract for the procurement item is delayed due to a protest or  
 2617 appeal;

2618 (b) the standard procurement process is delayed due to unintentional error;

2619 (c) changes in industry standards require significant changes to specifications for the  
 2620 procurement item;

2621 (d) the extension is necessary to prevent the loss of federal funds;

2622 (e) the extension is necessary to address a circumstance where the appropriation of  
 2623 state or federal funds has been delayed; ~~[or]~~

2624 (f) the extension covers the period of time during which contract negotiations with a  
 2625 new provider are being conducted~~[-]; or~~

2626 (g) the extension is necessary to avoid a lapse in critical governmental services that  
 2627 may negatively impact public health, safety, or welfare.

2628 Section 46. Section **63G-6a-904** is amended to read:

2629 **63G-6a-904. Debarment from consideration for award of contracts -- Causes for**  
 2630 **debarment.**

2631 (1) ~~(a) [After reasonable notice to the person involved and reasonable opportunity for~~  
 2632 ~~that person to be heard] Subject to Subsection (1)(b), the chief procurement officer~~[-a~~~~  
 2633 ~~procurement officer,]~~ or the head of a procurement unit with independent procurement  
 2634 authority may~~[-after consultation with the procurement unit involved in the matter for which~~  
 2635 ~~debarment is sought and, if the procurement unit is in the state executive branch, the attorney~~  
 2636 ~~general]:~~

2637 ~~[(a)]~~ (i) debar a person for cause from consideration for award of contracts for a period  
 2638 not to exceed three years; or

2639            ~~(b)~~ (ii) suspend a person from consideration for award of contracts if there is  
2640 probable cause to believe that the person has engaged in any activity that might lead to  
2641 debarment.

2642            (b) Before debarring or suspending a person under Subsection (1)(a), the chief  
2643 procurement officer or head of a procurement unit with independent procurement authority  
2644 shall:

2645            (i) consult with:

2646            (A) the procurement unit involved in the matter for which debarment or suspension is  
2647 sought; and

2648            (B) the attorney general, if the procurement unit is in the state executive branch, or the  
2649 procurement unit's attorney, if the procurement unit is not in the state executive branch;

2650            (ii) give the person at least 10 days' prior written notice of:

2651            (A) the reasons for which debarment or suspension is being considered; and

2652            (B) the hearing under Subsection (1)(b)(iii); and

2653            (iii) hold a hearing in accordance with Subsection (1)(c).

2654            (c) (i) At a hearing under Subsection (1)(b)(iii), the chief procurement officer or head  
2655 of a procurement unit with independent procurement authority may:

2656            (A) subpoena witnesses and compel their attendance at the hearing;

2657            (B) subpoena documents for production at the hearing;

2658            (C) obtain additional factual information; and

2659            (D) obtain testimony from experts, the person who is the subject of the proposed  
2660 debarment or suspension, representatives of the procurement unit, or others to assist the chief  
2661 procurement officer or head of a procurement unit with independent procurement authority to  
2662 make a decision on the proposed debarment or suspension.

2663            (ii) The Rules of Evidence do not apply to a hearing under Subsection (1)(b)(iii).

2664            (iii) The chief procurement officer or head of a procurement unit with independent  
2665 procurement authority shall:

2666            (A) record a hearing under Subsection (1)(b)(iii);

2667            (B) preserve all records and other evidence relied upon in reaching a decision until the  
2668 decision becomes final;

2669            (C) for an appeal of a debarment or suspension by a procurement unit other than a

2670 legislative procurement unit, a judicial procurement unit, a local government procurement unit,  
2671 or a public transit district, submit to the procurement policy board chair a copy of the written  
2672 decision and all records and other evidence relied upon in reaching the decision, within seven  
2673 days after receiving a notice that an appeal of a debarment or suspension has been filed under  
2674 Section [63G-6a-1702](#) or after receiving a request from the procurement policy board chair; and

2675 (D) for an appeal of a debarment or suspension by a legislative procurement unit, a  
2676 judicial procurement unit, a local government procurement unit, or a public transit district,  
2677 submit to the Utah Court of Appeals a copy of the written decision and all records and other  
2678 evidence relied upon in reaching the decision, within seven days after receiving a notice that an  
2679 appeal of a debarment or suspension has been filed under Section [63G-6a-1802](#).

2680 (iv) The holding of a hearing under Subsection (1)(b)(iii) or the issuing of a decision  
2681 under Subsection (1)(b)(v) does not affect a person's right to later question or challenge the  
2682 jurisdiction of the chief procurement officer or head of a procurement unit with independent  
2683 procurement authority to hold a hearing or issue a decision.

2684 (v) The chief procurement officer or head of a procurement unit with independent  
2685 procurement authority shall:

2686 (A) promptly issue a written decision regarding a proposed debarment or suspension,  
2687 unless the matter is settled by mutual agreement; and

2688 (B) mail, email, or otherwise immediately furnish a copy of the decision to the person  
2689 who is the subject of the decision.

2690 (vi) A written decision under Subsection (1)(b)(v) shall:

2691 (A) state the reasons for the debarment or suspension, if debarment or suspension is  
2692 ordered;

2693 (B) inform the person who is debarred or suspended of the right to judicial or  
2694 administrative review as provided in this chapter; and

2695 (C) indicate the amount of the security deposit or bond required under Section  
2696 [63G-6a-1703](#) and how that amount was calculated.

2697 (vi) (A) A decision of debarment or suspension issued by a procurement unit other than  
2698 a legislative procurement unit, a judicial procurement unit, a local government procurement  
2699 unit, or a public transit district is final and conclusive unless the person who is debarred or  
2700 suspended files an appeal of the decision under Section [63G-6a-1702](#).

2701 (B) A decision of debarment or suspension issued by a legislative procurement unit, a  
2702 judicial procurement unit, a local government procurement unit, or a public transit district is  
2703 final and conclusive unless the person who is debarred or suspended files an appeal of the  
2704 decision under Section 63G-6a-1802.

2705 (2) A suspension [~~described in Subsection (1)(b)~~] under this section may not be for a  
2706 period exceeding three months, unless an indictment has been issued for an offense which  
2707 would be a cause for debarment under Subsection (3), in which case the suspension shall, at the  
2708 request of the attorney general, if the procurement unit is in the state executive branch, or the  
2709 procurement unit's attorney, if the procurement unit is not in the state executive branch, remain  
2710 in effect until after the trial of the suspended person.

2711 (3) The causes for debarment include the following:

2712 (a) conviction of a criminal offense as an incident to obtaining or attempting to obtain a  
2713 public or private contract or subcontract or in the performance of a public or private contract or  
2714 subcontract;

2715 (b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery,  
2716 falsification or destruction of records, receiving stolen property, or any other offense indicating  
2717 a lack of business integrity or business honesty which currently, seriously, and directly affects  
2718 responsibility as a [state] contractor for the procurement unit;

2719 (c) conviction under state or federal antitrust statutes;

2720 (d) failure without good cause to perform in accordance with the terms of the contract;

2721 (e) a violation of this chapter; or

2722 (f) any other cause that the chief procurement officer [~~the procurement officer,~~] or the  
2723 head of a procurement unit with independent procurement authority determines to be so serious  
2724 and compelling as to affect responsibility as a [state] contractor for the procurement unit,  
2725 including debarment by another governmental entity.

2726 (4) A person who is debarred or suspended under this section may appeal the  
2727 debarment or suspension:

2728 (a) as provided in Section 63G-6a-1702, if the debarment or suspension is by a  
2729 procurement unit other than a legislative procurement unit, a judicial procurement unit, a local  
2730 government procurement unit, or a public transit district; or

2731 (b) as provided in Section 63G-6a-1802, if the debarment or suspension is by a

2732 legislative procurement unit, a judicial procurement unit, a local government procurement unit,  
2733 or a public transit district.

2734 (5) A procurement unit may consider a cause for debarment under Subsection (3) as the  
2735 basis for determining that a person responding to a solicitation is not responsible:

2736 (a) independent of any effort or proceeding under this section to debar or suspend the  
2737 person; and

2738 (b) even if the procurement unit does not choose to seek debarment or suspension.

2739 Section 47. Section **63G-6a-1103** is amended to read:

2740 **63G-6a-1103. Bonds necessary when contract is awarded -- Waiver -- Action --**  
2741 **Attorney fees.**

2742 (1) When a construction contract is awarded under this chapter, the contractor to whom  
2743 the contract is awarded shall deliver the following bonds or security to the [state] procurement  
2744 unit, which shall become binding on the parties upon the execution of the contract:

2745 (a) a performance bond satisfactory to the [state] procurement unit that is in an amount  
2746 equal to 100% of the price specified in the contract and is executed by a surety company  
2747 authorized to do business in this [state] procurement unit or any other form satisfactory to the  
2748 [state] procurement unit; and

2749 (b) a payment bond satisfactory to the [state] procurement unit that is in an amount  
2750 equal to 100% of the price specified in the contract and is executed by a surety company  
2751 authorized to do business in this state or any other form satisfactory to the [state] procurement  
2752 unit, which is for the protection of each person supplying labor, service, equipment, or material  
2753 for the performance of the work provided for in the contract.

2754 (2) (a) When a construction contract is awarded under this chapter, the procurement  
2755 officer or the head of the issuing procurement unit responsible for carrying out the construction  
2756 project may not require a contractor to whom a contract is awarded to obtain a bond of the  
2757 types referred to in Subsection (1) from a specific insurance or surety company, producer,  
2758 agent, or broker.

2759 (b) A person who violates Subsection (2)(a) is guilty of an infraction.

2760 (3) Rules of the applicable rulemaking authority may provide for waiver of the  
2761 requirement of a bid, performance, or payment bond for circumstances in which the  
2762 procurement officer considers any or all of the bonds to be unnecessary to protect the

2763 procurement unit.

2764 (4) A person shall have a right of action on a payment bond under this section for any  
2765 unpaid amount due to the person if:

2766 (a) the person has furnished labor, service, equipment, or material for the work  
2767 provided for in the contract for which the payment bond is furnished under this section; and

2768 (b) the person has not been paid in full within 90 days after the last day on which the  
2769 person performed the labor or service or supplied the equipment or material for which the  
2770 claim is made.

2771 (5) An action upon a payment bond may only be brought in a court of competent  
2772 jurisdiction in a county where the construction contract was to be performed. The action is  
2773 barred if not commenced within one year after the last day on which the claimant performed  
2774 the labor or service or supplied the equipment or material on which the claim is based. The  
2775 obligee named in the bond need not be joined as a party to the action.

2776 (6) In any suit upon a payment bond, the court shall award reasonable attorney fees to  
2777 the prevailing party, which fees shall be taxed as costs in the action.

2778 Section 48. Section **63G-6a-1105** is amended to read:

2779 **63G-6a-1105. Form of bonds -- Effect of certified copy.**

2780 (1) The form of the bonds required by this part shall be established by rule made by the  
2781 applicable rulemaking authority.

2782 (2) Any person may obtain from the [state] procurement unit a certified copy of a bond  
2783 upon payment of the cost of reproduction of the bond and postage, if any.

2784 (3) A certified copy of a bond [~~shall be~~] is prima facie evidence of the contents,  
2785 execution, and delivery of the original.

2786 Section 49. Section **63G-6a-1202** is repealed and reenacted to read:

2787 **63G-6a-1202. Standard contract clauses encouraged.**

2788 A procurement unit is encouraged to establish standard contract clauses to assist the  
2789 procurement unit and to help contractors and potential contractors to understand applicable  
2790 requirements.

