

HB0409S01 compared with HB0409

~~{deleted text}~~ shows text that was in HB0409 but was deleted in HB0409S01.

inserted text shows text that was not in HB0409 but was inserted into HB0409S01.

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Representative V. Lowry Snow proposes the following substitute bill:

AMENDMENTS TO THE PROCUREMENT CODE

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: V. Lowry Snow

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Utah Procurement Code.

Highlighted Provisions:

This bill:

- ▶ modifies provisions relating to the procurement of the services of an architect or engineer;
- ▶ authorizes the head of a procurement unit with independent procurement authority to address a procurement or contract that is out of compliance;
- ▶ modifies a provision relating to exemptions from the procurement code;
- ▶ modifies a provision relating to thresholds for small purchases;
- ▶ modifies a provision relating to a multiple stage bidding process;
- ▶ enacts a provision relating to changes in contract price;

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- ▶ modifies procurement appeal provisions relating to local government procurement units; and
- ▶ modifies provisions relating to the forfeiture of a security deposit or bond.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 17B-1-108**, as last amended by Laws of Utah 2012, Chapter 347
- 63G-6a-103**, as last amended by Laws of Utah 2014, Chapter 196
- 63G-6a-104**, as last amended by Laws of Utah 2014, Chapters 63 and 196
- 63G-6a-105**, as last amended by Laws of Utah 2013, Chapter 445
- 63G-6a-106**, as last amended by Laws of Utah 2014, Chapter 196
- 63G-6a-107**, as last amended by Laws of Utah 2014, Chapters 180, 196, and 313
- 63G-6a-204**, as last amended by Laws of Utah 2014, Chapter 196
- 63G-6a-303**, as last amended by Laws of Utah 2014, Chapter 196
- 63G-6a-402**, as last amended by Laws of Utah 2014, Chapters 179 and 196
- 63G-6a-408**, as last amended by Laws of Utah 2014, Chapter 196
- 63G-6a-609**, as last amended by Laws of Utah 2014, Chapter 196
- 63G-6a-707**, as last amended by Laws of Utah 2014, Chapter 196
- 63G-6a-1203**, as last amended by Laws of Utah 2013, Chapter 445
- 63G-6a-1501**, as enacted by Laws of Utah 2012, Chapter 347
- 63G-6a-1502**, as last amended by Laws of Utah 2014, Chapter 196
- 63G-6a-1503**, as last amended by Laws of Utah 2014, Chapter 196
- 63G-6a-1504**, as renumbered and amended by Laws of Utah 2012, Chapter 347
- 63G-6a-1505**, as last amended by Laws of Utah 2014, Chapter 196
- 63G-6a-1506**, as last amended by Laws of Utah 2013, Chapter 445
- 63G-6a-1603**, as last amended by Laws of Utah 2014, Chapter 196
- 63G-6a-1702**, as last amended by Laws of Utah 2014, Chapter 196
- 63G-6a-1703**, as last amended by Laws of Utah 2014, Chapter 196

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63G-6a-1802, as last amended by Laws of Utah 2014, Chapter 196

63G-6a-1903, as last amended by Laws of Utah 2014, Chapter 196

63G-6a-1904, as last amended by Laws of Utah 2014, Chapter 196

ENACTS:

63G-6a-1206.5, Utah Code Annotated 1953

63G-6a-1502.5, Utah Code Annotated 1953

63G-6a-1503.5, Utah Code Annotated 1953

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

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

17B-1-108. Restrictions on local district procurement of design professional services.

(1) As used in this section~~[:]~~, "design professional services" means the same as that term is defined in Section 63G-6a-103.

~~[(a) "Architect-engineer services" means those professional services within the scope of the practice of architecture as defined in Section 58-3a-102.]~~

~~[(b) "Engineer services" means those professional services within the scope of the practice of professional engineering as defined in Section 58-22-102.]~~

~~[(2) When a local district elects to obtain architect services or engineering services by using a competitive procurement process and has provided public notice of its competitive procurement process:]~~

~~[(a) a higher education entity, or any part of one, may not submit a proposal in response to the local district's competitive procurement process, and]~~

~~[(b) the local district may not award a contract to perform the architect services or engineering services solicited in the competitive procurement process to a higher education entity or any part of one:]~~

~~[(3) Notwithstanding Subsection 63G-6a-105(3), each local district board that engages the services of a professional architect, engineer, or surveyor and considers more than one such professional for the engagement:]~~

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

~~[(i) the qualifications, experience, and background of each firm submitting a proposal:]~~

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

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

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

(2) The procurement of design professional services is governed by Title 63G, Chapter 6a, Part 15, Design Professional Services.

Section 2. Section **63G-6a-103** is amended to read:

63G-6a-103. Definitions.

As used in this chapter:

~~[(1) "Architect-engineer services" means:]~~

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

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

~~[(c) master planning and programming services.]~~

~~[(2)] (1) "Bidder" means a person who responds to an invitation for bids.~~

~~[(3)] (2) "Change directive" means a written order signed by the procurement officer that directs the contractor to suspend work or make changes, as authorized by contract, without the consent of the contractor.~~

~~[(4)] (3) "Change order" means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract, upon mutual agreement of the parties to the contract.~~

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

~~[(6)] (5) "Conducting procurement unit" means a procurement unit that conducts all aspects of a procurement:~~

~~(a) except:~~

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

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

~~(b) including:~~

~~(i) preparing any solicitation document;~~

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- (ii) appointing an evaluation committee;
- (iii) conducting the evaluation process, except as provided in Subsection 63G-6a-707(5)(b) relating to scores calculated for costs of proposals;
- (iv) selecting and recommending the person to be awarded a contract;
- (v) negotiating the terms and conditions of a contract, subject to the issuing procurement unit's approval; and
- (vi) administering a contract.

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

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

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

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

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

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

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

- (a) more than one procurement unit; or
- (b) a procurement unit and a cooperative purchasing organization.

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

~~[(13)]~~ (12) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowed and allocated in accordance with the contract terms

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and the provisions of this chapter, and a fee, if any.

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

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

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

(16) "Design professional" means:

(a) an individual licensed as an architect under Title 58, Chapter 3a, Architects Licensing Act; or

(b) an individual licensed as a professional engineer [or professional land surveyor](#) under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

(17) "Design professional services" means:

(a) professional services within the scope of the practice of architecture as defined in Section 58-3a-102;

(b) professional engineering as defined in Section 58-22-102; or

(c) master planning and programming services.

~~[(17)]~~ (18) "Director" means the director of the division.

