

- 708 (ii) for each other executive branch procurement unit, the board;
- 709 (d) for a local government procurement unit ~~§~~ [c] :
- 709a (i) ~~§~~ the legislative body of the local
- 710 government procurement unit ~~§~~ ; or
- 710a (ii) an individual or body designated by the legislative body of the local government
- 710b procurement unit ~~§~~ :
- 711 (e) for a school district or a public school, the board, except to the extent of a school
- 712 district's own nonadministrative rules that do not conflict with the provisions of this chapter;
- 713 (f) for a state institution of higher education, the State Board of Regents;
- 714 (g) for a public transit district, the chief executive of the public transit district;
- 715 (h) for a local district other than a public transit district or for a special service district:
- 716 (i) before January 1, 2015, the board of trustees of the local district or the governing
- 717 body of the special service district; or
- 718 (ii) on or after January 1, 2015, the board, except to the extent that the board of trustees
- 719 of the local district or the governing body of the special service district makes its own rules:
- 720 (A) with respect to a subject addressed by board rules; or
- 721 (B) that are in addition to board rules; or
- 722 (i) for any other procurement unit, the board.
- 723 (2) "Approved vendor" means a vendor who has been approved through the approved
- 724 vendor list process.
- 725 (3) "Approved vendor list" means a list of approved vendors established under Section
- 726 [63G-6a-507](#).
- 727 (4) "Approved vendor list process" means the procurement process described in
- 728 Section [63G-6a-507](#).
- 729 [~~(+)~~] (5) "Bidder" means a person who [~~responds~~] submits a bid or price quote in
- 730 response to an invitation for bids.
- 731 (6) "Bidding process" means the procurement process described in Part 6, Bidding.
- 732 (7) "Board" means the Utah State Procurement Policy Board, created in Section
- 733 [63G-6a-202](#).
- 734 (8) "Building board" means the State Building Board, created in Section [63A-5-101](#).
- 735 [~~(2)~~] (9) "Change directive" means a written order signed by the procurement officer
- 736 that directs the contractor to suspend work or make changes, as authorized by contract, without
- 737 the consent of the contractor.
- 738 [~~(3)~~] (10) "Change order" means a written alteration in specifications, delivery point,

1049 the state, including:

1050 (a) a procurement unit;

1051 (b) a municipality or county, regardless of whether the municipality or county has  
1052 adopted this chapter or any part of this chapter; and

1053 (c) any other government entity located in the state that expends public funds.

1054 (65) "Public facility" means a building, structure, infrastructure, improvement, or other  
1055 facility of a public entity.

1056 (66) "Public funds" means money, regardless of its source, including from the federal  
1057 government, that is owned ~~§~~ [;] or ~~←§~~ held ~~§~~ [; or administered by a public entity] by a  
1057a procurement unit ~~←§~~ .

1058 (67) "Public transit district" means a public transit district organized under Title 17B,  
1059 Chapter 2a, Part 8, Public Transit District Act.

1060 (68) "Qualified vendor" means a vendor who:

1061 (a) is responsible; and

1062 (b) submits a responsive statement of qualifications under Section [63G-6a-410](#) that  
1063 meets the minimum mandatory requirements, evaluation criteria, and any applicable score  
1064 thresholds set forth in the request for statement of qualifications.

1065 (69) "Real property" means land and any building, fixture, improvement, appurtenance,  
1066 structure, or other development that is permanently affixed to land.

1067 ~~[(41)]~~ (70) "Request for information" means a nonbinding process [where] through  
1068 which a procurement unit requests information relating to a procurement item.

1069 ~~[(42)]~~ (71) "Request for proposals" [includes all documents, including documents that  
1070 are attached or incorporated by reference, used for soliciting] means a document used to solicit  
1071 proposals to provide a procurement item to a procurement unit, including all other documents  
1072 that are attached to that document or incorporated in that document by reference.

1073 (72) "Request for proposals process" means the procurement process described in Part  
1074 7, Request for Proposals.

1075 ~~[(43)]~~ (73) "Request for statement of qualifications" means [all documents] a document  
1076 used to solicit information about the qualifications of [the] a person interested in responding to  
1077 a potential procurement, including all other documents attached to that document or  
1078 incorporated in that document by reference.