2791 Section 50. Section **63G-6a-1204** is amended to read:

2792 **63G-6a-1204. Multiyear contracts.**

2793 (1) Except as provided in Subsection (7), a procurement unit may enter into a multiyear

2794 contract resulting from an invitation for bids or a request for proposals, if:

2795 (a) the procurement officer determines, in the discretion of the procurement officer,  
2796 that entering into a multiyear contract is in the best interest of the procurement unit; and

2797 (b) the invitation for bids or request for proposals:

2798 (i) states the term of the contract, including all possible renewals of the contract;

2799 (ii) states the conditions for renewal of the contract; and

2800 (iii) includes the provisions of Subsections (3) through (5) that are applicable to the  
2801 contract.

2802 (2) In making the determination described in Subsection (1)(a), the procurement officer  
2803 shall consider whether entering into a multiyear contract will:

2804 (a) result in significant savings to the procurement unit, including:

2805 (i) reduction of the administrative burden in procuring, negotiating, or administering  
2806 contracts;

2807 (ii) continuity in operations of the procurement unit; or

2808 (iii) the ability to obtain a volume or term discount;

2809 (b) encourage participation by a person who might not otherwise be willing or able to  
2810 compete for a shorter term contract; or

2811 (c) provide an incentive for a bidder or offeror to improve productivity through capital  
2812 investment or better technology.

2813 (3) (a) The determination described in Subsection (1)(a) is discretionary and is not  
2814 required to be in writing or otherwise recorded.

2815 (b) Except as provided in Subsections (4) and (5), notwithstanding any provision of an  
2816 invitation for bids, a request for proposals, or a contract to the contrary, a multiyear contract,  
2817 including a contract that was awarded outside of an invitation for bids or request for proposals  
2818 process, may not continue or be renewed for any year after the first year of the multiyear  
2819 contract if adequate funds are not appropriated or otherwise available to continue or renew the  
2820 contract.

2821 (4) A multiyear contract that is funded solely by federal funds may be continued or  
2822 renewed for any year after the first year of the multiyear contract if:

2823 (a) adequate funds to continue or renew the contract have not been, but are expected to  
2824 be appropriated by, and received from, the federal government;

2825 (b) continuation or renewal of the contract before the money is appropriated or  
2826 received is permitted by the federal government; and

2827 (c) the contract states that it may be cancelled or suspended, without penalty, if the  
2828 anticipated federal funds are not appropriated or received.

2829 (5) A multiyear contract that is funded in part by federal funds may be continued or  
2830 renewed for any year after the first year of the multiyear contract if:

2831 (a) the portion of the contract that is to be funded by funds of a public entity are  
2832 appropriated;

2833 (b) adequate federal funds to continue or renew the contract have not been, but are  
2834 expected to be, appropriated by, and received from, the federal government;

2835 (c) continuation or renewal of the contract before the federal money is appropriated or  
2836 received is permitted by the federal government; and

2837 (d) the contract states that it may be cancelled or suspended, without penalty, if the  
2838 anticipated federal funds are not appropriated or received.

2839 (6) A procurement unit may not continue or renew a multiyear contract after the end of  
2840 the multiyear contract term or the renewal periods described in the contract, unless the  
2841 procurement unit engages in a new standard procurement process or complies with an  
2842 exception, described in this chapter, to using a standard procurement process.

2843 (7) A multiyear contract, including any renewal periods, may not exceed a period of  
2844 five years, unless:

2845 (a) the procurement officer determines, in writing, that:

2846 (i) a longer period is necessary in order to obtain the procurement item;

2847 (ii) a longer period is customary for industry standards; or

2848 (iii) a longer period is in the best interest of the procurement unit; and

2849 (b) the written determination described in Subsection (7)(a) is included in the file  
2850 relating to the procurement.

2851 (8) This section does not apply to a contract for the design or construction of a facility,  
2852 a road, a public transit project, or a contract for the financing of equipment.

2853 Section 51. Section **63G-6a-1205** is amended to read:

2854 **63G-6a-1205. Regulation of contract types -- Permitted and prohibited contract**  
2855 **types.**



2856 (1) Except as otherwise provided in this section, and subject to rules made under this  
2857 section by the applicable rulemaking authority, a procurement unit may use any type of contract  
2858 that will promote the best interests of the procurement unit.

2859 (2) An applicable rulemaking authority:

2860 (a) may make rules governing, placing restrictions on, or prohibiting the use of any  
2861 type of contract; and

2862 (b) may not make rules that permit the use of a contract:

2863 (i) that is prohibited under this section; or

2864 (ii) in a manner that is prohibited under this section.

2865 (3) A procurement officer, the head of an issuing procurement unit, or a designee of  
2866 either, may not use a type of contract, other than a firm fixed price contract, unless the  
2867 procurement officer makes a written determination that:

2868 (a) the proposed contractor's accounting system will permit timely development of all  
2869 necessary cost data in the form required by the specific contract type contemplated;

2870 (b) the proposed contractor's accounting system is adequate to allocate costs in  
2871 accordance with generally accepted accounting principles; and

2872 (c) the use of a specified type of contract, other than a firm fixed price contract, is in  
2873 the best interest of the procurement unit, taking into consideration the following criteria:

2874 (i) the type and complexity of the procurement item;

2875 (ii) the difficulty of estimating performance costs at the time the contract is entered  
2876 into, due to factors that may include:

2877 (A) the difficulty of determining definitive specifications;

2878 (B) the difficulty of determining the risks, to the contractor, that are inherent in the  
2879 nature of the work to be performed; or

2880 (C) the difficulty to clearly determine other factors necessary to enter into an accurate  
2881 firm fixed price contract;

2882 (iii) the administrative costs to the procurement unit and the contractor;

2883 (iv) the degree to which the procurement unit is required to provide technical  
2884 coordination during performance of the contract;

2885 (v) the impact that the choice of contract type may have upon the level of competition  
2886 for award of the contract;

2887 (vi) the stability of material prices, commodity prices, and wage rates in the applicable  
2888 market;

2889 (vii) the impact of the contract type on the level of urgency related to obtaining the  
2890 procurement item;

2891 (viii) the impact of any applicable governmental regulation relating to the contract; and

2892 (ix) other criteria that the procurement officer determines may relate to determining the  
2893 contract type that is in the best interest of the procurement unit.

2894 (4) Contract types that, subject to the provisions of this section and rules made under  
2895 this section, may be used by a procurement unit include the following:

2896 (a) a fixed price contract;

2897 (b) a fixed price contract with price adjustment;

2898 (c) a time and materials contract;

2899 (d) a labor hour contract;

2900 (e) a definite quantity contract;

2901 (f) an indefinite quantity contract;

2902 (g) a requirements contract; [~~or~~]

2903 (h) a contract based on a rate table in accordance with industry standards; or

2904 [~~(h)~~] (i) a contract that includes one of the following construction delivery methods:

2905 (i) design-build;

2906 (ii) design-bid-build; or

2907 (iii) construction manager/general contractor.

2908 (5) Except as it applies to a change order, a procurement unit may not enter into a  
2909 cost-plus-percentage-of-cost contract, unless:

2910 (a) use of a cost-plus-percentage-of-cost contract is approved by the procurement  
2911 officer;

2912 (b) it is standard practice in the industry to obtain the procurement item through a  
2913 cost-plus-percentage-of-cost contract; and

2914 (c) the percentage and the method of calculating costs in the contract are in accordance  
2915 with industry standards.

2916 (6) A procurement unit may not enter into a cost-reimbursement contract, unless the  
2917 procurement officer makes a written determination that:

2918 (a) (i) a cost-reimbursement contract is likely to cost less than any other type of  
2919 permitted contract; or

2920 (ii) it is impracticable to obtain the procurement item under any other type of permitted  
2921 contract; and

2922 (b) the proposed contractor's accounting system:

2923 (i) will timely develop the cost data in the form necessary for the procurement unit to  
2924 timely and accurately make payments under the contract; and

2925 (ii) will allocate costs in accordance with generally accepted accounting principles.

2926 Section 52. Section **63G-6a-1206** is amended to read:

2927 **63G-6a-1206. Rules and regulations to determine allowable incurred costs --**

2928 **Required information -- Auditing of books.**

2929 (1) (a) The applicable rulemaking authority may, by rule, establish the cost principles  
2930 to be included in a cost-reimbursement contract to determine incurred costs for the purpose of  
2931 calculating a reimbursement.

2932 (b) The cost principles established by rule under Subsection (1)(a) may be modified, by  
2933 contract, if the procurement officer or head of the issuing procurement unit approves the  
2934 modification.

2935 (2) Except as provided in Subsection (5), a person who seeks to be, or is, a party in a  
2936 cost-based contract with a procurement unit shall:

2937 (a) submit cost or pricing data relating to determining the cost or pricing amount; and

2938 (b) certify that, to the best of the contractor's knowledge and belief, the cost or pricing  
2939 data submitted is accurate and complete as of the date specified by the procurement unit.

2940 (3) The procurement officer shall ensure that the date specified under Subsection (2)(b)  
2941 is before:

2942 (a) the pricing of any contract awarded by a standard procurement process or pursuant  
2943 to a sole source procurement, if the total contract price is expected to exceed an amount  
2944 established by rule made by the applicable rulemaking authority; or

2945 (b) the pricing of any change order that is expected to exceed an amount established by  
2946 rule made by the applicable rulemaking authority.

2947 (4) A contract or change order that requires a certification described in Subsection (2)  
2948 shall include a provision that the price to the procurement unit, including profit or fee, shall be

2949 adjusted to exclude any significant sums by which the procurement unit finds that the price was  
2950 increased because the contractor provided cost or pricing data that was inaccurate, incomplete,  
2951 or not current as of the date specified by the procurement officer.

2952 (5) A procurement unit is not required to comply with Subsection (2) if:

2953 (a) the contract price is based on adequate price competition;

2954 (b) the contract price is based on established catalogue prices or market prices;

2955 (c) the contract price is set by law or rule; or

2956 (d) the procurement states, in writing:

2957 (i) that, in accordance with rules made by the applicable rulemaking authority, the  
2958 requirements of Subsection (2) may be waived; and

2959 (ii) the reasons for the waiver.

2960 (6) The procurement officer or audit entity under contract with the procurement unit

2961 may, at reasonable times and places, only to the extent that the books and records relate to the  
2962 applicable cost or pricing data, audit the books and records of:

2963 (a) a person who has submitted cost or pricing data pursuant to this section; or

2964 (b) a contractor or subcontractor under a contract or subcontract other than a firm fixed  
2965 price contract.

2966 (7) Unless a shorter time is provided for by contract:

2967 (a) a person described in Subsection (6)(a) shall maintain the books and records  
2968 described in Subsection (6) for three years after the day on which the fiscal year in which final  
2969 payment is made under the contract ends;

2970 (b) a contractor shall maintain the books and records described in Subsection (6) for  
2971 three years after the day on which the fiscal year in which final payment under the prime  
2972 contract ends; and

2973 (c) a subcontractor shall maintain the books and records described in Subsection (6) for  
2974 three years after the day on which the fiscal year in which final payment is made under the  
2975 subcontract ends.

2976 Section 53. Section **63G-6a-1402** is amended to read:

2977 **63G-6a-1402. Procurement of design-build transportation project contracts.**

2978 (1) As used in this section:

2979 (a) "Design-build transportation project contract" means the procurement of both the

2980 design and construction of a transportation project in a single contract with a company or  
2981 combination of companies capable of providing the necessary engineering services and  
2982 construction.

2983 (b) "Transportation agency" means:

2984 (i) the Department of Transportation;

2985 (ii) a county of the first or second class, as defined in Section 17-50-501;

2986 (iii) a municipality of the first class, as defined in Section 10-2-301;

2987 (iv) a public transit district that has more than 200,000 people residing within its  
2988 boundaries; and

2989 (v) a public airport authority.

2990 (2) Except as provided in Subsection (3), a transportation agency may award a  
2991 design-build transportation project contract for any transportation project that has an estimated  
2992 cost of at least \$50,000,000 by following the requirements of this section.