~~[(18)]~~ (19) "Established catalogue price" means the price included in a catalogue, price list, schedule, or other form that:

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

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

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

~~[(19)]~~ (20) "Fixed price contract" means a contract that provides a price, for each procurement item obtained under the contract, that is not subject to adjustment except to the extent that:

(a) the contract provides, under circumstances specified in the contract, for an

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adjustment in price that is not based on cost to the contractor; or

(b) an adjustment is required by law.

~~[(20)]~~ (21) "Fixed price contract with price adjustment" means a fixed price contract that provides for an upward or downward revision of price, precisely described in the contract, that:

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

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

~~[(21)]~~ (22) (a) "Grant" means furnishing, by a public entity or by any other public or private source, financial or other assistance to a person to support a program authorized by law.

(b) "Grant" does not include:

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

or

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

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

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

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

(i) the director of a division; or

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

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

(i) the Judicial Council; or

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

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

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

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

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

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

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

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authority or a designee of the board of directors;

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

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

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

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

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

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

~~[(23)]~~ (24) "Indefinite quantity contract" means a fixed price contract that:

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

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

(ii) provides a maximum purchase limit.

~~[(24)]~~ (25) "Independent procurement authority" means authority granted to a procurement unit under Subsection 63G-6a-106(4)(a).

~~[(25)]~~ (26) "Invitation for bids" includes all documents, including documents that are attached or incorporated by reference, used for soliciting bids to provide a procurement item to a procurement unit.

~~[(26)]~~ (27) "Issuing procurement unit" means a procurement unit that:

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

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

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

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

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

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

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

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

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

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

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

~~[(33)]~~ (34) (a) "Procure" or "procurement" means buying, purchasing, renting, leasing, leasing with an option to purchase, or otherwise acquiring a procurement item.

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

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

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

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

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

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

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

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

- (a) legal services;
- (b) consultation services;
- (c) architectural services;

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- (d) engineering;
- (e) design;
- (f) underwriting;
- (g) bond counsel;
- (h) financial advice;
- (i) construction management;
- (j) medical services;
- (k) psychiatric services; or
- (l) counseling services.

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

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

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

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

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

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

~~[(40)]~~ (41) "Request for statement of qualifications" means all documents used to solicit information about the qualifications of the person interested in responding to a potential procurement, including documents attached or incorporated by reference.

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

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

(b) that:

- (i) does not require a minimum purchase amount; or
- (ii) provides a maximum purchase limit.

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

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

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

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

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

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

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

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

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

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

~~[(49)]~~ (50) "Specification" means any description of the physical or functional characteristics, or nature of a procurement item included in an invitation for bids or a request for proposals, or otherwise specified or agreed to by a procurement unit, including a description of:

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

(b) preparing a procurement item for delivery.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 3. Section **63G-6a-104** is amended to read:

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

As used in this chapter:

(1) "Applicable rulemaking authority" means:

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

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

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

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

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

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

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

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

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

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

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

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

(i) before January 1, 2015, the board of trustees of the local district or the governing body of the special service district; or

(ii) on or after January 1, 2015, the board, except to the extent that the board of trustees of the local district or the governing body of the special service district makes its own rules:

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

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

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

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

(2) "Board" means the Utah State Procurement Policy Board, created in Section 63G-6a-202.

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

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

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

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

(7) "Educational procurement unit" means:

(a) a school district;

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

(c) Utah Schools for the Deaf and Blind;

(d) the Utah Education and Telehealth Network; or

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

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

(9) "Judicial procurement unit" means:

(a) the Utah Supreme Court;

(b) the Utah Court of Appeals;

(c) the Judicial Council;

(d) a state judicial district; or

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

(10) "Legislative procurement unit" means:

(a) the Legislature;

(b) the Senate;

(c) the House of Representatives;

(d) a staff office of an entity described in Subsection (10)(a), (b), or (c); or

(e) each office, committee, subcommittee, or other organization within the state

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legislative branch.

(11) "Local building authority" is as defined in Section 17D-2-102.

(12) "Local district" is as defined in Section 17B-1-102.

(13) "Local government procurement unit" means:

(a) a county or municipality, and each office or agency of the county or municipality, unless the county or municipality adopts its own procurement code by ordinance;

(b) a county or municipality, and each office or agency of the county or municipality, that has adopted this entire chapter by ordinance; or

(c) a county or municipality, and each office or agency of the county or municipality, that has adopted a portion of this chapter by ordinance, to the extent that the term is used in the adopted portion of this chapter.

(14) "Nonadopting local government procurement unit" means:

(a) a county or municipality that has not adopted Part 16, Controversies and Protests, Part 17, Procurement Appeals Board, Part 18, Appeals to Court and Court Proceedings, and Part 19, General Provisions Related to Protest or Appeal; and

(b) each office or agency of a county or municipality described in Subsection (14)(a).

~~(14)~~ (15) (a) "Procurement unit" means:

(i) a legislative procurement unit;

(ii) an executive branch procurement unit;

(iii) a judicial procurement unit;

(iv) an educational procurement unit;

(v) a local government procurement unit;

(vi) a local district;

(vii) a special service district;

(viii) a local building authority;

(ix) a conservation district;

(x) a public corporation; or

(xi) a public transit district.

(b) "Procurement unit" does not include a political subdivision created under Title 11, Chapter 13, Interlocal Cooperation Act.

~~(15)~~ (16) "Public corporation" is as defined in Section 63E-1-102.

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~~[(16)]~~ (17) "Public entity" means any state government entity or a political subdivision of the state, including:

(a) a procurement unit;

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

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

~~[(17)]~~ (18) "Public transit district" means a public transit district organized under Title 17B, Chapter 2a, Part 8, Public Transit District Act.

~~[(18)]~~ (19) "Special service district" is as defined in Section 17D-1-102.

Section 4. Section **63G-6a-105** is amended to read:

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

(1) The provisions of this chapter that are enacted on May 1, 2013, apply only to a procurement advertised, or begun on or after May 1, 2013, unless the parties agree to have the provisions apply with respect to a procurement that was advertised or begun before May 1, 2013, but is not completed before May 1, 2013.

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

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

(3) ~~Except as provided in Subsection 17B-1-108(3) relating to local districts, the~~ The following procurement units shall adopt ordinances or resolutions relating to the procurement of ~~[architect-engineer]~~ design professional services not inconsistent with the provisions of Part 15, ~~[Architect-Engineer]~~ Design Professional Services:

(a) an educational procurement unit;

(b) a conservation district;

(c) a local building authority;

(d) a local district;

(e) a public corporation; or

(f) a special service district.

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

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

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

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

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

Section 5. Section **63G-6a-106** is amended to read:

63G-6a-106. Procurement units with specific statutory procurement authority -- Independent procurement authority.