1079 ~~[(44)]~~ (74) "Requirements contract" means a contract:

- 1762 (i) submit a responsive statement of qualifications; and  
1763 (ii) meet the minimum mandatory requirements, evaluation criteria, and applicable  
1764 score thresholds described in the request for statement of qualifications;  
1765 (d) a statement indicating that only vendors on the approved vendor list will be able to  
1766 participate in the procurements identified in the request for statement of qualifications;  
1767 (e) a statement indicating whether the procurement unit will use a performance rating  
1768 system for evaluating the performance of vendors on the approved vendor list, including  
1769 whether a vendor on the approved vendor list may be disqualified and removed from the list;  
1770 (f) (i) a statement indicating whether the procurement unit uses a closed-ended  
1771 approved vendor list, as defined in Section 63G-6a-507, or an open-ended approved vendor  
1772 list, as defined in Section 63G-6a-507; and  
1773 (ii) (A) if the procurement unit uses a closed-ended approved vendor list, the deadline  
1774 by which a vendor is required to submit a statement of qualifications and a specified period of  
1775 time after which the approved vendor list will expire; or  
1776 (B) if the procurement unit uses an open-ended approved vendor list, the deadline by  
1777 which a vendor is required to submit a statement of qualifications to be considered for the  
1778 initial approved vendor list, a schedule indicating when a vendor not on the initial approved  
1779 vendor list may submit a statement of qualifications to be considered to be added to the  
1780 approved vendor list, and the specified period of time after which a vendor is required to  
1781 submit a new statement of qualifications for evaluation before the vendor's status as an  
1782 approved vendor on the approved vendor list may be renewed; and  
1783 (g) a description of any other criteria or requirements specific to the procurement item  
1784 or scope of work that is the subject of the procurement.  
1785 (6) A procurement unit issuing a request for statement of qualifications shall publish  
1786 the request as provided in Section 63G-6a-112.  
1787 (7) After the deadline for submitting a statement of qualifications, the chief  
1788 procurement officer or the head of a procurement unit with independent procurement authority  
1789 may ~~§~~ allow a vendor to ~~§~~ correct an immaterial error in a statement of qualifications, as  
1789a provided in Section  
1790 63G-6a-114.  
1791 (8) (a) A conducting procurement unit may reject a statement of qualifications if the  
1792 conducting procurement unit determines that:

1855 (F) remedy a cause for ~~§~~ → [am] a ← ~~§~~ vendor being considered to be not responsible or a  
1855a statement

1856 of qualifications not responsive; or

1857 (G) correct a defect or inadequacy resulting in a determination that a vendor does not  
1858 meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds  
1859 established in the statement of qualifications.

1860 (e) After the evaluation committee completes its evaluation and scoring of the  
1861 statements of qualifications, the evaluation committee shall submit the statements of  
1862 qualifications and evaluation scores to the head of the procurement unit for review and final  
1863 determination of:

1864 (i) qualified vendors, if the request for statement of qualifications process is used as  
1865 one of the stages of a multiple-stage process; or

1866 (ii) vendors to be included on an approved vendor list, if the request for statement of  
1867 qualifications process is used as part of the approved vendor list process.

1868 (f) The issuing procurement unit shall review the evaluation committee's scores and  
1869 correct any errors, scoring inconsistencies, and reported noncompliance with this chapter.

1870 (g) (i) The deliberations of an evaluation committee under this Subsection (9) may be  
1871 held in private.

1872 (ii) If the evaluation committee is a public body, as defined in Section [52-4-103](#), the  
1873 evaluation committee shall comply with Section [52-4-205](#) in closing a meeting for its  
1874 deliberations.

1875 (10) A procurement unit may at any time request a vendor to clarify information  
1876 contained in a statement of qualifications, as provided in Section [63G-6a-115](#).

1877 (11) A vendor may voluntarily withdraw a statement of qualifications at any time  
1878 before a contract is awarded with respect to which the statement of qualifications was  
1879 submitted.

1880 (12) If only one vendor meets the minimum qualifications, evaluation criteria, and  
1881 applicable score thresholds set forth in the request for statement of qualifications that the  
1882 procurement unit is using as part of an approved vendor list process, the conducting  
1883 procurement unit:

1884 (a) shall cancel the request for statement of qualifications; and

1885 (b) may not establish an approved vendor list based on the canceled request for

1886 statement of qualifications or on statements of qualifications submitted in response to the  
 1887 request for statement of qualifications.

1888 (13) If a conducting procurement unit cancels a request for statement of qualifications,  
 1889 the conducting procurement unit shall make available for public inspection a written  
 1890 justification for the cancellation.

1891 (14) After receiving and reviewing the statements of qualifications and evaluation  
 1892 scores submitted by the evaluation committee under Subsection (9)(d), the head of the  
 1893 procurement unit using the request for statement of qualifications process under this section as  
 1894 one of the stages of a multiple-stage procurement process shall identify those vendors meeting  
 1895 the minimum mandatory requirements, evaluation criteria, and applicable score thresholds as  
 1896 qualified vendors who are allowed to participate in the remaining stages of the multiple-stage  
 1897 procurement process.