2993 (3) (a) The Department of Transportation:

2994 (i) may award a design-build transportation project contract for any transportation  
2995 project by following the requirements of this section; and

2996 (ii) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative  
2997 Rulemaking Act, establishing requirements for the procurement of its design-build  
2998 transportation project contracts in addition to those required by this section.

2999 (b) A public transit district that has more than 200,000 people residing within its  
3000 boundaries:

3001 (i) may award a design-build transportation project contract for any transportation  
3002 project by following the requirements of this section; and

3003 (ii) shall pass ordinances or a resolution establishing requirements for the procurement  
3004 of its design-build transportation project contracts in addition to those required by this section.

3005 (c) A design-build transportation project contract authorized under this Subsection (3)  
3006 is not subject to the estimated cost threshold described in Subsection (2).

3007 (d) A design-build transportation project contract may include provision by the  
3008 contractor of operations, maintenance, or financing.

3009 (4) (a) Before entering into a design-build transportation project contract, a  
3010 transportation agency may issue a request for qualifications to prequalify potential contractors.

3011 (b) Public notice of the request for qualifications shall be given in accordance with  
3012 board rules.

3013 (c) A transportation agency shall require, as part of the qualifications specified in the  
3014 request for qualifications, that potential contractors at least demonstrate their:

- 3015 (i) construction experience;
- 3016 (ii) design experience;
- 3017 (iii) financial, manpower, and equipment resources available for the project; and
- 3018 (iv) experience in other design-build transportation projects with attributes similar to  
3019 the project being procured.

3020 (d) The request for qualifications shall identify the number of eligible competing  
3021 proposers that the transportation agency will select to submit a proposal, which may not be less  
3022 than two.

3023 (5) The transportation agency shall:

- 3024 (a) evaluate the responses received from the request for qualifications;
- 3025 (b) select from their number those qualified to submit proposals; and
- 3026 (c) invite those respondents to submit proposals based upon the transportation agency's  
3027 request for proposals.

3028 (6) Except as provided in Subsection (7), if the transportation agency fails to receive at  
3029 least two qualified eligible competing proposals, the transportation agency shall readvertise the  
3030 project.

3031 (7) A transportation agency may award a contract for a transportation project that has  
3032 an estimated cost of \$5,000,000 or less to a qualified eligible proposer if:

- 3033 (a) only a single proposal is received; and
- 3034 (b) the transportation agency determines that:
  - 3035 (i) the proposal is advantageous to the state; and
  - 3036 (ii) the proposal price is reasonable.

3037 (8) The transportation agency shall issue a request for proposals to those qualified  
3038 respondents that:

3039 (a) includes a scope of work statement constituting an information for proposal that  
3040 may include:

- 3041 (i) preliminary design concepts;

- 3042 (ii) design criteria, needs, and objectives;
- 3043 (iii) warranty and quality control requirements;
- 3044 (iv) applicable standards;
- 3045 (v) environmental documents;
- 3046 (vi) constraints;
- 3047 (vii) time expectations or limitations;
- 3048 (viii) incentives or disincentives; and
- 3049 (ix) other special considerations;
- 3050 (b) requires submitters to provide:
- 3051 (i) a sealed cost proposal;
- 3052 (ii) a critical path matrix schedule, including cash flow requirements;
- 3053 (iii) proposal security; and
- 3054 (iv) other items required by the department for the project; and
- 3055 (c) may include award of a stipulated fee to be paid to offerors who submit
- 3056 unsuccessful proposals.
- 3057 (9) The transportation agency shall:
- 3058 (a) evaluate the submissions received in response to the request for proposals from the
- 3059 prequalified offerors;
- 3060 (b) comply with rules relating to discussion of proposals, best and final offers, and
- 3061 evaluations of the proposals submitted; and
- 3062 (c) after considering price and other identified factors, award the contract to the
- 3063 responsive and responsible offeror whose proposal is most advantageous to the transportation
- 3064 agency or the state.
- 3065 Section 54. Section **63G-6a-1503** is amended to read:
- 3066 **63G-6a-1503. Selection committee for architect-engineer services.**
- 3067 (1) In the procurement of architect-engineer services, the procurement officer or the
- 3068 head of an issuing procurement unit shall encourage firms engaged in the lawful practice of
- 3069 their profession to submit [~~annually~~] a statement of qualifications [~~and performance data~~].
- 3070 (2) The Building Board shall be the evaluation committee for architect-engineer
- 3071 services contracts under its authority.
- 3072 (3) An evaluation committee for architect-engineer services contracts not under the

3073 authority of the Building Board shall be established in accordance with rules made by the  
3074 applicable rulemaking authority.

3075 (4) An evaluation committee shall:

3076 (a) evaluate current statements of qualifications [~~and performance data on file with the~~  
3077 ~~state, together with those that may be submitted by other firms~~] in response to the  
3078 announcement of [~~the~~] a proposed contract;

3079 (b) consider no less than three firms; and

3080 (c) based upon criteria established and published by the issuing procurement unit,  
3081 select no less than three of the firms considered to be the most highly qualified to provide the  
3082 services required.

3083 Section 55. Section **63G-6a-1505** is amended to read:

3084 **63G-6a-1505. Determination of compensation for architect-engineer services.**

3085 (1) The procurement officer shall award a contract to a qualified firm at compensation  
3086 that the procurement officer determines, in writing, to be fair and reasonable to the [~~state~~]  
3087 procurement unit.

3088 (2) In making the determination described in Subsection (1), the procurement officer  
3089 shall take into account the services':

3090 (a) estimated value;

3091 (b) scope;

3092 (c) complexity; and

3093 (d) professional nature.

3094 (3) If the procurement officer is unable to agree to a satisfactory contract with the firm  
3095 first selected, at a price the procurement officer determines to be fair and reasonable to the  
3096 [~~state~~] procurement unit, the procurement officer shall:

3097 (a) formally terminate discussions with that firm; and

3098 (b) undertake discussions with a second qualified firm.

3099 (4) If the procurement officer is unable to agree to a satisfactory contract with the  
3100 second firm selected, at a price the procurement officer determines to be fair and reasonable to  
3101 the [~~state~~] procurement unit, the procurement officer shall:

3102 (a) formally terminate discussions with that firm; and

3103 (b) undertake discussions with a third qualified firm.



3104 (5) If the procurement officer is unable to award a contract at a fair and reasonable  
3105 price to any of the selected firms, the procurement officer shall:

3106 (a) select additional firms; and

3107 (b) continue discussions in accordance with this part until an agreement is reached.

3108 Section 56. Section **63G-6a-1602** is amended to read:

3109 **63G-6a-1602. Protest -- Time -- Authority to resolve protest.**

3110 [~~(1) Except as provided in Subsection (2), a person who is an actual or prospective~~  
3111 ~~bidder, offeror, or contractor who is aggrieved in connection with a procurement or award of a~~  
3112 ~~contract may protest to the protest officer as follows:]~~

3113 [~~(a) with respect]~~

3114 (1) (a) A protest may be filed with the protest officer by:

3115 (a) an actual or prospective bidder or offeror who is aggrieved in connection with a  
3116 procurement; or

3117 (b) a prospective contractor who is aggrieved in connection with an award of a  
3118 contract.

3119 (b) (i) A protest under Subsection (1)(a) relating to an invitation for bids or a request  
3120 for proposals shall be filed:

3121 [(i)] (A) before the opening of bids or the closing date for proposals; or

3122 [(ii)] (B) if the person filing the protest did not know and should not have known of the  
3123 facts giving rise to the protest before the bid opening or the closing date for proposals, within  
3124 seven days after the day on which the person knows or should have known of the facts giving  
3125 rise to the protest[; or].

3126 (ii) A protest under Subsection (1)(a) relating to a form of procurement not described  
3127 in Subsection (1)(b)(i) but involving a deadline established for the submission of a price or  
3128 response shall be filed:

3129 (A) before the deadline for the submission of a price or response; or

3130 (B) if the person filing the protest did not know and reasonably should not have known  
3131 of the facts giving rise to the protest before the deadline for the submission of a price or  
3132 response, within seven days after the day on which the person knows or reasonably should have  
3133 known of the facts giving rise to the protest.

3134 ~~[(b)] (iii) [if Subsection (1)(a) does not apply,]~~ A protest under Subsection (1)(a)

3135 relating to a form of procurement not described in Subsection (1)(b)(i) or (ii) shall be filed  
3136 within seven days after the day on which the person filing the protest knows or should have  
3137 known of the facts giving rise to the protest.

3138 ~~[(2) A person who is debarred or suspended under this chapter may protest the~~  
3139 ~~debarment or suspension to the protest officer that ordered the debarment, as applicable, within~~  
3140 ~~seven days after the day on which the debarment or suspension is ordered.]~~

3141 ~~[(3)]~~ (2) A person who files a protest under this section shall include in the filing  
3142 document:

3143 (a) the person's address of record and email address of record; and

3144 (b) a concise statement of the grounds upon which the protest is made.

3145 ~~[(4)]~~ (3) A person described in Subsection (1)~~[-(2), or (3)]~~ who fails to [~~timely~~] file a  
3146 protest [~~under this section~~] within the time prescribed in Subsection (1)(b) may not [~~bring a~~]:

3147 (a) protest[;] to the protest officer a solicitation or award of a contract; or

3148 (b) file an action[;] or appeal challenging a solicitation or award of a contract[; or a  
3149 ~~debarment or suspension;]~~ before [~~the protest officer;]~~ an appeals panel, a court, or any other  
3150 forum.

3151 ~~[(5)]~~ (4) Subject to the applicable requirements of Section [63G-10-403](#), a protest  
3152 officer[;] or the [~~protest officer's designee;]~~ head of a procurement unit may enter into a  
3153 settlement agreement to resolve a protest.

3154 Section 57. Section **63G-6a-1603** is amended to read:

3155 **63G-6a-1603. Protest officer responsibilities and authority if protest filed --**  
3156 **Decisions of protest officer to be in writing -- Effect of no writing.**

3157 (1) After a [~~timely~~] protest is filed [~~in accordance with Section [63G-6a-1602](#)],~~ the  
3158 protest officer[;] shall determine whether the protest is timely filed and complies fully with the  
3159 requirements of Section [63G-6a-1602](#).

3160 ~~[(a) shall consider the protest; and]~~

3161 ~~[(b) may hold a hearing on the protest.]~~

3162 (2) If the protest officer determines that the protest is not timely filed or that the protest  
3163 does not fully comply with Section [63G-6a-1602](#), the protest officer shall dismiss the protest.

3164 (3) If the protest officer determines that the protest is timely filed and complies fully  
3165 with Section [63G-6a-1602](#), the protest officer shall:

3166 (a) dismiss the protest if the protest officer determines that the protest alleges facts that,  
 3167 if true, do not provide an adequate basis for the protest;

3168 (b) uphold the protest without holding a hearing if the protest officer determines that  
 3169 the undisputed facts of the protest indicate that the protest should be upheld; or

3170 (c) hold a hearing on the protest if there is a genuine issue of material fact that needs to  
 3171 be resolved in order to determine whether the protest should be upheld.

3172 ~~[(2)]~~ (4) (a) ~~[The]~~ If a hearing is held on a protest, the protest officer may:

3173 (i) subpoena witnesses and compel their attendance at [a] the protest hearing; [or]

3174 (ii) subpoena documents for production at [a] the protest hearing[-];

3175 (iii) obtain additional factual information; and

3176 (iv) obtain testimony from experts, the person filing the protest, representatives of the  
 3177 procurement unit, or others to assist the protest officer to make a decision on the protest.

3178 (b) The Rules of Evidence do not apply to a protest hearing.

3179 (c) The applicable rulemaking authority shall make rules relating to intervention in a  
 3180 protest, including designating:

3181 (i) who may intervene; and

3182 (ii) the time and manner of intervention.