(1) A procurement unit with procurement authority under the following provisions has independent procurement authority to the extent of the applicable provisions and for the procurement items specified in the applicable provisions:

- (a) Title 53B, State System of Higher Education;
- (b) Title 63A, Chapter 5, State Building Board - Division of Facilities Construction and Management;
- (c) Title 67, Chapter 5, Attorney General;
- (d) Title 72, Transportation Code; and
- (e) Title 78A, Chapter 5, District Court.

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

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

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

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

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

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(i) engage in a standard procurement process;
(ii) procure an item under an exception, as provided in this chapter, to the requirement to use a standard procurement process; or

(iii) otherwise engage in an act authorized or required by this chapter.

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

(i) a legislative procurement unit;

(ii) a judicial procurement unit;

(iii) an educational procurement unit;

(iv) a local government procurement unit;

(v) a conservation district;

(vi) a local building authority;

(vii) a local district;

(viii) a public corporation;

(ix) a special service district;

(x) a public transit district; and

(xi) a procurement unit referred to in Subsection (1), to the extent authorized in Subsection (1).

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

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

(e) At any stage of the procurement process, a head of a procurement unit with independent procurement authority who determines that a procurement over which the procurement unit has authority is out of compliance with this chapter or applicable rules may:

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

(ii) cancel the procurement, if the head of the procurement unit determines that it is:

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

(B) in the best interest of the procurement unit to cancel the procurement.

(f) If, at any time during the term of a contract awarded by a procurement unit with independent procurement authority, the head of the procurement unit determines that the

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contract is out of compliance with this chapter or applicable rules, the head of the procurement unit may correct or amend the contract to bring it into compliance or cancel the contract:

(i) if the head of the procurement unit determines that correcting, amending, or canceling the contract is in the best interest of the procurement unit; and

(ii) after consulting with legal counsel.

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

(i) retain outside counsel; or

(ii) procure litigation support services, including retaining an expert witness.

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

(i) retain outside counsel; or

(ii) procure litigation support services, including retaining an expert witness.

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

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

(a) deposit ~~and investment~~ services; and

(b) services related to issuing bonds.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) contracts between procurement units;

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

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

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

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

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

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

(h) activities related to the management of investments by a public entity granted investment authority by law.

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

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

~~[(4)]~~ (3) Notwithstanding any conflicting provision of this chapter, when a procurement involves the expenditure of federal or state assistance, federal contract funds, local matching funds, or federal financial participation funds, the procurement unit shall

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comply with mandatory applicable federal or state law and regulations not reflected in this chapter.

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

Section 7. Section **63G-6a-204** is amended to read:

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

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

(2) The building board rules governing procurement of construction, ~~[architect-engineer]~~ design professional services, and leases apply to the procurement of construction, ~~[architect-engineer]~~ design professional services, and leases of real property by the Division of Facilities Construction and Management.

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

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

(5) Notwithstanding Subsection 63G-3-301(13)(b), an applicable rulemaking authority is required to initiate rulemaking proceedings, for rules required to be made under this chapter, on or before:

- (a) May 13, 2014, if the applicable rulemaking authority is the board; or
- (b) January 1, 2015, for each other applicable rulemaking authority.

Section 8. Section **63G-6a-303** is amended to read:

63G-6a-303. Duties and authority of chief procurement officer.

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

- (a) adopt office policies governing the internal functions of the division;
- (b) procure or supervise each procurement over which the chief procurement officer

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has authority;

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

(d) prepare statistical data concerning each procurement and procurement usage of a state procurement unit;

(e) ensure that:

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

(ii) the oversight authority required by Subsection [~~(5)(a)~~] (1)(e)(i) is not delegated outside the division;

(f) provide training to procurement units and to persons who do business with procurement units;

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

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

(ii) cancel the procurement, if:

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

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

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

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

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

(2) The chief procurement officer may:

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

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

Section 9. Section **63G-6a-402** is amended to read:

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

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

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

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

(ii) complies with:

(A) the requirements of this chapter; and

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

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

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

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

(c) if the procurement unit is not a procurement unit described in Subsection (1)(a) or (b), the procurement unit:

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

(ii) uses a standard procurement process; and

(iii) complies with:

(A) the requirements of this chapter; and

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

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

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

(b) The State Building Board rules governing procurement of construction, ~~[architect-engineer]~~ design professional services, and leases apply to the procurement of construction, ~~[architect-engineer]~~ design professional services, and leases of real property by the Division of Facilities Construction and Management.

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

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

(6) The rules of the applicable rulemaking authority for the executive branch procurement unit shall require, for each contract and request for proposals, the inclusion of a clause that requires the issuing procurement unit, for the duration of the contract, to make available contact information of the winning contractor to the Department of Workforce Services in accordance with Section 35A-2-203. This requirement does not preclude a contractor from advertising job openings in other forums throughout the state.

Section 10. Section **63G-6a-408** is amended to read:

63G-6a-408. Small purchases.

(1) As used in this section:

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

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

(c) "Single procurement aggregate threshold" means the maximum total amount,

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established by the applicable rulemaking authority under Subsection (2)(a)(iii), that a procurement unit may expend to obtain multiple procurement items from one source at one time under this section.

(2) (a) The applicable rulemaking authority may make rules governing small purchases ~~including:~~

~~(a) of any procurement item, including construction, job order contracting, design professional services, other professional services, information technology, and goods.~~

(b) Rules under Subsection (2)(a) may include provisions:

~~(a)~~ (i) establishing expenditure thresholds, including:

~~(i)~~ (A) an annual cumulative threshold;

~~(ii)~~ (B) an individual procurement threshold; ~~(B)~~ and ~~(B)~~

~~(iii)~~ (C) a single procurement aggregate threshold; ~~(C)~~ and

~~(iv) other thresholds relating to the procurement of a procurement item, including:~~

~~(A) construction, including job order contracting;~~

~~(B) design professional services and other professional services; and~~

~~(C) an information technology project;~~

~~(b)~~

~~(b)~~ (ii) establishing procurement requirements relating to the thresholds described in Subsection (2) ~~(a)~~ (b)(i); and

~~(c)~~ (iii) providing for the use of electronic, telephone, or written quotes.

(3) Expenditures made under this section by a procurement unit may not exceed a threshold established by the applicable rulemaking authority, unless the chief procurement officer or the head of a procurement unit with independent procurement authority gives written authorization to exceed the threshold that includes the reasons for exceeding the threshold.

