

Representative Keven J. Stratton proposes the following substitute bill:

PROCUREMENT CHANGES

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Keven J. Stratton

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Utah Procurement Code.

Highlighted Provisions:

This bill:

- ▶ deletes a definition of grant and enacts new definitions for a competitive grant and a direct award grant;
- ▶ provides that the procurement code does not apply to direct award grants;
- ▶ specifies application of the procurement code to competitive grants;
- ▶ modifies a provision relating to exemptions from the procurement code; and
- ▶ enacts provisions relating to the procurement process applicable to competitive grants.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-6a-103, as last amended by Laws of Utah 2014, Chapter 196



- 26 [63G-6a-105](#), as last amended by Laws of Utah 2013, Chapter 445
- 27 [63G-6a-107](#), as last amended by Laws of Utah 2014, Chapters 180, 196, and 313
- 28 [63G-6a-109](#), as enacted by Laws of Utah 2014, Chapter 196
- 29 [63G-6a-702](#), as last amended by Laws of Utah 2014, Chapter 196
- 30 [63G-6a-1702](#), as last amended by Laws of Utah 2014, Chapter 196

31

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

33 Section 1. Section [63G-6a-103](#) is amended to read:

34 **[63G-6a-103](#). Definitions.**

35 As used in this chapter:

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

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

38 Section [58-3a-102](#);

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

40 (c) master planning and programming services.

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

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

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

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

50 (6) "Competitive grant" means an award of funds, whether originating from a federal,
51 state, or local government entity or private entity:

52 (a) by an executive branch procurement unit;

53 (b) with respect to which the executive branch procurement unit has discretion to
54 determine to whom the funds are to be awarded; and

55 (c) to a person in exchange for a procurement item.

56 [~~(6)~~] (7) "Conducting procurement unit" means a procurement unit that conducts all

57 aspects of a procurement:

58 (a) except:

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

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

61 (b) including:

62 (i) preparing any solicitation document;

63 (ii) appointing an evaluation committee;

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

65 [63G-6a-707](#)(5)(b) relating to scores calculated for costs of proposals;

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

67 (v) negotiating the terms and conditions of a contract, subject to the issuing

68 procurement unit's approval; and

69 (vi) administering a contract.

70 [~~(7)~~] (8) (a) "Construction" means the process of building, renovating, altering,

71 improving, or repairing a public building or public work.

72 (b) "Construction" does not include the routine operation, routine repair, or routine

73 maintenance of an existing structure, building, or real property.

74 [~~(8)~~] (9) (a) "Construction manager/general contractor" means a contractor who enters

75 into a contract for the management of a construction project when the contract allows the

76 contractor to subcontract for additional labor and materials that are not included in the

77 contractor's cost proposal submitted at the time of the procurement of the contractor's services.

78 (b) "Construction manager/general contractor" does not include a contractor whose

79 only subcontract work not included in the contractor's cost proposal submitted as part of the

80 procurement of the contractor's services is to meet subcontracted portions of change orders

81 approved within the scope of the project.

82 [~~(9)~~] (10) "Contract" means an agreement for the procurement or disposal of a

83 procurement item.

84 [~~(10)~~] (11) "Contractor" means a person who is awarded a contract with a procurement

85 unit.

86 [~~(11)~~] (12) "Cooperative procurement" means procurement conducted by, or on behalf

87 of:

88 (a) more than one procurement unit; or

89 (b) a procurement unit and a cooperative purchasing organization.

90 ~~[(12)]~~ (13) "Cost-plus-a-percentage-of-cost contract" means a contract where the
91 contractor is paid a percentage over and above the contractor's actual expenses or costs.

92 ~~[(13)]~~ (14) "Cost-reimbursement contract" means a contract under which a contractor
93 is reimbursed for costs which are allowed and allocated in accordance with the contract terms
94 and the provisions of this chapter, and a fee, if any.

95 ~~[(14)]~~ (15) "Days" means calendar days, unless expressly provided otherwise.

96 ~~[(15)]~~ (16) "Definite quantity contract" means a fixed price contract that provides for
97 the supply of a specified amount of goods over a specified period, with deliveries scheduled
98 according to a specified schedule.

99 ~~[(16)]~~ (17) "Design-build" means the procurement of architect-engineer services and
100 construction by the use of a single contract with the design-build provider.