3183 (d) ~~[If a hearing on a protest is held under this section, the]~~ A protest officer shall:

3184 (i) record ~~[the]~~ each hearing held on a protest under this section;

3185 ~~[(ii) preserve all evidence presented at the hearing; and]~~

3186 ~~[(iii) preserve all records and other evidence relied upon in reaching the written~~  
 3187 ~~decision described in this section.]~~

3188 ~~[(e)]~~ (ii) ~~[Regardless]~~ regardless of whether a hearing on a protest is held under this  
 3189 section, ~~[the protest officer shall]~~ preserve all records and other evidence relied upon in

3190 reaching the protest officer's written decision~~[-(f) The records described in Subsections (2)(d)~~  
 3191 ~~and (e) may not be destroyed]~~ until the decision, and any appeal of the decision, becomes

3192 final[-]; and

3193 (iii) submit to the procurement policy board chair a copy of the protest officer's written  
 3194 decision and all records and other evidence relied upon in reaching the decision, within seven  
 3195 days after receiving;

3196 (A) notice that an appeal of the protest officer's decision has been filed under Section

3197 [63G-6a-1702](#); or

3198 (B) a request from the chair of the procurement policy board.

3199 ~~[(g)]~~ (e) A protest ~~[officer who holds]~~ officer's holding a hearing, ~~[considers]~~

3200 ~~considering~~ a protest, or ~~[issues]~~ issuing a written decision under this section does not ~~[waive~~

3201 ~~the]~~ affect a person's right to ~~[-,at a]~~ later ~~[date,]~~ question or challenge the protest officer's

3202 jurisdiction to hold the hearing, consider the protest, or ~~[render]~~ issue the decision.

3203 (5) (a) The deliberations of a protest officer that is subject to Title 52, Chapter 4, Open

3204 and Public Meetings Act, because the protest officer is a public body, as defined in Section

3205 52-4-103, may be held in a closed meeting, as provided in Title 52, Chapter 4, Open and Public

3206 Meetings Act.

3207 (b) Subsection (5)(a) does not apply to any information gathering activities of a protest

3208 officer described in Subsection (5)(a).

3209 ~~[(3)]~~ (6) (a) A protest officer, or the protest officer's designee, shall promptly issue a

3210 written decision regarding any protest, ~~[debarment, suspension, or contract controversy if it]~~

3211 unless the protest is [not] settled by mutual agreement.

3212 (b) The decision shall:

3213 (i) state the reasons for the action taken ~~[and]~~;

3214 (ii) inform the protestor~~[-, contractor, or prospective contractor]~~ of the right to judicial

3215 or administrative review as provided in this chapter~~[-]; and~~

3216 (iii) indicate the amount of the security deposit or bond required under Section

3217 63G-6a-1703 and how that amount was calculated.

3218 (c) A person who issues a decision under Subsection (6)(a) shall mail, email, or

3219 otherwise immediately furnish a copy of the decision to the protestor.

3220 ~~[(4)]~~ (7) A decision described in this section is effective until stayed or reversed on

3221 appeal, except to the extent provided in Section [63G-6a-1903](#). ~~[A person who issues a decision~~

3222 ~~described in Subsection (1) shall mail, email, or otherwise immediately furnish a copy of the~~

3223 ~~decision to the protestor, prospective contractor, or contractor.]~~

3224 ~~[(b)]~~ (8) (a) A decision described in Subsection ~~[(4)]~~ (6)(a) that is issued in relation to a

3225 procurement unit other than a legislative procurement unit ~~[or]~~, a judicial procurement unit

3226 ~~[shall be]~~, a local government procurement unit, or a public transit district is final and

3227 conclusive unless the protestor[-, prospective contractor, or contractor: (i) for a controversy

3228 described in Section ~~63G-6a-1905~~, commences an action in district court in accordance with  
 3229 Subsection ~~63G-6a-1802(5)~~; (ii) for a controversy related to a solicitation or the award of a  
 3230 contract,] files an appeal under Section ~~63G-6a-1702~~[; or].

3231 [(iii) for a debarment or suspension, files an appeal under Section ~~63G-6a-1702~~.]

3232 [(c)] (b) A decision described in Subsection [(4)] (6)(a) that is issued in relation to a  
 3233 legislative procurement unit [or], a judicial procurement unit [shall be], a local government  
 3234 procurement unit, or a public transit district is final and conclusive unless the protestor[;  
 3235 prospective contractor, or contractor:] files an appeal under Section 63G-6a-1802.

3236 [(i) for a controversy described in Section ~~63G-6a-1905~~, commences an action in  
 3237 district court in accordance with Subsection ~~63G-6a-1802(5)~~.]

3238 [(ii) for a controversy related to a solicitation or the award of a contract, files an appeal  
 3239 under Subsection ~~63G-6a-1802(1)(b)~~; or]

3240 [(iii) for a debarment or suspension, files an appeal under Subsection  
 3241 ~~63G-6a-1802(1)(b)~~.]

3242 [(5)] (9) If the protest officer does not issue the written decision regarding a protest or a  
 3243 contract controversy within 30 calendar days after the day on which a written request for a final  
 3244 decision is filed with the protest officer, or within a longer period as may be agreed upon by the  
 3245 parties, the protester, prospective contractor, or contractor may proceed as if an adverse  
 3246 decision had been received.

3247 [(6) Except for a controversy described in Section ~~63G-6a-1905~~, a]

3248 (10) A determination under this section by the protest officer regarding an issue of fact  
 3249 may not be overturned on appeal unless the decision is arbitrary and capricious or clearly  
 3250 erroneous.

3251 Section 58. Section ~~63G-6a-1702~~ is amended to read:

3252 **63G-6a-1702. Appeal to Utah State Procurement Policy Board -- Appointment of**  
 3253 **procurement appeals panel -- Proceedings.**

3254 (1) This part applies to all procurement units other than:

3255 (a) a legislative procurement unit;

3256 (b) a judicial procurement unit;

3257 (c) a [county or municipality] local government procurement unit; or

3258 (d) a public transit district.

3259 (2) (a) [A] Subject to Section 63G-6a-1703, a party to a protest involving a  
3260 procurement unit other than a procurement ~~[described]~~ unit listed in Subsection (1)(a), (b), (c),  
3261 or (d) may appeal the protest decision to the board by ~~[(a)]~~ filing a written notice of appeal  
3262 with the chair of the board within seven days after:

3263 (i) the day on which the written decision described in Section 63G-6a-1603 is:

3264 (A) personally served on the party or the party's representative; or

3265 (B) emailed or mailed to the address or email address of record provided by the party  
3266 under Subsection 63G-6a-1602(3); or

3267 (ii) the day on which the 30-day period described in Subsection 63G-6a-1603 ~~[(5)]~~ (7)  
3268 ends, if a written decision is not issued before the end of the 30-day period ~~[(5)]~~.

3269 ~~[(b) including in the filing document the person's]~~

3270 (b) A person appealing a debarment or suspension of a procurement unit other than a  
3271 procurement unit listed in Subsection (1)(a), (b), (c), or (d) shall file a written notice of appeal  
3272 with the chair of the board no later than seven days after the debarment or suspension.

3273 (c) A notice of appeal under Subsection (2)(a) or (b) shall:

3274 (i) include the address of record and email address of record of the party filing the  
3275 notice of appeal; and

3276 (ii) be accompanied by a copy of any written protest decision or debarment or  
3277 suspension order.

3278 ~~[(c) at the time that the notice of appeal described in Subsection (2)(a) is filed,~~  
3279 ~~complying with the requirements of Section 63G-6a-1703 regarding the posting of a security~~  
3280 ~~deposit or a bond.]~~

3281 (3) A person may not base an appeal of a protest under this section on a ground not  
3282 specified in the person's protest under Section 63G-6a-1602.

3283 ~~[(3)]~~ (4) A person may not appeal from a protest described in Section 63G-6a-1602,  
3284 unless:

3285 (a) a decision on the protest has been issued; or

3286 (b) a decision is not issued and the 30-day period described in Subsection  
3287 63G-6a-1603 ~~[(5)]~~ (7), or a longer period agreed to by the parties, has passed.

3288 ~~[(4)]~~ (5) The chair of the board or a designee of the chair who is not employed by the  
3289 procurement unit responsible for the solicitation, contract award, or other action complained of:

3290 (a) shall, within seven days after the day on which the chair receives a timely written  
 3291 notice of appeal under Subsection (2), and if all the requirements of Subsection (2) and Section  
 3292 63G-6a-1703 have been met, appoint:

3293 (i) a procurement appeals panel to hear and decide the appeal, consisting of at least  
 3294 three individuals, each of whom shall be:

3295 (A) a member of the board; or

3296 (B) a designee of a member appointed under Subsection (4)(a)(i)(A), if the designee is  
 3297 approved by the chair; and

3298 (ii) one of the members of the procurement appeals panel to be the chair of the panel;

3299 (b) may:

3300 (i) appoint the same procurement appeals panel to hear more than one appeal; or

3301 (ii) appoint a separate procurement appeals panel for each appeal; [~~and~~]

3302 (c) may not appoint a person to a procurement appeals panel if the person is employed  
 3303 by the procurement unit responsible for the solicitation, contract award, or other action  
 3304 complained of[-]; and

3305 (d) shall, at the time the procurement appeals panel is appointed, provide appeals panel  
 3306 members with a copy of the protest officer's written decision and all other records and other  
 3307 evidence that the protest officer relied on in reaching the decision.

3308 [~~(5)~~] (6) A procurement appeals panel described in Subsection [~~(4)~~] (5) shall:

3309 (a) consist of an odd number of members;

3310 (b) [~~except as provided in Subsection (6),~~] conduct an informal proceeding on the  
 3311 appeal within 60 days after the day on which the procurement appeals panel is appointed[-];

3312 (i) unless all parties stipulate to a later date; and

3313 (ii) subject to Subsection (8);

3314 (c) at least seven days before the proceeding, mail, email, or hand-deliver a written  
 3315 notice of the proceeding to the parties to the appeal; and

3316 (d) within seven days after the day on which the proceeding ends:

3317 (i) issue a written decision on the appeal; and

3318 (ii) mail, email, or hand-deliver the written decision on the appeal to the parties to the  
 3319 appeal and to the protest officer.

3320 (7) (a) The deliberations of a procurement appeals panel that is subject to Title 52,

3321 Chapter 4, Open and Public Meetings Act, because the procurement appeals panel is a public  
3322 body, as defined in Section 52-4-103, may be held in a closed meeting, as provided in Title 52,  
3323 Chapter 4, Open and Public Meetings Act.

3324 (b) Subsection (7)(a) does not apply to any information gathering activities of a  
3325 procurement appeals panel described in Subsection (7)(a).

3326 [~~6~~] (8) A procurement appeals panel may continue a procurement appeals proceeding  
3327 beyond the 60-day period described in Subsection [~~5~~] (6)(b) if the procurement appeals panel  
3328 determines that the continuance is in the interests of justice.

3329 [~~7~~] (9) A procurement appeals panel:

3330 (a) shall, subject to Subsection (9)(c), consider the appeal based solely on:

3331 (i) the protest decision;

3332 (ii) the record considered by the person who issued the protest decision; and

3333 (iii) if a protest hearing was held, the record of the protest hearing;

3334 (b) may not take additional evidence; [~~and~~]

3335 (c) notwithstanding Subsection (9)(b), may, during an informal hearing, ask questions  
3336 and receive responses regarding the appeal, the protest decision, or the record in order to assist  
3337 the panel to understand the appeal, the protest decision, and the record; and

3338 [~~e~~] (d) shall uphold the decision of the protest officer, unless the decision is arbitrary  
3339 and capricious or clearly erroneous.