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

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

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

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

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

(iii) another emergency condition; or

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

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

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

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

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

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

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

(ii) for a procurement item that, if defective in its manufacture, installation, or performance, may result in serious physical injury, death, or substantial property damage, determines in writing that the terms and conditions, relating to liability for injury, death, or property damage, available from the source other than the contractor who holds the state contract, are similar to, or better than, the terms and conditions available under the state contract; and

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

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

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

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

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

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

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

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

(b) A person who engages in the conduct made unlawful under Subsection (8)(a) is guilty of:

(i) a second degree felony, if the value of the procurement before being divided is \$1,000,000 or more;

(ii) a third degree felony, if the value of the procurement before being divided is \$250,000 or more but less than \$1,000,000;

(iii) a class A misdemeanor, if the value of the procurement before being divided is \$100,000 or more but less than \$250,000; or

(iv) a class B misdemeanor, if the value of the procurement before being divided is less than \$100,000.

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

(a) making two or more separate purchases;

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

or

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

(10) A person who violates Subsection (8) is subject to the criminal penalties described in Section 63G-6a-2405.

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

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

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

Section 11. Section **63G-6a-609** is amended to read:

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

~~[(1) A procurement unit that conducts a procurement using a bidding standard procurement process may use multiple stages to:]~~

~~[(a) narrow the number of bidders who will progress to a subsequent stage;]~~

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

~~[(c) enter into a contract for a single procurement; or]~~

~~[(d) award multiple contracts for a series of upcoming procurements.]~~

~~[(2)]~~ (1) The invitation for bids for a multiple stage bidding process shall:

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

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

(i) a single contract; or

(ii) multiple contracts for a series of upcoming procurements; and

(c) state that:

(i) the first stage is for prequalification only;

(ii) a bidder may not submit any pricing information in the first stage of the process;

and

(iii) bids in the second stage will only be accepted from a person who prequalifies in the first stage.

~~[(3)]~~ (2) During the first stage, the conducting procurement unit:

(a) shall prequalify bidders to participate in subsequent stages, in accordance with Section 63G-6a-403;

(b) shall prohibit the submission of pricing information until the final stage; and

(c) may, before beginning the second stage, request additional information to clarify the qualifications of the bidders who submit timely responses.

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~~[(4)]~~ (3) Contracts may only be awarded for a procurement item described in stage one of the invitation for bids.

~~[(5)]~~ (4) The conducting procurement unit may use as many stages as it determines to be appropriate.

~~[(6)]~~ (5) Except as otherwise expressly provided in this section, a procurement unit conducting a multiple stage bidding process under this section shall ensure compliance with this part.

~~[(7)]~~ (6) The applicable rulemaking authority may make rules governing the use of a multiple stage process described in this section.

Section 12. Section **63G-6a-707** is amended to read:

63G-6a-707. Evaluation of proposals -- Evaluation committee.

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

- (a) experience;
- (b) performance ratings;
- (c) inspection;
- (d) testing;
- (e) quality;
- (f) workmanship;
- (g) time, manner, or schedule of delivery;
- (h) references;
- (i) financial solvency;
- (j) suitability for a particular purpose;
- (k) management plans;
- (l) cost; or
- (m) other subjective or objective criteria specified in the request for proposals.

(2) Criteria not described in the request for proposals may not be used to evaluate a proposal.

(3) The conducting procurement unit shall:

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- (a) appoint an evaluation committee consisting of at least three individuals; and
- (b) ensure that the evaluation committee and each member of the evaluation committee:
 - (i) does not have a conflict of interest with any of the offerors;
 - (ii) can fairly evaluate each proposal;
 - (iii) does not contact or communicate with an offeror concerning the procurement outside the official evaluation committee process; and
 - (iv) conducts the evaluation in a manner that ensures a fair and competitive process and avoids the appearance of impropriety.

(4) The evaluation committee may, with the approval of the head of the conducting procurement unit, enter into discussions or conduct interviews with, or attend presentations by, the offerors.

(5) (a) Except as provided in Subsections (5)(b) and (8), each member of the evaluation committee is prohibited from knowing, or having access to, any information relating to the cost, or the scoring of the cost, of a proposal until after the evaluation committee submits its final recommended scores on all other criteria to the issuing procurement unit.

(b) The issuing procurement unit shall:

(i) if applicable, assign an individual who is not a member of the evaluation committee to calculate scores for cost based on the applicable scoring formula, weighting, and other scoring procedures contained in the request for proposals;

(ii) review the evaluation committee's scores and correct any errors, scoring inconsistencies, and reported noncompliance with this chapter;

(iii) add the scores calculated for cost, if applicable, to the evaluation committee's final recommended scores on criteria other than cost to derive the total combined score for each responsive and responsible proposal; and

(iv) provide to the evaluation committee the total combined score calculated for each responsive and responsible proposal, including any applicable cost formula, weighting, and scoring procedures used to calculate the total combined scores.

(c) The evaluation committee may not:

(i) change its final recommended scores described in Subsection (5)(a) after the evaluation committee has submitted those scores to the issuing procurement unit; or

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(ii) change cost scores calculated by the issuing procurement unit.

(6) (a) As used in this Subsection (6), "management fee" includes only the following fees of the construction manager/general contractor:

(i) preconstruction phase services;

(ii) monthly supervision fees for the construction phase; and

(iii) overhead and profit for the construction phase.

(b) When selecting a construction manager/general contractor for a construction project, the evaluation committee:

(i) may score a construction manager/general contractor based upon criteria contained in the solicitation, including qualifications, performance ratings, references, management plan, certifications, and other project specific criteria described in the solicitation;

(ii) may, as described in the solicitation, weight and score the management fee as a fixed rate or as a fixed percentage of the estimated contract value;

(iii) may, at any time after the opening of the responses to the request for proposals, have access to, and consider, the management fee proposed by the offerors; and

(iv) except as provided in Subsection [~~(7)~~] (8), may not know or have access to any other information relating to the cost of construction submitted by the offerors, until after the evaluation committee submits its final recommended scores on all other criteria to the issuing procurement unit.

(7) (a) The deliberations of an evaluation committee may be held in private.

(b) If the evaluation committee is a public body, as defined in Section 52-4-103, the evaluation committee shall comply with Section 52-4-205 in closing a meeting for its deliberations.

(8) An issuing procurement unit is not required to comply with Subsection (5) if the head of the issuing procurement unit or a person designated by rule made by the applicable rulemaking authority:

(a) signs a written statement:

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

(ii) describing the nature of the proposal and the other circumstances relied upon to waive compliance with Subsection (5); and

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(b) makes the written statement available to the public, upon request.

Section 13. Section **63G-6a-1203** is amended to read:

63G-6a-1203. Contracts -- Certain indemnification provisions forbidden.