101 (18) "Direct award grant" means an award of funds, whether originating from a federal,
102 state, or local government entity or private entity:

103 (a) by an executive branch procurement unit;

104 (b) with respect to which the executive branch procurement unit does not have
105 discretion to determine to whom the funds are to be awarded because of requirements imposed
106 by:

107 (i) the federal, state, or local government entity or private entity from which the funds
108 originate; or

109 (ii) the circumstances of the executive branch procurement unit's receipt of the funds;

110 and

111 (c) to a person without the person providing value in return to the executive branch
112 procurement unit.

113 ~~[(17)]~~ (19) "Director" means the director of the division.

114 ~~[(18)]~~ (20) "Established catalogue price" means the price included in a catalogue, price
115 list, schedule, or other form that:

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

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

118 (c) states prices at which sales are currently or were last made to a significant number

119 of any category of buyers or buyers constituting the general buying public for the supplies or
120 services involved.

121 ~~[(19)]~~ (21) "Fixed price contract" means a contract that provides a price, for each
122 procurement item obtained under the contract, that is not subject to adjustment except to the
123 extent that:

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

126 (b) an adjustment is required by law.

127 ~~[(20)]~~ (22) "Fixed price contract with price adjustment" means a fixed price contract
128 that provides for an upward or downward revision of price, precisely described in the contract,
129 that:

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

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

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

135 ~~[(b) "Grant" does not include:]~~

136 ~~[(i) an award whose primary purpose is to procure an end product or procurement item;~~
137 ~~or]~~

138 ~~[(ii) a contract that is awarded as a result of a procurement or a procurement process.]~~

139 ~~[(22)]~~ (23) "Head of a procurement unit" means:

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

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

143 (i) the director of a division; or

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

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

146 (i) the Judicial Council; or

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

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

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

- 150 (ii) any other person designated by the local government procurement unit;
 - 151 (e) as it relates to a local district, the board of trustees of the local district or a designee
 - 152 of the board of trustees;
 - 153 (f) as it relates to a special service district, the governing body of the special service
 - 154 district or a designee of the governing body;
 - 155 (g) as it relates to a local building authority, the board of directors of the local building
 - 156 authority or a designee of the board of directors;
 - 157 (h) as it relates to a conservation district, the board of supervisors of the conservation
 - 158 district or a designee of the board of supervisors;
 - 159 (i) as it relates to a public corporation, the board of directors of the public corporation
 - 160 or a designee of the board of directors;
 - 161 (j) as it relates to a school district or any school or entity within a school district, the
 - 162 board of the school district, or the board's designee;
 - 163 (k) as it relates to a charter school, the individual or body with executive authority over
 - 164 the charter school, or the individual's or body's designee;
 - 165 (l) as it relates to an institution of higher education of the state, the president of the
 - 166 institution of higher education, or the president's designee; or
 - 167 (m) as it relates to a public transit district, the board of trustees or a designee of the
 - 168 board of trustees.
- 169 [~~(23)~~] (24) "Indefinite quantity contract" means a fixed price contract that:
- 170 (a) is for an indefinite amount of procurement items to be supplied as ordered by a
 - 171 procurement unit; and
 - 172 (b) (i) does not require a minimum purchase amount; or
 - 173 (ii) provides a maximum purchase limit.
- 174 [~~(24)~~] (25) "Independent procurement authority" means authority granted to a
- 175 procurement unit under Subsection [63G-6a-106\(4\)\(a\)](#).
- 176 [~~(25)~~] (26) "Invitation for bids" includes all documents, including documents that are
- 177 attached or incorporated by reference, used for soliciting bids to provide a procurement item to
- 178 a procurement unit.
- 179 [~~(26)~~] (27) "Issuing procurement unit" means a procurement unit that:
- 180 (a) reviews a solicitation to verify that it is in proper form;

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

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

183 [~~(27)~~] (28) "Labor hour contract" is a contract where:

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

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

187 [~~(28)~~] (29) "Multiple award contracts" means the award of a contract for an indefinite
188 quantity of a procurement item to more than one bidder or offeror.

189 [~~(29)~~] (30) "Multiyear contract" means a contract that extends beyond a one-year
190 period, including a contract that permits renewal of the contract, without competition, beyond
191 the first year of the contract.

192 [~~(30)~~] (31) "Municipality" means a city or a town.

193 [~~(31)~~] (32) "Offeror" means a person who responds to a request for proposals.