3340 [~~8~~] (10) If a procurement appeals panel determines that the decision of the protest  
3341 officer is arbitrary and capricious or clearly erroneous, the procurement appeals panel:

3342 (a) shall remand the matter to the protest officer, to cure the problem or render a new  
3343 decision;

3344 (b) may recommend action that the protest officer should take; and

3345 (c) may not order that:

3346 (i) a contract be awarded to a certain person;

3347 (ii) a contract or solicitation be cancelled; or

3348 (iii) any other action be taken other than the action described in Subsection [~~8~~]

3349 (10)(a).

3350 [~~9~~] (11) The board shall make rules relating to the conduct of an appeals proceeding,  
3351 including rules that provide for:



- 3352 (a) expedited proceedings; and  
 3353 (b) electronic participation in the proceedings by panel members and participants.  
 3354 ~~[(10)]~~ (12) The Rules of Evidence do not apply to an appeals proceeding.

3355 Section 59. Section **63G-6a-1703** is amended to read:

3356 **63G-6a-1703. Requirement to post a security deposit or bond -- Exceptions --**  
 3357 **Forfeiture of security deposit or bond.**

3358 (1) Except as provided by rule made under Subsection (2)(a), a person who files ~~[an]~~ a  
 3359 notice of appeal under Section 63G-6a-1702 shall, ~~[at the time that the appeal is filed]~~ before  
 3360 the expiration of the time provided under Subsection 63G-6a-1702(2) for filing a notice of  
 3361 appeal, pay a security deposit or post a bond with the office of the protest officer in ~~[an]~~ the  
 3362 amount ~~[that is the greater]~~ of:

3363 ~~[(a) for the appeal of a debarment or suspension, \$1,000;]~~

3364 ~~[(b) for any type of procurement, \$1,000;]~~

3365 ~~[(c)]~~ (a) (i) for an appeal relating to an invitation for bids, 5% of the estimated total  
 3366 contract value, based on:

3367 ~~[(i)]~~ (A) the lowest responsible and responsive bid amount for the entire term of the  
 3368 contract, excluding any renewal period, if the bid opening has occurred; [or]

3369 ~~[(ii) the estimated contract cost, established in accordance with Subsection (2)(b), if the~~  
 3370 ~~bid opening has not yet occurred;]~~

3371 (B) the total budget for the procurement item for the entire term of the contract,  
 3372 excluding any renewal period, if bids are based on unit or rate pricing; or

3373 (C) if the contract is being rebid, the historical usage and amount spent on the contract  
 3374 over the life of the contract; or

3375 ~~[(d)]~~ (ii) for an appeal relating to a request for proposals, 5% of the estimated total  
 3376 contract value, based on:

3377 ~~[(i)]~~ (A) the lowest cost proposed in a response to a request for proposals, considering  
 3378 the entire term of the contract, excluding any renewal period, if the opening of proposals has  
 3379 occurred; [or]

3380 ~~[(ii) the estimated contract cost, established in accordance with Subsection (2)(b), if the~~  
 3381 ~~opening of proposals has not occurred; or]~~

3382 ~~[(e) for a type of procurement other than an invitation for bids or a request for~~

3383 proposals, the amount established in accordance with Subsection (2).]

3384 [~~(2) The board shall make rules, in accordance with Title 63G, Chapter 3, Utah~~

3385 ~~Administrative Rulemaking Act, that establish:]~~

3386 [~~(a) circumstances and procedures under which the requirement for paying a security~~

3387 ~~deposit or posting a bond may be waived or reduced on grounds, including:]~~

3388 [~~(i) that the person filing the appeal is impecunious;~~

3389 [~~(ii) circumstances where certain small purchases are involved; or]~~

3390 [~~(iii) other grounds determined by the Division of Purchasing and General Services to~~

3391 ~~be appropriate; and]~~

3392 [~~(b) the method used to determine:]~~

3393 [~~(i) the estimated contract cost described in Subsections (1)(c)(ii) and (1)(d)(ii); and]~~

3394 [~~(ii) the amount described in Subsection (1)(e).]~~

3395 [~~(3) The chair of the board shall dismiss a protest filed under Section ~~63G-6a-1702~~ if~~

3396 ~~the actual or prospective bidder, offeror, or contractor fails to timely pay the security deposit or~~

3397 ~~post the bond required under Subsection (1).]~~

3398 (B) the total budget for the procurement item over the entire term of the contract,

3399 excluding any renewal period, if opened cost proposals are based on unit or rate pricing; or

3400 (C) if the contract is being reissued, the historical usage and amount spent on the

3401 contract over the life of the contract that is being reissued; or

3402 (b) \$20,000, for an appeal:

3403 (i) relating to any type of procurement process other than an invitation for bids or

3404 request for proposals;

3405 (ii) relating to an invitation for bids or request for proposals, if the estimated total

3406 contract value cannot be determined; or

3407 (iii) of a debarment or suspension.

3408 [~~(4)~~ (2) The [~~chair of the board~~] protest officer shall:

3409 (a) retain the security deposit or bond until the protest and any appeal of the protest

3410 decision is final;

3411 (b) as it relates to a security deposit:

3412 (i) deposit the security deposit into an interest-bearing account; and

3413 (ii) after any appeal of the protest decision becomes final, return the security deposit

3414 and the interest it accrues to the person who paid the security deposit, unless the security  
 3415 deposit is forfeited to the General Fund under Subsection ~~[(5)]~~ (3); and

3416 (c) as it relates to a bond:

3417 (i) retain the bond until the protest and any appeal of the protest decision becomes  
 3418 final; and

3419 (ii) after the protest and any appeal of the protest decision becomes final, return the  
 3420 bond to the person who posted the bond, unless the bond is forfeited to the General Fund under  
 3421 Subsection ~~[(5)]~~ (3).

3422 ~~[(5)]~~ (3) A security deposit that is paid, or a bond that is posted, under this section shall  
 3423 forfeit to the General Fund if:

3424 (a) the person who paid the security deposit or posted the bond fails to ultimately  
 3425 prevail on appeal; and

3426 (b) the procurement appeals panel finds that the protest or appeal is frivolous or that its  
 3427 primary purpose is to harass or cause a delay.

3428 Section 60. Section **63G-6a-1706** is amended to read:

3429 **63G-6a-1706. Dismissal of an appeal not filed in compliance with requirements.**

3430 (1) The chair of the board shall dismiss an appeal filed under Section [63G-6a-1702](#) if  
 3431 the person filing the appeal fails to comply with any of the requirements of Subsection  
 3432 [63G-6a-1702](#)(2) or Section [63G-6a-1703](#).

3433 (2) A procurement appeals panel may dismiss an appeal that is assigned to the  
 3434 procurement appeals panel if the appeal is not filed in accordance with the requirements of this  
 3435 chapter.

3436 Section 61. Section **63G-6a-1802** is amended to read:

3437 **63G-6a-1802. Appeal to Utah Court of Appeals -- Jurisdiction of district court.**

3438 ~~[(1)(a) Subject to Subsection (2), a person who receives an adverse decision, or a~~  
 3439 ~~procurement unit, may appeal a decision of a procurement appeals panel to the Utah Court of~~  
 3440 ~~Appeals within seven days after the day on which the decision is issued.]~~

3441 ~~[(b) A person who receives an adverse decision in a protest relating to a legislative~~  
 3442 ~~procurement unit, a judicial procurement unit, a local government procurement unit, or a public~~  
 3443 ~~transit district may appeal the decision to the Utah Court of Appeals within seven days after the~~  
 3444 ~~day on which the decision is issued.]~~

3445 (1) (a) As provided in this part:

3446 (i) a person may appeal a dismissal of an appeal by the board chair under Subsection  
3447 63G-6a-1706(1);

3448 (ii) a person who receives an adverse decision by a procurement appeals panel may  
3449 appeal that decision;

3450 (iii) subject to Subsection (2), a procurement unit, other than a legislative procurement  
3451 unit, a judicial procurement unit, a local government procurement unit, or a public transit  
3452 district, may appeal an adverse decision by a procurement appeals panel;

3453 (iv) a person who receives an adverse decision in a protest relating to a legislative  
3454 procurement unit, a judicial procurement unit, a local government procurement unit, or a public  
3455 transit district may appeal that decision; and

3456 (v) a person who is debarred or suspended under Section 63G-6a-904 by a legislative  
3457 procurement unit, a judicial procurement unit, a local government procurement unit, or a public  
3458 transit district may appeal the debarment or suspension.

3459 (b) A person seeking to appeal a dismissal, decision, or debarment or suspension under  
3460 Subsection (1)(a) shall file a notice of appeal with the Utah Court of Appeals within seven days  
3461 after the dismissal, decision, or debarment or suspension.

3462 (2) A procurement unit may not appeal the decision of a procurement appeals panel,  
3463 unless the appeal is:

3464 (a) recommended by the protest officer involved; and

3465 (b) except for a procurement unit that is not represented by the attorney general's  
3466 office, approved by the attorney general.

3467 (3) A person appealing a dismissal, decision, protest, debarment, or suspension under  
3468 this section may not base the appeal on a ground not specified in the proceeding from which  
3469 the appeal is taken.

3470 ~~[(3)]~~ (4) The Utah Court of Appeals:

3471 (a) shall consider the appeal as an appellate court;

3472 (b) may not hear the matter as a trial de novo; and

3473 (c) may not overturn a finding ~~[or]~~, dismissal, decision ~~[of the protest officer or a~~  
3474 ~~procurement appeals panel]~~, or debarment or suspension, unless the finding ~~[or]~~, dismissal,  
3475 decision, or debarment or suspension is arbitrary and capricious or clearly erroneous.

3476 ~~[(4)]~~ (5) The Utah Court of Appeals is encouraged to:

3477 (a) give an appeal made under ~~[Subsection (1)]~~ this section priority; and

3478 (b) consider the appeal and render a decision in an expeditious manner.

3479 ~~[(5) The district court shall have original jurisdiction in a cause of action between a~~  
3480 ~~contractor and a procurement unit for any cause of action that arises under, or in relation to, an~~  
3481 ~~existing contract between the contractor and a procurement unit.]~~

3482 Section 62. Section **63G-6a-1902** is amended to read:

3483 **63G-6a-1902. Requirement to exhaust administrative remedies -- Protests and**  
3484 **appeals.**

3485 (1) A person may not challenge a procurement, a procurement process, the award of a  
3486 contract relating to a procurement, a debarment, or a suspension, in a court, before an  
3487 administrative officer or body, or in any other forum other than the forum permitted in this  
3488 chapter.

3489 (2) A person who desires to challenge a procurement, a procurement process, the award  
3490 of a contract relating to a procurement, a debarment, or a suspension, shall bring the challenge,  
3491 in accordance with the requirements of this chapter~~[-, by timely filing:].~~

3492 ~~[(a) a protest in accordance with Section **63G-6a-1602**;~~

3493 ~~[(b) any appeal of the protest decision involving a procurement unit, other than a~~  
3494 ~~legislative procurement unit, a judicial procurement unit, a local government procurement unit,~~  
3495 ~~or a public transit district, in accordance with Section **63G-6a-1702**, and]~~

3496 ~~[(c) any appeal from a procurement appeals panel, or from a protest decision of a~~  
3497 ~~legislative procurement unit, a judicial procurement unit, a local government procurement unit,~~  
3498 ~~or a public transit district, in accordance with Section **63G-6a-1802**.]~~

3499 ~~[(3) A person who files a protest or appeal under this chapter is limited to protesting or~~  
3500 ~~appealing on the grounds specified in the filing document described in Subsection~~  
3501 ~~**63G-6a-1602**.]~~

3502 ~~[(4)]~~ (3) In hearing a protest or an appeal under this chapter relating to an expenditure  
3503 of federal assistance, federal contract funds, or a federal grant, the person who hears the appeal  
3504 shall ensure compliance with federal law and regulations relating to the expenditure.