~~[(1) As used in this section, "design ~~{}~~professional" ~~{}~~expert" means:]~~

~~[(a) an architect, licensed under Title 58, Chapter 3a, Architects Licensing Act;]~~

~~[(b) a landscape architect, licensed under Title 58, Chapter 53, Landscape Architects Licensing Act; or]~~

~~[(c) a professional engineer or professional land surveyor, licensed under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.]~~

~~[(2)(a)]~~(1) A contract, including an amendment to an existing contract, entered into under this chapter may not require that a design ~~{}~~professional ~~{}~~expert indemnify another from liability claims that arise out of the design ~~{}~~professional's ~~{}~~expert's services, unless the liability claim arises from the design ~~{}~~professional's ~~{}~~expert's negligent act, wrongful act, error or omission, or other liability imposed by law.

~~[(b)]~~(2) Subsection ~~[(2)(a)]~~(1) may not be waived by contract.

~~[(c)]~~(3) Notwithstanding Subsections ~~[(2)(a)]~~(1) and ~~[(b)]~~(2), a design ~~{}~~professional ~~{}~~expert may be required to indemnify a person for whom the design ~~{}~~professional ~~{}~~expert has direct or indirect control or responsibility.

Section 14. Section **63G-6a-1206.5** is enacted to read:

63G-6a-1206.5. Change in contract price.

(1) At any time during the period that a contract is in effect, a contractor may lower the contract price to the procurement unit.

(2) A contractor may increase the contract price only in accordance with the terms of the contract.

Section 15. Section **63G-6a-1501** is amended to read:

Part 15. Design Professional Services

63G-6a-1501. Title.

This part is known as "[~~Architect-Engineer~~] Design Professional Services."

Section 16. Section **63G-6a-1502** is amended to read:

63G-6a-1502. Policy regarding design professional services.

~~[(1) It is the policy of this state to]~~

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(1) A procurement unit seeking to procure design professional services shall:

(a) publicly announce all requirements for ~~[architect-engineer]~~ those services through a request for statement of qualifications ~~[and to]~~, as provided in this part; and

(b) negotiate contracts for ~~[architect-engineer]~~ design professional services;

(i) on the basis of demonstrated competence and qualification for the type of services required~~[,]~~; and

(ii) at fair and reasonable prices.

(2) ~~[Architect-engineer services shall be procured]~~ A procurement unit shall procure design professional services as provided in this part, except as otherwise provided in Sections 63G-6a-403, 63G-6a-404, 63G-6a-408, 63G-6a-802, and 63G-6a-803.

(3) This part does not affect the authority of, and does not apply to procedures undertaken by, a procurement unit to obtain the services of architects or engineers in the capacity of employees of the procurement unit.

Section 17. Section **63G-6a-1502.5** is enacted to read:

63G-6a-1502.5. Request for statement of qualifications.

(1) A procurement unit may establish criteria in a request for statement of qualifications by which the qualifications of a design professional, as set forth in a statement of qualifications, will be evaluated, including:

(a) the ~~{person's}~~ ~~design professional's~~ work history and experience;

(b) performance ratings earned by the ~~{person}~~ ~~design professional~~ or references for similar work;

(c) any quality assurance or quality control plan;

(d) the quality of the ~~{person's}~~ ~~design professional's~~ past work product;

(e) the time, manner of delivery, and schedule of delivery of the design professional services;

(f) the ~~{person's}~~ ~~design professional's~~ financial solvency;

(g) any management plan, including key personnel and subconsultants for the project;

and

(h) other project specific criteria that the procurement unit establishes.

(2) A request for statement of qualifications may not include a request for a price or a cost component for the design professional services.

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Section 18. Section **63G-6a-1503** is amended to read:

63G-6a-1503. Evaluation committee for design professional services.

(1) In the procurement of [~~architect-engineer~~] design professional services, the procurement officer or the head of an issuing procurement unit shall encourage [~~firms~~] design professionals engaged in the lawful practice of their profession to submit a statement of qualifications.

(2) (a) The director of the Division of Facilities Construction and Management shall appoint an evaluation committee for [~~architect-engineer~~] design professional services [~~contracts~~] procurements under its authority.

~~[(3) An evaluation committee for architect-engineer services contracts not under the authority of the Division of Facilities Construction and Management shall be established in accordance with rules made by the applicable rulemaking authority.]~~

(b) A conducting procurement unit, other than the Division of Facilities Construction and Management, shall appoint an evaluation committee for design professional services procurements under the authority of that procurement unit.

(3) (a) An evaluation committee appointed under Subsection (2) shall consist of at least three members.

(b) A procurement unit appointing an evaluation committee under this section shall ensure that each member of the evaluation committee:

(i) does not have a conflict of interest with any of the design professionals under consideration;

(ii) can fairly evaluate each statement of qualifications;

(iii) does not contact or communicate with any of the design professionals under consideration concerning the request for statement of qualifications outside the official evaluation committee process, beginning the date that the request for statement of qualifications is issued until the selection of the design professional has been made; and

(iv) conducts the evaluation in a manner that ensures a fair and competitive process and avoids the appearance of impropriety.

(4) An evaluation committee appointed under this section shall:

(a) evaluate current statements of qualifications and performance data on file with the procurement unit, together with those that may be submitted by other [~~firms~~] design

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professionals in response to the announcement of a proposed contract;

(b) consider no [~~less~~] fewer than three [~~firms~~] design professionals; and

(c) based upon criteria established and published by the [~~issuing~~] conducting procurement unit, select no [~~less~~] fewer than three of the [~~firms~~] design professionals considered to be the most highly qualified to provide the services required.

Section 19. Section **63G-6a-1503.5** is enacted to read:

63G-6a-1503.5. Evaluation of statements of qualifications.

(1) An evaluation committee appointed under Section 63G-6a-1503 shall evaluate and score each responsive and responsible statement of qualifications that has not been disqualified from consideration under this chapter, using the criteria described in the request for statement of qualifications.

(2) Criteria not described in the request for statement of qualifications may not be used to evaluate a statement of qualifications.

(3) An evaluation committee may enter into discussions or conduct interviews with, or attend presentations by, the design professionals whose statements of qualifications are under consideration.

(4) An evaluation committee shall rank the top three highest scoring design professionals, in order of their scores, for the purpose of entering into fee negotiations as provided in Section 63G-6a-1505.

(5) If fewer than three design professionals submit statements of qualifications or are determined to be responsive and responsible, the chief procurement officer or head of a procurement unit with independent procurement authority shall issue a written determination explaining why it is in the best interest of the procurement unit to continue the fee negotiation and the contracting process with less than three design professionals.

(6) (a) The deliberations of an evaluation committee may be held in private.