194 [~~(32)~~] (33) "Preferred bidder" means a bidder that is entitled to receive a reciprocal
195 preference under the requirements of this chapter.

196 [~~(33)~~] (34) (a) "Procure" or "procurement" means buying, purchasing, renting, leasing,
197 leasing with an option to purchase, or otherwise acquiring a procurement item, including
198 through a competitive grant.

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

201 (i) the description of requirements;

202 (ii) the selection process;

203 (iii) solicitation of sources;

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

205 (v) the award of a contract.

206 [~~(34)~~] (35) "Procurement item" means a supply, a service, construction, or technology.

207 [~~(35)~~] (36) "Procurement officer" means:

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

209 (i) the head of the procurement unit;

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

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

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

214 [~~36~~] (37) "Professional service" means a service that requires a high degree of
215 specialized knowledge and discretion in the performance of the service, including:

- 216 (a) legal services;
- 217 (b) consultation services;
- 218 (c) architectural services;
- 219 (d) engineering;
- 220 (e) design;
- 221 (f) underwriting;
- 222 (g) bond counsel;
- 223 (h) financial advice;
- 224 (i) construction management;
- 225 (j) medical services;
- 226 (k) psychiatric services; or
- 227 (l) counseling services.

228 [~~37~~] (38) "Protest officer" means:

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

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

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

236 [~~38~~] (39) "Request for information" means a nonbinding process where a
237 procurement unit requests information relating to a procurement item.

238 [~~39~~] (40) "Request for proposals" includes all documents, including documents that
239 are attached or incorporated by reference, used for soliciting proposals to provide a
240 procurement item to a procurement unit.

241 [~~40~~] (41) "Request for statement of qualifications" means all documents used to
242 solicit information about the qualifications of the person interested in responding to a potential

243 procurement, including documents attached or incorporated by reference.

244 [~~(41)~~] (42) "Requirements contract" means a contract:

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

247 (b) that:

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

249 (ii) provides a maximum purchase limit.

250 [~~(42)~~] (43) "Responsible" means being capable, in all respects, of:

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

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

254 [~~(43)~~] (44) "Responsive" means conforming in all material respects to the invitation for
255 bids or request for proposals.

256 [~~(44)~~] (45) "Sealed" means manually or electronically sealed and submitted bids or
257 proposals.

258 [~~(45)~~] (46) (a) "Services" means the furnishing of labor, time, or effort by a contractor,
259 not involving the delivery of a specific end product other than a report that is incidental to the
260 required performance.

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

263 [~~(46)~~] (47) "Sole source contract" means a contract resulting from a sole source
264 procurement.

265 [~~(47)~~] (48) "Sole source procurement" means a procurement without competition
266 pursuant to a determination under Subsection [63G-6a-802\(2\)\(a\)](#) that there is only one source
267 for the procurement item.

268 [~~(48)~~] (49) "Solicitation" means an invitation for bids, request for proposals, notice of a
269 sole source procurement, request for statement of qualifications, request for information, or any
270 document used to obtain bids, proposals, pricing, qualifications, or information for the purpose
271 of entering into a procurement contract.

272 [~~(49)~~] (50) "Specification" means any description of the physical or functional
273 characteristics, or nature of a procurement item included in an invitation for bids or a request

274 for proposals, or otherwise specified or agreed to by a procurement unit, including a description
275 of:

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

277 (b) preparing a procurement item for delivery.

278 [~~50~~] (51) "Standard procurement process" means one of the following methods of
279 obtaining a procurement item:

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

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

282 (c) small purchases, in accordance with the requirements established under Section
283 63G-6a-408.

284 [~~51~~] (52) "State cooperative contract" means a contract awarded by the division for
285 and in behalf of all public entities.

286 [~~52~~] (53) "Statement of qualifications" means a written statement submitted to a
287 procurement unit in response to a request for statement of qualifications.

288 [~~53~~] (54) (a) "Subcontractor" means a person under contract with a contractor or
289 another subcontractor to provide services or labor for design or construction.

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

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

293 [~~54~~] (55) "Supplies" means all property, including equipment, materials, and printing.

294 [~~55~~] (56) "Tie bid" means that the lowest responsive and responsible bids are
295 identical in price.