3505 Section 63. Section **63G-6a-1903** is amended to read:

3506 **63G-6a-1903. Effect of timely protest or appeal.**

3507 ~~[In the event of a timely protest under Subsection 63G-6a-1602(1), or a timely appeal of~~  
 3508 ~~the protest under Section 63G-6a-1702 or 63G-6a-1802, a]~~

3509 A procurement unit, other than a legislative procurement unit, a judicial procurement  
 3510 unit, a local government procurement unit, or a public transit district, may not proceed further  
 3511 with ~~the~~ a solicitation or with the award of ~~the~~ a contract ~~until~~:

3512 (1) during the pendency of a timely:

3513 (a) protest under Subsection 63G-6a-1602(1);

3514 (b) appeal of a protest under Section 63G-6a-1702; or

3515 (c) appeal of a procurement appeals panel decision under Section 63G-6a-1802; and

3516 (2) until:

3517 ~~[(1)]~~ (a) all administrative and judicial remedies are exhausted;

3518 ~~[(2)]~~ (b) for a protest under Section 63G-6a-1602 or an appeal under Section

3519 63G-6a-1702:

3520 ~~[(a)]~~ (i) the chief procurement officer, after consultation with the attorney general's  
 3521 office and the head of the using agency, makes a written determination that award of the  
 3522 contract without delay is ~~[necessary to protect substantial interests]~~ in the best interest of the  
 3523 procurement unit or the state;

3524 ~~[(b)]~~ (ii) the head of ~~[the purchasing agency]~~ a procurement unit with independent  
 3525 procurement authority, after consultation with the procurement unit's attorney ~~[general's office]~~,  
 3526 makes a written determination that award of the contract without delay is ~~[necessary to protect~~  
 3527 substantial interests] in the best interest of the procurement unit or the state; or

3528 ~~[(c)]~~ (iii) for a procurement unit that is not represented by the attorney general's office,  
 3529 the procurement unit, after consulting with the attorney for the procurement unit, makes a  
 3530 written determination that award of the contract without delay is ~~[necessary to protect~~  
 3531 substantial interests] in the best interest of the procurement unit or the state; or

3532 ~~[(3)]~~ (c) for an appeal under Section 63G-6a-1802, or an appeal to a higher court than  
 3533 district court:

3534 ~~[(a)]~~ (i) the chief procurement officer, after consultation with the attorney general's  
 3535 office and the head of the using agency, makes a written determination that award of the  
 3536 contract without delay is in the best interest of the procurement unit or the state;

3537 ~~[(b)]~~ (ii) the head of ~~[the purchasing agency]~~ a procurement unit with independent

3538 procurement authority, after consultation with the procurement unit's attorney [~~general's office~~],  
3539 makes a written determination that award of the contract without delay is in the best interest of  
3540 the procurement unit or the state; or

3541 [~~(c)~~] (iii) for a procurement unit that is not represented by the attorney general's office,  
3542 the procurement unit, after consulting with the attorney for the procurement unit, makes a  
3543 written determination that award of the contract without delay is necessary to protect the best  
3544 interest of the procurement unit or the state.

3545 Section 64. Section **63G-6a-1904** is amended to read:

3546 **63G-6a-1904. Costs to or against protestor.**

3547 (1) When a protest is sustained administratively or upon administrative or judicial  
3548 review and the protesting bidder or offeror should have been awarded the contract under the  
3549 solicitation but is not, the protestor shall be entitled to the following relief as a claim against  
3550 the [~~state~~] procurement unit:

3551 (a) the reasonable costs incurred in connection with the solicitation, including bid  
3552 preparation and appeal costs; and

3553 (b) any equitable relief determined to be appropriate by the reviewing administrative or  
3554 judicial body.

3555 (2) When a protest is not sustained by a procurement appeals panel, the protestor shall  
3556 reimburse the issuing procurement unit for expenses incurred in defending the appeal,  
3557 including personnel costs, attorney fees, other legal costs, expenses incurred by the attorney  
3558 general's office, the per diem and expenses paid by the issuing procurement unit to witnesses or  
3559 appeals panel members, and any additional expenses incurred by the staff of the issuing  
3560 procurement unit who have provided materials and administrative services to the procurement  
3561 appeals panel for that case.

3562 (3) The provisions of Title 63G, Chapter 7, Part 4, Notice of Claim Against a  
3563 Governmental Entity or a Government Employee, and Section **63G-7-601** do not apply to  
3564 actions brought under this chapter by an aggrieved party for equitable relief or reasonable costs  
3565 incurred in preparing or appealing an unsuccessful bid or offer.

3566 Section 65. Section **63G-6a-1906** is amended to read:

3567 **63G-6a-1906. Effect of prior determination by agents of procurement unit.**

3568 In any judicial action under Section **63G-6a-1802**, determinations by employees, agents,

3569 or other persons appointed by the [state] procurement unit shall be final and conclusive only as  
3570 provided in Sections 63G-6a-1911, 63G-6a-1603, and 63G-6a-1705.

3571 Section 66. Section **63G-6a-1907** is amended to read:

3572 **63G-6a-1907. Effect of violation found after award of contract.**

3573 (1) If after award of a contract it is determined administratively or upon administrative  
3574 or judicial review that a procurement or award of a contract is in violation of law:

3575 (a) (i) if the person awarded the contract did not act fraudulently or in bad faith:

3576 (A) the contract may be ratified and affirmed if it is in the best interests of the [state]  
3577 procurement unit; or

3578 (B) the contract may be terminated; and

3579 (ii) the person awarded the contract shall be compensated for the actual expenses  
3580 reasonably incurred under the contract before the termination, plus a reasonable profit; or

3581 (b) if the person awarded the contract acted fraudulently or in bad faith:

3582 (i) the contract may be declared null and void; or

3583 (ii) the contract may be ratified and affirmed if it is in the best interests of the [state]  
3584 procurement unit, without prejudice to the [state's] procurement unit's rights to any appropriate  
3585 damages.

3586 (2) Under no circumstances is a person entitled to consequential damages in relation to  
3587 a solicitation or award of a contract under this chapter, including consequential damages for  
3588 lost profits, loss of business opportunities, or damage to reputation.

3589 Section 67. Section **63G-6a-1910** is amended to read:

3590 **63G-6a-1910. Interest rates.**

3591 (1) In controversies between [~~the state~~] a procurement unit and [~~contractors~~] a  
3592 contractor under this chapter, interest on amounts ultimately determined to be due to a  
3593 contractor or the [state] procurement unit are payable at the rate applicable to judgments from  
3594 the date the claim arose through the date of decision or judgment, whichever is later.

3595 (2) Unless otherwise specified in a lawful contract between a procurement unit and the  
3596 person making a bond claim against the procurement unit, the interest rate applicable to the  
3597 bond claim is the rate described in Subsection 15-1-1(2).

3598 (3) This section does not apply to public assistance benefits programs.

3599 Section 68. Section **63G-6a-2103** is amended to read:



3600 **63G-6a-2103. Purchases between procurement units.**

3601 (1) ~~[Upon request, a]~~ (a) A procurement unit may ~~[make services available to],~~  
 3602 without using a standard procurement process, purchase from another procurement unit~~;~~  
 3603 including:] a procurement item that the other procurement unit itself produces or provides.

3604 ~~[(a) standard forms;]~~

3605 ~~[(b) printed manuals;]~~

3606 ~~[(c) qualified products lists;]~~

3607 ~~[(d) source information;]~~

3608 ~~[(e) common use commodities listings;]~~

3609 ~~[(f) supplier prequalification information;]~~

3610 ~~[(g) supplier performance ratings;]~~

3611 ~~[(h) debarred and suspended bidders lists;]~~

3612 ~~[(i) forms for invitation for bids, requests for proposals, instructions to bidders, general~~  
 3613 ~~contract provisions, and contract forms; or]~~

3614 ~~[(j) contracts or published summaries of contracts, including price and time of delivery~~  
 3615 ~~information.]~~

3616 [(2) A procurement unit may provide technical services to another procurement unit,  
 3617 including:]

3618 ~~[(a) development of specifications;]~~

3619 ~~[(b) development of quality assurance test methods, including receiving, inspection,~~  
 3620 ~~and acceptance procedures;]~~

3621 ~~[(c) use of testing and inspection facilities; or]~~

3622 ~~[(d) use of personnel training programs.]~~

3623 ~~[(3) Procurement units may enter into contractual arrangements and]~~

3624 (b) Subject to Section [63G-6a-2105](#), Subsection (1)(a) does not authorize a  
 3625 procurement unit to purchase from another procurement unit a procurement item that the other  
 3626 procurement unit acquires by a procurement.

3627 (2) A procurement unit may publish a schedule of costs or fees for ~~[the services~~  
 3628 ~~provided under Subsections (1) and (2)]~~ procurement items available for purchase by another  
 3629 procurement unit.

3630 Section 69. Section **63G-6a-2105** is amended to read:

3631           **63G-6a-2105. Participation of a public entity or a procurement unit in**  
3632 **agreements or contracts of procurement units -- Cooperative purchasing -- State**  
3633 **cooperative contracts.**

3634           (1) The chief procurement officer may, in accordance with the requirements of this  
3635 chapter, enter into a cooperative procurement, and a contract that is awarded as a result of a  
3636 cooperative procurement, with:

3637           (a) another state;

3638           ~~[(b) an external procurement unit; or]~~

3639           (b) a cooperative purchasing organization; or

3640           (c) a public entity ~~[in Utah]~~ inside or outside ~~[of Utah]~~ the state.

3641           (2) A public entity, nonprofit organization, or, as permitted under federal law, an  
3642 agency of the federal government, may obtain a procurement item from a state cooperative  
3643 contract or a contract awarded by the chief procurement officer under Subsection (1), without  
3644 signing a participating addendum if the ~~[quote, invitation for bids, or request for proposals~~  
3645 ~~used]~~ solicitation issued by the chief procurement officer to obtain the contract includes a  
3646 statement indicating that the resulting contract will be issued ~~[on behalf of a]~~ for the benefit of  
3647 public [entity in Utah] entities and, as applicable, nonprofit organizations and agencies of the  
3648 federal government.

3649           (3) Except as provided in Section [63G-6a-408](#), or as otherwise provided in this chapter,  
3650 an executive branch procurement unit may not obtain a procurement item from a source other  
3651 than a state cooperative contract or a contract awarded by the chief procurement officer under  
3652 Subsection (1), if the procurement item is available under a state cooperative contract or a  
3653 contract awarded by the chief procurement officer under Subsection (1).

3654           (4) A Utah procurement unit may:

3655           (a) contract with the federal government without going through a standard procurement  
3656 process or an exception to a standard procurement process, described in Part 8, Exceptions to  
3657 Procurement Requirements, if the procurement item obtained under the contract is provided:

3658           (i) directly by the federal government and not by a person contracting with the federal  
3659 government; or

3660           (ii) by a person under contract with the federal government that obtained the contract in  
3661 a manner that substantially complies with the provisions of this chapter;

3662 (b) participate in, sponsor, conduct, or administer a cooperative procurement with  
3663 another Utah procurement unit or another public entity in Utah, if:

3664 (i) each party unit involved in the cooperative procurement enters into an agreement  
3665 describing the rights and duties of each party;

3666 (ii) the procurement is conducted, and the contract awarded, in accordance with the  
3667 requirements of this chapter;

3668 (iii) the [~~request for quotes, the invitation for bids, or the request for proposals~~]  
3669 solicitation:

3670 (A) clearly indicates that the procurement is a cooperative procurement; and  
3671 (B) identifies each party that may purchase under the resulting contract; and  
3672 (iv) each party involved in the cooperative procurement signs a participating addendum  
3673 describing its rights and obligations in relation to the resulting contract; or

3674 (c) purchase under, or otherwise participate in, an agreement or contract of [~~an external~~  
3675 ~~procurement unit~~] a cooperative purchasing organization, if:

3676 (i) each party involved in the cooperative procurement enters into an agreement  
3677 describing the rights and duties of each party;

3678 (ii) the procurement was conducted in accordance with the requirements of this  
3679 chapter;

3680 (iii) the [~~request for quotes, the invitation for bids, or the request for proposals~~]  
3681 solicitation:

3682 (A) clearly indicates that the procurement is a cooperative procurement; and  
3683 (B) identifies each party that may purchase under the resulting contract; and  
3684 (iv) each party involved in the cooperative procurement signs a participating addendum  
3685 describing its rights and obligations in relation to the resulting contract.