(b) If the evaluation committee is a public body, as defined in Section 52-4-103, the evaluation committee shall comply with Section 52-4-205 in closing a meeting for its deliberations.

Section 20. Section **63G-6a-1504** is amended to read:

63G-6a-1504. Selection as part of design-build or lease.

Notwithstanding any other provision of this chapter, [~~architect-engineer~~] design

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professional services may be procured under Title 63A, Chapter 5, State Building Board - Division of Facilities Construction and Management, as part of the services obtained in a design-build contract or as part of the services obtained in a lease contract for real property, if the qualifications of those providing the [~~architect-engineer~~] design professional services are part of the consideration in the selection process.

Section 21. Section **63G-6a-1505** is amended to read:

63G-6a-1505. Determination of compensation for design professional services.

(1) The procurement officer shall award a contract to [~~a~~] the qualified [firm] design professional whose statement of qualifications was awarded the highest score under Subsection 63G-6a-1503(4) by the evaluation committee, at compensation that the procurement officer determines, in writing, to be fair and reasonable to the procurement unit.

(2) In making the determination described in Subsection (1), the procurement officer shall take into account [~~the services~~]:

[~~(a) estimated value;~~]

[~~(b) scope;~~]

[~~(c) complexity; and~~]

[~~(d) professional nature.~~]

(a) the estimated value, scope, and professional nature of the services; and

(b) the complexity of the project or services.

(3) If the procurement officer is unable to agree to a satisfactory contract with the [~~firm first selected~~] highest scoring design professional, at a price the procurement officer determines to be fair and reasonable to the procurement unit, the procurement officer shall:

(a) formally terminate discussions with that [~~firm~~] design professional; and

(b) undertake discussions with [~~a~~] the second highest scoring, qualified [firm] design professional.

(4) If the procurement officer is unable to agree to a satisfactory contract with the second [~~firm selected~~] highest scoring design professional, at a price the procurement officer determines to be fair and reasonable to the procurement unit, the procurement officer shall:

(a) formally terminate discussions with that [~~firm~~] design professional; and

(b) undertake discussions with [~~a~~] the third highest scoring, qualified [firm] design professional.

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(5) If the procurement officer is unable to award a contract at a fair and reasonable price to any of the ~~[selected firms]~~ highest scoring design professionals, the procurement officer shall:

- (a) select additional ~~[firms]~~ design professionals; and
- (b) continue discussions in accordance with this part until an agreement is reached.

Section 22. Section **63G-6a-1506** is amended to read:

63G-6a-1506. Restrictions on procurement of design professional services.

(1) Except as provided in Subsection (2), ~~[when]~~ if the division or a procurement unit with independent procurement authority, in accordance with Section 63G-6a-1502, ~~[elects to obtain architect or engineering services by using a competitive procurement process and has provided public notice of its competitive procurement process]~~ issues a request for statement of qualifications to procure design professional services and provides public notice of the request for statement of qualifications:

(a) a ~~[higher education entity, or any part of one,]~~ public entity inside or outside the state may not submit a proposal in response to the procurement unit's ~~[competitive procurement process]~~ request for statement of qualifications; and

(b) the procurement unit may not award a contract ~~[to perform the architect or engineering services solicited in the competitive procurement process to a higher education entity or any part of one]~~ to a public entity inside or outside the state to perform the design professional services solicited in the request for statement of qualifications.

(2) Subsection (1) does not apply when the procurement unit is procuring ~~[architect or engineer]~~ design professional services for contracts related to research activities and technology transfer.

Section 23. Section **63G-6a-1603** is amended to read:

63G-6a-1603. Protest officer responsibilities and authority -- Proceedings on protest -- Effect of decision.

(1) After a protest is filed, the protest officer shall determine whether the protest is timely filed and complies fully with the requirements of Section 63G-6a-1602.

(2) If the protest officer determines that the protest is not timely filed or that the protest does not fully comply with Section 63G-6a-1602, the protest officer shall dismiss the protest.

(3) If the protest officer determines that the protest is timely filed and complies fully

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with Section 63G-6a-1602, the protest officer shall:

(a) dismiss the protest if the protest officer determines that the protest alleges facts that, if true, do not provide an adequate basis for the protest;

(b) uphold the protest without holding a hearing if the protest officer determines that the undisputed facts of the protest indicate that the protest should be upheld; or

(c) hold a hearing on the protest if there is a genuine issue of material fact that needs to be resolved in order to determine whether the protest should be upheld.

(4) (a) If a hearing is held on a protest, the protest officer may:

(i) subpoena witnesses and compel their attendance at the protest hearing;

(ii) subpoena documents for production at the protest hearing;

(iii) obtain additional factual information; and

(iv) obtain testimony from experts, the person filing the protest, representatives of the procurement unit, or others to assist the protest officer to make a decision on the protest.

(b) The Rules of Evidence do not apply to a protest hearing.

(c) The applicable rulemaking authority shall make rules relating to intervention in a protest, including designating:

(i) who may intervene; and

(ii) the time and manner of intervention.

(d) A protest officer shall:

(i) record each hearing held on a protest under this section;

(ii) regardless of whether a hearing on a protest is held under this section, preserve all records and other evidence relied upon in reaching the protest officer's written decision until the decision, and any appeal of the decision, becomes final; and

(iii) submit to the procurement policy board chair a copy of the protest officer's written decision and all records and other evidence relied upon in reaching the decision, within seven days after receiving:

(A) notice that an appeal of the protest officer's decision has been filed under Section 63G-6a-1702; or

(B) a request from the chair of the procurement policy board.

(e) A protest officer's holding a hearing, considering a protest, or issuing a written decision under this section does not affect a person's right to later question or challenge the

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protest officer's jurisdiction to hold the hearing, consider the protest, or issue the decision.

(5) (a) The deliberations of a protest officer may be held in private.

(b) If the protest officer is a public body, as defined in Section 52-4-103, the protest officer shall comply with Section 52-4-205 in closing a meeting for its deliberations.

(6) (a) A protest officer, or the protest officer's designee, shall promptly issue a written decision regarding any protest, unless the protest is settled by mutual agreement.

(b) The decision shall:

(i) state the reasons for the action taken;

(ii) inform the protestor of the right to judicial or administrative review as provided in this chapter; and

(iii) indicate the amount of the security deposit or bond required under Section 63G-6a-1703.

(c) A person who issues a decision under Subsection (6)(a) shall mail, email, or otherwise immediately furnish a copy of the decision to the protestor.

(7) A decision described in this section is effective until stayed or reversed on appeal, except to the extent provided in Section 63G-6a-1903.