296 [~~56~~] (57) "Time and materials contract" means a contract where the contractor is
297 paid:

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

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

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

302 Section 2. Section 63G-6a-105 is amended to read:

303 **63G-6a-105. Application of chapter.**

304 (1) The provisions of this chapter that are enacted on May 1, 2013, apply only to a

305 procurement advertised, or begun on or after May 1, 2013, unless the parties agree to have the
306 provisions apply with respect to a procurement that was advertised or begun before May 1,
307 2013, but is not completed before May 1, 2013.

308 (2) (a) Except as provided in Section 63G-6a-107, this chapter shall apply to every
309 expenditure of public funds irrespective of the source of the funds, including federal assistance,
310 by any procurement unit, under any contract.

311 (b) The provisions of this chapter do not apply to a public entity that is not a
312 procurement unit.

313 (3) Except as provided in Subsection 17B-1-108(3) relating to local districts, the
314 following procurement units shall adopt ordinances or resolutions relating to the procurement
315 of architect-engineer services not inconsistent with the provisions of Part 15,

316 Architect-Engineer Services:

- 317 (a) an educational procurement unit;
- 318 (b) a conservation district;
- 319 (c) a local building authority;
- 320 (d) a local district;
- 321 (e) a public corporation; or
- 322 (f) a special service district.

323 (4) Any section of this chapter, or its implementing regulations, may be adopted by:

- 324 (a) a county;
- 325 (b) a municipality; or
- 326 (c) the Utah Housing Corporation.

327 (5) Rules adopted under this chapter shall be consistent with the provisions of this
328 chapter.

329 (6) An applicable rulemaking authority or a procurement unit may not adopt rules,
330 policies, or regulations that are inconsistent with this chapter.

331 (7) Unless otherwise provided by statute, this chapter does not apply to procurement of
332 real property.

333 (8) (a) Except as provided in Subsection (8)(a), this chapter applies to a competitive
334 grant.

335 (b) The following provisions do not apply to a competitive grant:

- 336 (i) Subsections 63G-6a-707(5), (6), and (8);
337 (ii) Subsections 63G-6a-708(1)(a)(iii) and (iv);
338 (iii) Subsections 63G-6a-708(2), (3), (4), (5), and (6); and
339 (iv) Section 63G-6a-711.

340 Section 3. Section **63G-6a-107** is amended to read:

341 **63G-6a-107. Exemptions from chapter -- Compliance with federal law.**

342 (1) Except for Part 24, Unlawful Conduct and Penalties, the provisions of this chapter
343 do not apply to:

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

346 [~~(b) grants awarded by the state or contracts between the state and any of the~~
347 ~~following;~~]

348 [~~(i) an educational procurement unit;~~]

349 [~~(ii) a conservation district;~~]

350 [~~(iii) a local building authority;~~]

351 [~~(iv) a local district;~~]

352 [~~(v) a public corporation;~~]

353 [~~(vi) a special service district;~~]

354 [~~(vii) a public transit district; or~~]

355 [~~(viii) two or more of the entities described in Subsections (1)(b)(i) through (vii),~~
356 ~~acting under legislation that authorizes intergovernmental cooperation;]~~

357 (b) a direct award grant;

358 (c) a contract between procurement units;

359 [~~(e)~~] (d) medical supplies or medical equipment, including service agreements for
360 medical equipment, obtained through a purchasing consortium by the Utah State Hospital, the
361 Utah State Developmental Center, the University of Utah Hospital, or any other hospital owned
362 by the state or a political subdivision of the state, if:

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

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

367 ~~[(d)]~~ (e) the purchase of firefighting supplies or equipment by the Division of Forestry,
368 Fire, and State Lands, created in Section 65A-1-4, through the federal General Services
369 Administration or the National Fire Cache system;

370 ~~[(e)]~~ (f) goods purchased for resale to the public; or

371 ~~[(f)]~~ (g) the Division of Parks and Recreation, during a fiscal emergency, as defined by
372 Subsection 79-4-1102(1), if the division is acting under the authority described in Sections
373 79-4-1101 through 79-4-1103.

374 (2) This chapter does not prevent a procurement unit from complying with the terms
375 and conditions of any grant, gift, or bequest that is otherwise consistent with law.

376 (3) This chapter does not apply to any action taken by a majority of both houses of the
377 Legislature.

378 (4) Notwithstanding any conflicting provision of this chapter, when a procurement
379 involves the expenditure of federal assistance, federal contract funds, local matching funds, or
380 federal financial participation funds, the procurement unit shall comply with mandatory
381 applicable federal law and regulations not reflected in this chapter.