3686 (5) A procurement unit may not obtain a procurement item under a contract that results  
3687 from a cooperative procurement described in Subsection (4), if the procurement unit:

3688 (a) is not identified under Subsection (4)(b)(iii)(B) or (4)(c)(iii)(B); or  
3689 (b) does not sign a participating addendum to the contract as required by this section.

3690 (6) A procurement unit, other than a legislative procurement unit or a judicial  
3691 procurement unit, may not obtain a procurement item under a contract held by the United  
3692 States General Services Administration, unless, based upon documentation provided by the

3693 procurement unit, the Director of the State Division of Purchasing and General Services  
3694 determines in writing that the United States General Services Administration procured the  
3695 contract in a manner that substantially complies with the provisions of this chapter.

3696 (7) In addition to any other authority under this section, the chief procurement officer  
3697 may, in accordance with the requirements of this chapter, award a contract for a procurement  
3698 item to be provided within a specific geographical region within the state:

3699 (a) despite a state cooperative contract for the same procurement item; and

3700 (b) if awarding the contract on a regional basis is practicable.

3701 Section 70. Section **63G-6a-2401** is enacted to read:

3702 **Part 24. Unlawful Conduct and Penalties**

3703 **63G-6a-2401. Title.**

3704 This part is known as "Unlawful Conduct and Penalties."

3705 Section 71. Section **63G-6a-2402** is enacted to read:

3706 **63G-6a-2402. Definitions.**

3707 As used in this part:

3708 (1) "Contract administration professional":

3709 (a) means an individual under contract with a procurement unit, or an individual  
3710 employed by a person under contract with a procurement unit, to:

3711 (i) assist in developing a solicitation or grant;

3712 (ii) assist in the procurement process; or

3713 (iii) supervise or oversee, or assist in supervising or overseeing, the administration or  
3714 management of a contract or grant; and

3715 (b) does not include an employee of the procurement unit.

3716 (2) "Contribution":

3717 (a) means a voluntary gift or donation of money, service, or anything else of value, to a  
3718 public entity for the public entity's use and not for the primary use of an individual employed  
3719 by the public entity; and

3720 (b) includes:

3721 (i) a philanthropic donation;

3722 (ii) admission to a seminar, vendor fair, charitable event, fundraising event, or similar  
3723 event that relates to the function of the public entity;

3724 (iii) the purchase of a booth or other display space at an event sponsored by the public  
3725 entity or a group of which the public entity is a member; and

3726 (iv) the sponsorship of an event that is organized by the public entity.

3727 (3) "Family member" means a father, mother, husband, wife, son, daughter, sister,  
3728 brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law,  
3729 sister-in-law, son-in-law, or daughter-in-law.

3730 (4) "Governing body" means an administrative, advisory, executive, or legislative body  
3731 of a public entity.

3732 (5) "Gratuity":

3733 (a) means anything of value given:

3734 (i) without anything provided in exchange; or

3735 (ii) in excess of the market value of that which is provided in exchange;

3736 (b) includes:

3737 (i) a gift or favor;

3738 (ii) money;

3739 (iii) a loan at an interest rate below the market rate or with terms that are more  
3740 advantageous to the borrower than terms offered generally on the market;

3741 (iv) anything of value provided with an award, other than a certificate, plaque, or  
3742 trophy;

3743 (v) employment;

3744 (vi) admission to an event;

3745 (vii) a meal, lodging, or travel;

3746 (viii) entertainment for which a charge is normally made; and

3747 (ix) a raffle, drawing for a prize, or lottery; and

3748 (c) does not include:

3749 (i) an item, including a meal in association with a training seminar, that is:

3750 (A) included in a contract or grant; or

3751 (B) provided in the proper performance of a requirement of a contract or grant;

3752 (ii) an item requested to evaluate properly the award of a contract or grant;

3753 (iii) a rebate, coupon, discount, airline travel award, dividend, or other offering  
3754 included in the price of a procurement item;

3755 (iv) a meal provided by an organization or association, including a professional or  
3756 educational association, an association of vendors, or an association comprised of public  
3757 agencies or public entities, that does not, as an organization or association, respond to  
3758 solicitations;

3759 (v) a product sample submitted to a public entity to assist the public entity to evaluate a  
3760 solicitation;

3761 (vi) a political campaign contribution;

3762 (vii) an item generally available to the public; or

3763 (viii) anything of value that one public agency provides to another public agency.

3764 (6) "Hospitality gift":

3765 (a) means a token gift of minimal value, including a pen, pencil, stationery, toy, pin,  
3766 trinket, snack, beverage, or appetizer, given for promotional or hospitality purposes; and

3767 (b) does not include money, a meal, admission to an event for which a charge is  
3768 normally made, entertainment for which a charge is normally made, travel, or lodging.

3769 (7) "Kickback":

3770 (a) means a negotiated bribe provided in connection with a procurement or the  
3771 administration of a contract or grant; and

3772 (b) does not include anything listed in Subsection (5)(c).

3773 (8) "Procurement" has the same meaning as defined in Section [63G-6a-103](#), but also  
3774 includes the awarding of a grant.

3775 (9) "Procurement professional":

3776 (a) means an individual who:

3777 (i) by title or primary responsibility, has procurement decision making authority; and

3778 (ii) is assigned to be engaged in, or is engaged in:

3779 (A) the procurement process; or

3780 (B) the process of administering a contract or grant, including enforcing contract or  
3781 grant compliance, approving contract or grant payments, or approving contract or grant change  
3782 orders or amendments; and

3783 (b) excludes:

3784 (i) any individual who, by title or primary responsibility, does not have procurement  
3785 decision making authority;

- 3786 (ii) an individual holding an elective office;  
3787 (iii) a member of a governing body;  
3788 (iv) a chief executive of a public entity or a chief assistant or deputy of the chief  
3789 executive, if the chief executive, chief assistant, or deputy, respectively, has a variety of duties  
3790 and responsibilities beyond the management of the procurement process or the contract or grant  
3791 administration process;  
3792 (v) the superintendent, business administrator, principal, or vice principal of a school  
3793 district or charter school, or the chief assistant or deputy of the superintendent, business  
3794 administrator, principal, or vice principal;  
3795 (vi) a university or college president, vice president, business administrator, or dean;  
3796 (vii) a chief executive of a local district, as defined in Section 17B-1-102, special  
3797 service district, as defined in Section 17D-1-102, or a political subdivision created under Title  
3798 11, Chapter 13, Interlocal Cooperation Act;  
3799 (viii) an employee of a public entity with:  
3800 (A) an annual budget of \$1,000,000 or less; or  
3801 (B) no more than four full-time employees; and  
3802 (ix) an executive director or director of an executive branch procurement unit who:  
3803 (A) by title or primary responsibility, does not have procurement decision making  
3804 authority; and  
3805 (B) is not assigned to engage in, and is not engaged in, the procurement process.  
3806 (10) "Public agency" has the same meaning as defined in Section 11-13-103, but also  
3807 includes all officials, employees, and official representatives of a public agency, as defined in  
3808 Section 11-13-103.  
3809 Section 72. Section **63G-6a-2403** is enacted to read:  
3810 **63G-6a-2403. Applicability.**  
3811 (1) This part applies to each public entity.  
3812 (2) A procurement professional is subject to this part at all times during:  
3813 (a) the procurement process; and  
3814 (b) the administration of a contract or grant.  
3815 (3) A contract administration professional is subject to this part at all times during the  
3816 period the contract administration professional is:

3817 (a) under contract with a procurement unit; and

3818 (b) involved in:

3819 (i) the procurement process; or

3820 (ii) the administration of a contract or grant.

3821 (4) This part does not apply to:

3822 (a) an individual described in Subsection [63G-6a-2402\(9\)\(b\)](#); or

3823 (b) any individual other than a procurement professional or contract administration  
3824 professional.

3825 (5) The other subsections of this section do not affect the applicability or effect of any  
3826 other ethics, bribery, or other law.

3827 Section 73. Section **63G-6a-2404** is enacted to read:

3828 **63G-6a-2404. Unlawful conduct -- Exceptions -- Classification of offenses.**

3829 (1) (a) It is unlawful for a person who has or is seeking a contract with or a grant from  
3830 a public entity knowingly to give, or offer, promise, or pledge to give, a gratuity or kickback to:

3831 (i) the public entity;

3832 (ii) a procurement professional or contract administration professional; or

3833 (iii) an individual who the person knows is a family member of an individual described  
3834 in Subsection (1)(a)(ii).

3835 (b) Notwithstanding Subsection (1)(a), it is not unlawful for a public agency to make a  
3836 contribution to another public agency.

3837 (c) A person is not guilty of unlawful conduct under Subsection (1)(a) for:

3838 (i) giving or offering, promising, or pledging to give a contribution to a public entity,  
3839 unless done with the intent to induce the public entity, in exchange, to:

3840 (A) award a contract or grant;

3841 (B) make a procurement decision; or

3842 (C) take an action relating to the administration of a contract or grant; or

3843 (ii) giving or offering, promising, or pledging to give something of value to an  
3844 organization to which a procurement professional or contract administration professional

3845 belongs, unless done with the intent to induce a public entity, in exchange, to:

3846 (A) award a contract or grant;

3847 (B) make a procurement decision; or



3848 (C) take an action relating to the administration of a contract or grant.

3849 (2) (a) It is unlawful for a procurement professional or contract administration  
3850 professional, or a family member of either, knowingly to receive or accept, offer or agree to  
3851 receive or accept, or ask for a promise or pledge of, a gratuity or kickback from a person who  
3852 has or is seeking a contract with or a grant from a public entity.

3853 (b) An individual is not guilty of unlawful conduct under Subsection (2)(a) for  
3854 receiving or accepting, offering or agreeing to receive or accept, or asking for a promise or  
3855 pledge of a contribution on behalf of a public entity, unless done with the intent that the public  
3856 entity, in exchange:

3857 (i) award a contract or grant;

3858 (ii) make a procurement decision; or

3859 (iii) take an action relating to the administration of a contract or grant.

3860 (3) Notwithstanding Subsections (1) and (2), it is not unlawful for a person to give or  
3861 receive, offer to give or receive, or promise or pledge to give or ask for a promise or pledge of,  
3862 a hospitality gift, if:

3863 (a) the total value of the hospitality gift is less than \$10; and

3864 (b) the aggregate value of all hospitality gifts from the person to the recipient in a  
3865 calendar year is less than \$50.

3866 (4) A person who engages in the conduct made unlawful under Subsection (1) or (2) is  
3867 guilty of:

3868 (a) a second degree felony, if the total value of the gratuity or kickback is \$1,000 or  
3869 more;

3870 (b) a third degree felony, if the total value of the gratuity or kickback is \$250 or more  
3871 but less than \$1,000;

3872 (c) a class A misdemeanor, if the total value of the gratuity or kickback is \$100 or more  
3873 but less than \$250; and

3874 (d) a class B misdemeanor, if the total value of the gratuity or kickback is less than  
3875 \$100.

3876 (5) The criminal sanctions described in Subsection (4) do not preclude the imposition  
3877 of other penalties for conduct made unlawful under this part, in accordance with other  
3878 applicable law, including:

- 3879 (a) dismissal from employment or other disciplinary action;
- 3880 (b) for an elected officer listed in Section 77-6-1, removal from office as provided in
- 3881 Title 77, Chapter 6, Removal by Judicial Proceedings;
- 3882 (c) requiring the public officer or employee to return the value of the unlawful gratuity
- 3883 or kickback; and
- 3884 (d) any other civil penalty provided by law.