(8) (a) A decision described in Subsection (6)(a) that is issued in relation to a procurement unit other than a legislative procurement unit, a judicial procurement unit, a nonadopting local government procurement unit, or a public transit district is final and conclusive unless the protestor files an appeal under Section 63G-6a-1702.

(b) A decision described in Subsection (6)(a) that is issued in relation to a legislative procurement unit, a judicial procurement unit, a nonadopting local government procurement unit, or a public transit district is final and conclusive unless the protestor files an appeal under Section 63G-6a-1802.

(9) If the protest officer does not issue the written decision regarding a protest or a contract controversy within 30 calendar days after the day on which a written request for a final decision is filed with the protest officer, or within a longer period as may be agreed upon by the parties, the protestor, prospective contractor, or contractor may proceed as if an adverse decision had been received.

(10) A determination under this section by the protest officer regarding an issue of fact may not be overturned on appeal unless the decision is arbitrary and capricious or clearly

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erroneous.

Section 24. Section **63G-6a-1702** is amended to read:

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

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

- (a) a legislative procurement unit;
- (b) a judicial procurement unit;
- (c) a nonadopting local government procurement unit; or
- (d) a public transit district.

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

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

(A) personally served on the party or the party's representative; or

(B) emailed or mailed to the address or email address of record provided by the party under Subsection 63G-6a-1602~~(3)~~(2); or

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

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

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

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

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

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

(4) A person may not appeal from a protest described in Section 63G-6a-1602, unless:

- (a) a decision on the protest has been issued; or

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(b) a decision is not issued and the 30-day period described in Subsection 63G-6a-1603(7), or a longer period agreed to by the parties, has passed.

(5) The chair of the board or a designee of the chair who is not employed by the procurement unit responsible for the solicitation, contract award, or other action complained of:

(a) shall, within seven days after the day on which the chair receives a timely written notice of appeal under Subsection (2), and if all the requirements of Subsection (2) and Section 63G-6a-1703 have been met, appoint:

(i) a procurement appeals panel to hear and decide the appeal, consisting of at least three individuals, each of whom is:

(A) a member of the board; or

(B) a designee of a member appointed under Subsection [~~(4)~~] (5)(a)(i)(A), if the designee is approved by the chair; and

(ii) one of the members of the procurement appeals panel to be the chair of the panel;

(b) may:

(i) appoint the same procurement appeals panel to hear more than one appeal; or

(ii) appoint a separate procurement appeals panel for each appeal;

(c) may not appoint a person to a procurement appeals panel if the person is employed by the procurement unit responsible for the solicitation, contract award, or other action complained of; and

(d) shall, at the time the procurement appeals panel is appointed, provide appeals panel members with a copy of the protest officer's written decision and all other records and other evidence that the protest officer relied on in reaching the decision.

(6) A procurement appeals panel described in Subsection (5) shall:

(a) consist of an odd number of members;

(b) conduct an informal proceeding on the appeal within 60 days after the day on which the procurement appeals panel is appointed:

(i) unless all parties stipulate to a later date; and

(ii) subject to Subsection (8);

(c) at least seven days before the proceeding, mail, email, or hand-deliver a written notice of the proceeding to the parties to the appeal; and

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

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(i) issue a written decision on the appeal; and
(ii) mail, email, or hand-deliver the written decision on the appeal to the parties to the appeal and to the protest officer.

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

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

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

(9) A procurement appeals panel:

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

(i) the protest decision;

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

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

(b) may not take additional evidence;

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

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

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

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

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

(c) may not order that:

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

(ii) a contract or solicitation be cancelled; or

(iii) any other action be taken other than the action described in Subsection (10)(a).

(11) The board shall make rules relating to the conduct of an appeals proceeding,

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including rules that provide for:

- (a) expedited proceedings; and
 - (b) electronic participation in the proceedings by panel members and participants.
- (12) The Rules of Evidence do not apply to an appeals proceeding.

Section 25. Section **63G-6a-1703** is amended to read:

63G-6a-1703. Requirement to pay a security deposit or post a bond -- Exceptions
-- Amount -- Forfeiture of security deposit or bond.

(1) Except as provided by rule made under Subsection (2)(a), a person who files a notice of appeal under Section 63G-6a-1702 shall, before the expiration of the time provided under Subsection 63G-6a-1702(2) for filing a notice of appeal, pay a security deposit or post a bond with the office of the protest officer.

(2) The amount of a security deposit or bond required under Subsection (1) is:

(a) for an appeal relating to an invitation for bids or request for proposals and except as provided in Subsection (2)(b)(ii):

- (i) \$20,000, if the total contract value is under \$500,000;
- (ii) \$25,000, if the total contract value is \$500,000 or more but less than \$1,000,000;
- (iii) \$50,000, if the total contract value is \$1,000,000 or more but less than \$2,000,000;
- (iv) \$95,000, if the total contract value is \$2,000,000 or more but less than \$4,000,000;
- (v) \$180,000, if the total contract value is \$4,000,000 or more but less than \$8,000,000;
- (vi) \$320,000, if the total contract value is \$8,000,000 or more but less than \$16,000,000;
- (vii) \$600,000, if the total contract value is \$16,000,000 or more but less than \$32,000,000;
- (viii) \$1,100,000, if the total contract value is \$32,000,000 or more but less than \$64,000,000;
- (ix) \$1,900,000, if the total contract value is \$64,000,000 or more but less than \$128,000,000;
- (x) \$3,500,000, if the total contract value is \$128,000,000 or more but less than \$256,000,000;
- (xi) \$6,400,000, if the total contract value is \$256,000,000 or more but less than \$512,000,000; and

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(xii) \$10,200,000, if the total contract value is \$512,000,000 or more; or

(b) \$20,000, for an appeal:

(i) relating to any type of procurement process other than an invitation for bids or request for proposals;

(ii) relating to an invitation for bids or request for proposals, if the estimated total contract value cannot be determined; or

(iii) of a debarment or suspension.

(3) (a) For an appeal relating to an invitation for bids, the estimated total contract value shall be based on:

(i) the lowest responsible and responsive bid amount for the entire term of the contract, excluding any renewal period, if the bid opening has occurred;

(ii) the total budget for the procurement item for the entire term of the contract, excluding any renewal period, if bids are based on unit or rate pricing; or

(iii) if the contract is being rebid, the historical usage and amount spent on the contract over the life of the contract.

(b) For an appeal relating to a request for proposals, the estimated total contract value shall be based on:

(i) the lowest cost proposed in a response to a request for proposals, considering the entire term of the contract, excluding any renewal period, if the opening of proposals has occurred;

(ii) the total budget for the procurement item over the entire term of the contract, excluding any renewal period, if opened cost proposals are based on unit or rate pricing; or

(iii) if the contract is being reissued, the historical usage and amount spent on the contract over the life of the contract that is being reissued.