382 (5) This chapter does not supersede the requirements for retention or withholding of
383 construction proceeds and release of construction proceeds as provided in Section 13-8-5.

384 Section 4. Section 63G-6a-109 is amended to read:

385 **63G-6a-109. Issuing procurement unit and conducting procurement unit.**

386 (1) ~~With~~ (a) Except as provided in Subsection (1)(b), with respect to a procurement
387 by an executive branch procurement unit:

388 ~~[(a)]~~ (i) the division is the issuing procurement unit; and

389 ~~[(b)]~~ (ii) the executive branch procurement unit is the conducting procurement unit and
390 is responsible to ensure that the procurement is conducted in compliance with this chapter.

391 (b) An executive branch procurement unit pursuing a competitive grant is both the
392 issuing procurement unit and the conducting procurement unit.

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

395 Section 5. Section 63G-6a-702 is amended to read:

396 **63G-6a-702. Contracts awarded by request for proposals.**

397 (1) A request for proposals standard procurement process may be used instead of

398 bidding if:

399 (a) the procurement officer determines, in writing, that the request for proposals
400 standard procurement process will provide the best value to the procurement unit[-]; or

401 (b) the procurement is a competitive grant.

402 (2) The request for proposals standard procurement process is appropriate to use for:

403 (a) the procurement of professional services;

404 (b) a design-build procurement;

405 (c) when cost is not the most important factor to be considered in making the selection
406 that is most advantageous to the procurement unit; or

407 (d) when factors, in addition to cost, are highly significant in making the selection that
408 is most advantageous to the procurement unit.

409 (3) The procurement of architect-engineer services is governed by Part 15,
410 Architect-Engineer Services.

411 (4) (a) An executive branch agency may denominate its solicitation for a competitive
412 grant as a request for grant applications rather than a request for proposals.

413 (b) A request for grant applications shall include:

414 (i) a description of the nature of the grant project, including the scope of the work to be
415 performed or service to be provided;

416 (ii) an identification of the funding source and the total amount of available funds;

417 (iii) a statement indicating whether a single award or multiple awards are expected to
418 be made;

419 (iv) a statement indicating whether collaboration or partnering between persons or
420 community partnerships will be allowed;

421 (v) any requirements mandated by the federal, state, or local government authorizing
422 the grant;

423 (vi) the criteria that will be used to evaluate applicants for the award and the relative
424 importance of each criterion;

425 (vii) the date by which applications for the grant are required to be submitted and the
426 anticipated date when awards will be made public;

427 (viii) whether the grant award will be for multiple years; and

428 (ix) any other information unique to the grant.

429 (c) An executive branch procurement unit may, before the date applications for the
430 grant award are required to be submitted, conduct a conference with potential grant applicants
431 to explain grant application requirements.

432 Section 6. Section **63G-6a-1702** is amended to read:

433 **63G-6a-1702. Appeal to Utah State Procurement Policy Board -- Appointment of**
434 **procurement appeals panel -- Proceedings.**

435 (1) This part applies to all procurement units other than:

- 436 (a) a legislative procurement unit;
437 (b) a judicial procurement unit;
438 (c) a local government procurement unit; or
439 (d) a public transit district.

440 (2) (a) Subject to Section **63G-6a-1703**, a party to a protest involving a procurement
441 unit other than a procurement unit listed in Subsection (1)(a), (b), (c), or (d) may appeal the
442 protest decision to the board by filing a written notice of appeal with the chair of the board
443 within seven days after:

444 (i) the day on which the written decision described in Section **63G-6a-1603** is:

- 445 (A) personally served on the party or the party's representative; or
446 (B) emailed or mailed to the address or email address of record provided by the party
447 under Subsection **63G-6a-1602**(3); or

448 (ii) the day on which the 30-day period described in Subsection **63G-6a-1603**(7) ends,
449 if a written decision is not issued before the end of the 30-day period.

450 (b) A person appealing a debarment or suspension of a procurement unit other than a
451 procurement unit listed in Subsection (1)(a), (b), (c), or (d) shall file a written notice of appeal
452 with the chair of the board no later than seven days after the debarment or suspension.

453 (c) A notice of appeal under Subsection (2)(a) or (b) shall:

454 (i) include the address of record and email address of record of the party filing the
455 notice of appeal; and

456 (ii) be accompanied by a copy of any written protest decision or debarment or
457 suspension order.