3885 Section 74. Section **63G-6a-2405** is enacted to read:

3886 **63G-6a-2405. Discretion to declare contract or grant void -- Limitations.**

3887 (1) Subject to Subsection (2), the governing body or chief executive officer of a public

3888 entity that awards a contract or grant to a person who engages in conduct made unlawful under

3889 this part may, in the sole discretion of the governing body or chief executive officer, declare the

3890 contract or grant to be void and unenforceable, unless:

3891 (a) the contract or grant relates to the issuance of a bond or other obligation and the

3892 bond has been issued or obligation incurred; or

3893 (b) a third party has substantially changed its position in reliance upon the contract or

3894 grant.

3895 (2) Declaring a contract or grant void under Subsection (1) does not affect the

3896 obligation of a procurement unit to pay for a contractor's proper performance completed under

3897 the contract or grant or the value the contractor provides to the public entity under the contract

3898 or grant before the contract or grant is declared void.

3899 (3) Subsection (1) applies only to a procurement with respect to which:

3900 (a) public notice is provided on or after July 1, 2014, if public notice of the

3901 procurement is required; or

3902 (b) the initial contact between the public entity and the potential contractor, for

3903 purposes of the procurement, occurs on or after July 1, 2014, if public notice of the

3904 procurement is not required.

3905 Section 75. Section **63G-6a-2406** is enacted to read:

3906 **63G-6a-2406. Authority of conducting procurement unit with respect to**

3907 **evaluation committee.**

3908 Nothing in this part restricts a conducting procurement unit from:

3909 (1) requiring an evaluation committee member to disclose a conflict of interest; or

3910 (2) removing an evaluation committee member for having a conflict of interest.

3911 Section 76. Section **63G-6a-2407** is enacted to read:

3912 **63G-6a-2407. Duty to report unlawful conduct.**

3913 (1) A procurement professional shall notify the attorney general or other appropriate  
3914 prosecuting attorney if the procurement professional has actual knowledge that a person has  
3915 engaged in:

3916 (a) conduct made unlawful under this part; or

3917 (b) conduct, including bid rigging, improperly steering a contract to a favored vendor,  
3918 exercising undue influence on an individual involved in the procurement process, or  
3919 participating in collusion or other anticompetitive practices, made unlawful under other  
3920 applicable law.

3921 (2) A procurement professional who fails to comply with the requirement of  
3922 Subsection (1) is subject to any applicable disciplinary action or civil penalty identified in  
3923 Subsection [63G-6a-2404\(5\)](#).

3924 Section 77. Section **67-16-4** is amended to read:

3925 **67-16-4. Improperly disclosing or using private, controlled, or protected**  
3926 **information -- Using position to secure privileges or exemptions -- Accepting employment**  
3927 **which would impair independence of judgment or ethical performance -- Exception.**

3928 (1) Except as provided in Subsection (3), it is an offense for a public officer, public  
3929 employee, or legislator to:

3930 (a) accept employment or engage in any business or professional activity that he might  
3931 reasonably expect would require or induce him to improperly disclose controlled information  
3932 that he has gained by reason of his official position;

3933 (b) disclose or improperly use controlled, private, or protected information acquired by  
3934 reason of his official position or in the course of official duties in order to further substantially  
3935 the officer's or employee's personal economic interest or to secure special privileges or  
3936 exemptions for himself or others;

3937 (c) use or attempt to use his official position to:

3938 (i) further substantially the officer's or employee's personal economic interest; or

3939 (ii) secure special privileges or exemptions for himself or others;

3940 (d) accept other employment that he might expect would impair his independence of

3941 judgment in the performance of his public duties; or

3942 (e) accept other employment that he might expect would interfere with the ethical  
3943 performance of his public duties.

3944 (2) (a) Subsection (1) does not apply to the provision of education-related services to  
3945 public school students by public education employees acting outside their regular employment.

3946 (b) The conduct referred to in Subsection (2)(a) is subject to Section [53A-1-402.5](#).

3947 (3) This section does not apply to a public officer, public employee, or legislator who  
3948 engages in conduct that constitutes a violation of this section to the extent that the public  
3949 officer, public employee, or legislator is chargeable, for the same conduct, under Section  
3950 [~~63G-6a-2304.5~~] [63G-6a-2404](#) or Section [76-8-105](#).

3951 Section 78. Section [67-16-5](#) is amended to read:

3952 **[67-16-5. Accepting gift, compensation, or loan -- When prohibited.](#)**

3953 (1) As used in this section, "economic benefit tantamount to a gift" includes:

3954 (a) a loan at an interest rate that is substantially lower than the commercial rate then  
3955 currently prevalent for similar loans; and

3956 (b) compensation received for private services rendered at a rate substantially  
3957 exceeding the fair market value of the services.

3958 (2) Except as provided in Subsection (4), it is an offense for a public officer or public  
3959 employee to knowingly receive, accept, take, seek, or solicit, directly or indirectly for himself  
3960 or another a gift of substantial value or a substantial economic benefit tantamount to a gift:

3961 (a) that would tend improperly to influence a reasonable person in the person's position  
3962 to depart from the faithful and impartial discharge of the person's public duties;

3963 (b) that the public officer or public employee knows or that a reasonable person in that  
3964 position should know under the circumstances is primarily for the purpose of rewarding the  
3965 public officer or public employee for official action taken; or

3966 (c) if the public officer or public employee recently has been, is now, or in the near  
3967 future may be involved in any governmental action directly affecting the donor or lender,  
3968 unless a disclosure of the gift, compensation, or loan and other relevant information has been  
3969 made in the manner provided in Section [67-16-6](#).

3970 (3) Subsection (2) does not apply to:

3971 (a) an occasional nonpecuniary gift, having a value of not in excess of \$50;

3972 (b) an award publicly presented in recognition of public services;

3973 (c) any bona fide loan made in the ordinary course of business; or

3974 (d) a political campaign contribution.

3975 (4) This section does not apply to a public officer or public employee who engages in  
3976 conduct that constitutes a violation of this section to the extent that the public officer or public  
3977 employee is chargeable, for the same conduct, under Section [~~63G-6a-2304.5~~] 63G-6a-2404 or  
3978 Section 76-8-105.

3979 Section 79. Section **67-16-5.3** is amended to read:

3980 **67-16-5.3. Requiring donation, payment, or service to government agency in**  
3981 **exchange for approval -- When prohibited.**

3982 (1) Except as provided in Subsection (3), it is an offense for a public officer, public  
3983 employee, or legislator to demand from any person as a condition of granting any application or  
3984 request for a permit, approval, or other authorization, that the person donate personal property,  
3985 money, or services to any agency.

3986 (2) (a) Subsection (1) does not apply to any donation of property, funds, or services to  
3987 an agency that is:

3988 (i) expressly required by statute, ordinance, or agency rule;

3989 (ii) mutually agreed to between the applicant and the entity issuing the permit,  
3990 approval, or other authorization;

3991 (iii) made voluntarily by the applicant; or

3992 (iv) a condition of a consent decree, settlement agreement, or other binding instrument  
3993 entered into to resolve, in whole or in part, an actual or threatened agency enforcement action.

3994 (b) If a person donates property, funds, or services to an agency, the agency shall, as  
3995 part of the permit or other written authorization:

3996 (i) identify that a donation has been made;

3997 (ii) describe the donation;

3998 (iii) certify, in writing, that the donation was voluntary; and

3999 (iv) place that information in its files.

4000 (3) This section does not apply to a public officer, public employee, or legislator who  
4001 engages in conduct that constitutes a violation of this section to the extent that the public  
4002 officer, public employee, or legislator is chargeable, for the same conduct, under Section

4003 [~~63G-6a-2304.5~~] [63G-6a-2404](#) or Section [76-8-105](#).

4004 Section 80. Section **67-16-5.6** is amended to read:

4005 **67-16-5.6. Offering donation, payment, or service to government agency in**  
4006 **exchange for approval -- When prohibited.**

4007 (1) Except as provided in Subsection (3), it is an offense for any person to donate or  
4008 offer to donate personal property, money, or services to any agency on the condition that the  
4009 agency or any other agency approve any application or request for a permit, approval, or other  
4010 authorization.

4011 (2) (a) Subsection (1) does not apply to any donation of property, funds, or services to  
4012 an agency that is:

4013 (i) otherwise expressly required by statute, ordinance, or agency rule;

4014 (ii) mutually agreed to between the applicant and the entity issuing the permit,  
4015 approval, or other authorization;

4016 (iii) a condition of a consent decree, settlement agreement, or other binding instrument  
4017 entered into to resolve, in whole or in part, an actual or threatened agency enforcement action;  
4018 or

4019 (iv) made without condition.

4020 (b) The person making the donation of property, funds, or services shall include with  
4021 the donation a signed written statement certifying that the donation is made without condition.

4022 (c) The agency receiving the donation shall place the signed written statement in its  
4023 files.

4024 (3) This section does not apply to a person who engages in conduct that constitutes a  
4025 violation of this section to the extent that the person is chargeable, for the same conduct, under  
4026 Section [~~63G-6a-2304.5~~] [63G-6a-2404](#) or Section [76-8-105](#).

4027 Section 81. Section **67-16-6** is amended to read:

4028 **67-16-6. Receiving compensation for assistance in transaction involving an**  
4029 **agency -- Filing sworn statement.**

4030 (1) Except as provided in Subsection (5), it is an offense for a public officer or public  
4031 employee to receive or agree to receive compensation for assisting any person or business  
4032 entity in any transaction involving an agency unless the public officer or public employee files  
4033 a sworn, written statement containing the information required by Subsection (2) with:

- 4034 (a) the head of the officer or employee's own agency;
- 4035 (b) the agency head of the agency with which the transaction is being conducted; and
- 4036 (c) the state attorney general.

4037 (2) The statement shall contain:

- 4038 (a) the name and address of the public officer or public employee involved;
- 4039 (b) the name of the public officer's or public employee's agency;
- 4040 (c) the name and address of the person or business entity being or to be assisted; and
- 4041 (d) a brief description of:
  - 4042 (i) the transaction as to which service is rendered or is to be rendered; and
  - 4043 (ii) the nature of the service performed or to be performed.

4044 (3) The statement required to be filed under Subsection (1) shall be filed within 10  
4045 days after the date of any agreement between the public officer or public employee and the  
4046 person or business entity being assisted or the receipt of compensation, whichever is earlier.

4047 (4) The statement is public information and shall be available for examination by the  
4048 public.

4049 (5) This section does not apply to a public officer or public employee who engages in  
4050 conduct that constitutes a violation of this section to the extent that the public officer or public  
4051 employee is chargeable, for the same conduct, under Section [~~63G-6a-2304.5~~] 63G-6a-2404 or  
4052 Section 76-8-105.

4053 Section 82. **Repealer.**

4054 This bill repeals:

4055 Section 63G-6a-1803, **Statutes of limitations.**

4056 Section 63G-6a-1905, **Authority to resolve controversy between state and**  
4057 **contractor.**

4058 Section 63G-6a-2301, **Title.**

4059 Section 63G-6a-2302, **Duty to report factual information to attorney general.**

4060 Section 63G-6a-2304.5, **Gratuities -- Kickbacks -- Unlawful use of position or**  
4061 **influence.**

4062 Section 63G-6a-2305, **Penalties for artificially dividing a purchase.**

4063 Section 63G-6a-2306, **Penalties.**

4064 Section 63G-6a-2307, **Contract awarded in relation to criminal conduct void.**

4065 Section **63G-6a-2308**, Exemption.

4066 Section 83. **Effective date.**

4067 If approved by two-thirds of all the members elected to each house, this bill takes effect  
4068 upon approval by the governor, or the day following the constitutional time limit of Utah  
4069 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,  
4070 the date of veto override.