(4) The protest officer shall:

(a) retain the security deposit or bond until the protest and any appeal of the protest decision is final;

(b) as it relates to a security deposit:

(i) deposit the security deposit into an interest-bearing account; and

(ii) after any appeal of the protest decision becomes final, return the security deposit and the interest it accrues to the person who paid the security deposit, unless the security

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deposit is forfeited to the [~~General Fund~~] general fund of the procurement unit under Subsection (5); and

(c) as it relates to a bond:

(i) retain the bond until the protest and any appeal of the protest decision becomes final; and

(ii) after the protest and any appeal of the protest decision becomes final, return the bond to the person who posted the bond, unless the bond is forfeited to the [~~General Fund~~] general fund of the procurement unit under Subsection (5).

(5) A security deposit that is paid, or a bond that is posted, under this section shall forfeit to the [~~General Fund~~] general fund of the procurement unit if:

(a) the person who paid the security deposit or posted the bond fails to ultimately prevail on appeal; and

(b) the procurement appeals panel finds that the protest or appeal is frivolous or that its primary purpose is to harass or cause a delay.

Section 26. Section **63G-6a-1802** is amended to read:

63G-6a-1802. Appeal to Utah Court of Appeals.

(1) (a) As provided in this part:

(i) a person may appeal a dismissal of an appeal by the board chair under Subsection 63G-6a-1706(1);

(ii) a person who receives an adverse decision by a procurement appeals panel may appeal that decision;

(iii) subject to Subsection (2), a procurement unit, other than a legislative procurement unit, a judicial procurement unit, a nonadopting local government procurement unit, or a public transit district, may appeal an adverse decision by a procurement appeals panel;

(iv) a person who receives an adverse decision in a protest relating to a legislative procurement unit, a judicial procurement unit, a nonadopting local government procurement unit, or a public transit district may appeal that decision; and

(v) a person who is debarred or suspended under Section 63G-6a-904 by a legislative procurement unit, a judicial procurement unit, a nonadopting local government procurement unit, or a public transit district may appeal the debarment or suspension.

(b) A person seeking to appeal a dismissal, decision, or debarment or suspension under

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Subsection (1)(a) shall file a notice of appeal with the Utah Court of Appeals within seven days after the dismissal, decision, or debarment or suspension.

(2) A procurement unit may not appeal the decision of a procurement appeals panel, unless the appeal is:

(a) recommended by the protest officer involved; and

(b) except for a procurement unit that is not represented by the attorney general's office, approved by the attorney general.

(3) A person appealing a dismissal, decision, protest, debarment, or suspension under this section may not base the appeal on a ground not specified in the proceeding from which the appeal is taken.

(4) The Utah Court of Appeals:

(a) shall consider the appeal as an appellate court;

(b) may not hear the matter as a trial de novo; and

(c) may not overturn a finding, dismissal, decision, or debarment or suspension, unless the finding, dismissal, decision, or debarment or suspension is arbitrary and capricious or clearly erroneous.

(5) The Utah Court of Appeals is encouraged to:

(a) give an appeal made under this section priority; and

(b) consider the appeal and render a decision in an expeditious manner.

Section 27. Section **63G-6a-1903** is amended to read:

63G-6a-1903. Effect of timely protest or appeal.

A procurement unit, other than a legislative procurement unit, a judicial procurement unit, a nonadopting local government procurement unit, or a public transit district, may not proceed further with a solicitation or with the award of a contract:

(1) during the pendency of a timely:

(a) protest under Subsection 63G-6a-1602(1);

(b) appeal of a protest under Section 63G-6a-1702; or

(c) appeal of a procurement appeals panel decision under Section 63G-6a-1802; and

(2) until:

(a) all administrative and judicial remedies are exhausted;

(b) for a protest under Section 63G-6a-1602 or an appeal under Section 63G-6a-1702:

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(i) the chief procurement officer, after consultation with the attorney general's office and the head of the using agency, makes a written determination that award of the contract without delay is in the best interest of the procurement unit or the state;

(ii) the head of a procurement unit with independent procurement authority, after consultation with the procurement unit's attorney, makes a written determination that award of the contract without delay is in the best interest of the procurement unit or the state; or

(iii) for a procurement unit that is not represented by the attorney general's office, the procurement unit, after consulting with the attorney for the procurement unit, makes a written determination that award of the contract without delay is in the best interest of the procurement unit or the state; or

(c) for an appeal under Section 63G-6a-1802, or an appeal to a higher court than district court:

(i) the chief procurement officer, after consultation with the attorney general's office and the head of the using agency, makes a written determination that award of the contract without delay is in the best interest of the procurement unit or the state;

(ii) the head of a procurement unit with independent procurement authority, after consultation with the procurement unit's attorney, makes a written determination that award of the contract without delay is in the best interest of the procurement unit or the state; or

(iii) for a procurement unit that is not represented by the attorney general's office, the procurement unit, after consulting with the attorney for the procurement unit, makes a written determination that award of the contract without delay is necessary to protect the best interest of the procurement unit or the state.

Section 28. Section **63G-6a-1904** is amended to read:

63G-6a-1904. Costs to or against protestor.

(1) [~~When~~] If a protest is sustained administratively or upon administrative or judicial review and the protesting bidder or offeror should have been awarded the contract under the solicitation but is not, the protestor [~~shall be~~] is entitled to the following relief as a claim against the procurement unit:

(a) the reasonable costs incurred in connection with the solicitation, including bid preparation and appeal costs; and

(b) any equitable relief determined to be appropriate by the reviewing administrative or

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judicial body.

(2) [~~When a protest is not sustained by a~~] If the final determination of a procurement appeals panel or other appellate body does not sustain the protest, the protestor shall reimburse the conducting or issuing procurement unit for all expenses that the conducting or issuing procurement unit incurred in defending the appeal, including personnel costs, attorney fees, other legal costs, [~~expenses incurred by the attorney general's office,~~] the per diem and expenses paid by the conducting or issuing procurement unit to witnesses or appeals panel members, and any additional expenses incurred by the staff of the conducting or issuing procurement unit who have provided materials and administrative services to the procurement appeals panel for that case.

(3) The provisions of Title 63G, Chapter 7, Part 4, Notice of Claim Against a Governmental Entity or a Government Employee, and Section 63G-7-601 do not apply to actions brought under this chapter by an aggrieved party for equitable relief or reasonable costs incurred in preparing or appealing an unsuccessful bid or offer.

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Legislative Review Note

~~as of 2-25-15 10:31 AM~~

~~Office of Legislative Research and General Counsel~~