458 (3) A person may not base an appeal of a protest under this section on a ground not
459 specified in the person's protest under Section **63G-6a-1602**.

- 460 (4) A person may not appeal from a protest described in Section 63G-6a-1602, unless:
- 461 (a) a decision on the protest has been issued; or
- 462 (b) a decision is not issued and the 30-day period described in Subsection
- 463 63G-6a-1603(7), or a longer period agreed to by the parties, has passed.
- 464 (5) The chair of the board or a designee of the chair who is not employed by the
- 465 procurement unit responsible for the solicitation, contract award, or other action complained of:
- 466 (a) shall, within seven days after the day on which the chair receives a timely written
- 467 notice of appeal under Subsection (2), and if all the requirements of Subsection (2) and Section
- 468 63G-6a-1703 have been met, appoint:
- 469 (i) a procurement appeals panel to hear and decide the appeal, consisting of at least
- 470 three individuals, each of whom is:
- 471 (A) a member of the board; or
- 472 (B) a designee of a member appointed under Subsection ~~[(4)]~~ (5)(a)(i)(A), if the
- 473 designee is approved by the chair; and
- 474 (ii) one of the members of the procurement appeals panel to be the chair of the panel;
- 475 (b) may:
- 476 (i) appoint the same procurement appeals panel to hear more than one appeal; or
- 477 (ii) appoint a separate procurement appeals panel for each appeal;
- 478 (c) may not appoint a person to a procurement appeals panel if the person is employed
- 479 by the procurement unit responsible for the solicitation, contract award, or other action
- 480 complained of; and
- 481 (d) shall, at the time the procurement appeals panel is appointed, provide appeals panel
- 482 members with a copy of the protest officer's written decision and all other records and other
- 483 evidence that the protest officer relied on in reaching the decision.
- 484 (6) A procurement appeals panel described in Subsection (5) shall:
- 485 (a) consist of an odd number of members;
- 486 (b) conduct an informal proceeding on the appeal within 60 days after the day on which
- 487 the procurement appeals panel is appointed:
- 488 (i) unless all parties stipulate to a later date; and
- 489 (ii) subject to Subsection (8);
- 490 (c) at least seven days before the proceeding, mail, email, or hand-deliver a written

491 notice of the proceeding to the parties to the appeal; and

492 (d) within seven days after the day on which the proceeding ends:

493 (i) issue a written decision on the appeal; and

494 (ii) mail, email, or hand-deliver the written decision on the appeal to the parties to the
495 appeal and to the protest officer.

496 (7) (a) The deliberations of a procurement appeals panel may be held in private.

497 (b) If the procurement appeals panel is a public body, as defined in Section 52-4-103,
498 the procurement appeals panel shall comply with Section 52-4-205 in closing a meeting for its
499 deliberations.

500 (8) A procurement appeals panel may continue a procurement appeals proceeding
501 beyond the 60-day period described in Subsection (6)(b) if the procurement appeals panel
502 determines that the continuance is in the interests of justice.

503 (9) A procurement appeals panel:

504 (a) shall, subject to Subsection (9)(c), consider the appeal based solely on:

505 (i) the protest decision;

506 (ii) the record considered by the person who issued the protest decision; and

507 (iii) if a protest hearing was held, the record of the protest hearing;

508 (b) may not take additional evidence;

509 (c) notwithstanding Subsection (9)(b), may, during an informal hearing, ask questions
510 and receive responses regarding the appeal, the protest decision, or the record in order to assist
511 the panel to understand the appeal, the protest decision, and the record; and

512 (d) shall uphold the decision of the protest officer, unless the decision is arbitrary and
513 capricious or clearly erroneous.

514 (10) If a procurement appeals panel determines that the decision of the protest officer is
515 arbitrary and capricious or clearly erroneous, the procurement appeals panel:

516 (a) shall remand the matter to the protest officer, to cure the problem or render a new
517 decision;

518 (b) may recommend action that the protest officer should take; and

519 (c) may not order that:

520 (i) a contract be awarded to a certain person;

521 (ii) a contract or solicitation be cancelled; or

- 522 (iii) any other action be taken other than the action described in Subsection (10)(a).
523 (11) The board shall make rules relating to the conduct of an appeals proceeding,
524 including rules that provide for:
525 (a) expedited proceedings; and
526 (b) electronic participation in the proceedings by panel members and participants.
527 (12) The Rules of Evidence do not apply to an appeals proceeding.