1898 (15) The applicable rulemaking authority may make rules pertaining to the request for  
 1899 statement of qualifications and the process described in this section.

1900 Section 24. Section **63G-6a-501** is amended to read:

1901 **Part 5. Other Standard Procurement Processes**

1902 **63G-6a-501. Title.**

1903 This part is known as [~~"Request for Information."~~] "Other Standard Procurement  
 1904 Processes."

1905 Section 25. Section **63G-6a-506**, which is renumbered from Section 63G-6a-408 is  
 1906 renumbered and amended to read:

1907 [~~63G-6a-408~~]. **63G-6a-506. Small purchases.**

1908 (1) As used in this section:

1909 (a) "Annual cumulative threshold" means the maximum total annual amount,  
 1910 established by the applicable rulemaking authority under Subsection (2)[~~(a)(i)~~] ~~§→~~ [~~(b)~~] ~~←§~~, that a  
 1911 procurement unit may expend to obtain procurement items from the same source under this  
 1912 section.

1913 (b) "Individual procurement threshold" means the maximum amount, established by  
 1914 the applicable rulemaking authority under Subsection (2)[~~(a)(ii)~~] ~~§→~~ [~~(b)~~] ~~←§~~, for which a  
 1914a procurement  
 1915 unit may purchase a procurement item under this section.

1916 (c) "Single procurement aggregate threshold" means the maximum total amount,

1917 established by the applicable rulemaking authority under Subsection (2)[(a)(iii)] ~~§~~→ [(b)] ←~~§~~, that  
 1917a a

1918 procurement unit may expend to obtain multiple procurement items from one source at one  
 1919 time under this section.

1920 (2) (a) The applicable rulemaking authority may make rules governing small purchases  
 1921 of any procurement item, including construction, job order contracting, design professional  
 1922 services, other professional services, information technology, and goods.

1923 (b) Rules under Subsection (2)(a) may include provisions:

1924 (i) establishing expenditure thresholds, including:

1925 (A) an annual cumulative threshold;

1926 (B) an individual procurement threshold; and

1927 (C) a single procurement aggregate threshold;

1928 (ii) establishing procurement requirements relating to the thresholds described in  
 1929 Subsection (2)(b)(i); and

1930 (iii) providing for the use of electronic, telephone, or written quotes.

1931 (3) Expenditures made under this section by a procurement unit may not exceed a  
 1932 threshold established by the applicable rulemaking authority, unless the chief procurement  
 1933 officer or the head of a procurement unit with independent procurement authority gives written  
 1934 authorization to exceed the threshold that includes the reasons for exceeding the threshold.

1935 (4) Except as provided in Subsection (5), an executive branch procurement unit may  
 1936 not obtain a procurement item through a small purchase standard procurement process if the  
 1937 procurement item may be obtained through a state cooperative contract or a contract awarded  
 1938 by the chief procurement officer under Subsection 63G-6a-2105(1).

1939 (5) Subsection (4) does not apply if:

1940 (a) the procurement item is obtained for an unanticipated, urgent [~~or unanticipated~~], or  
 1941 emergency condition, including:

1942 (i) an item needed to avoid stopping a public construction project;

1943 (ii) an immediate repair to a facility or equipment; or

1944 (iii) another emergency condition; or

1945 (b) the chief procurement officer or the head of a procurement unit that is an executive  
 1946 branch procurement unit with independent procurement authority:

1947 (i) determines in writing that it is in the best interest of the procurement unit to obtain

2320 presentations by, the offerors, for the purpose of clarifying information contained in proposals.

2321 (b) In a discussion, interview, or presentation under Subsection (5)(a), an offeror:

2322 (i) may only explain, illustrate, or interpret the contents of the offeror's original

2323 proposal; and

2324 (ii) may not:

2325 (A) address criteria or specifications not contained in the offeror's original proposal;

2326 (B) correct a deficiency, inaccuracy, or mistake in a proposal that is not an immaterial

2327 error;

2328 (C) correct an incomplete submission of documents that the solicitation required to be

2329 submitted with the proposal;

2330 (D) correct a failure to submit a timely proposal;

2331 (E) substitute or alter a required form or other document specified in the solicitation;

2332 (F) remedy a cause for an offeror being considered to be not responsible or a proposal

2333 not responsive; or

2334 (G) correct a defect or inadequacy resulting in a determination that an offeror does not

2335 meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds

2336 established in the solicitation.

2337 ~~[(5)]~~ (6) (a) Except as provided in ~~§~~→ [Subsections ~~[(5)(b) and (8)]~~ ~~(6)(b) and~~ Subsection

2337a (7)(b) relating to access to management fee information, and except as provided in

2337b Subsection ~~←~~§ (9), each

2338 member of the evaluation committee is prohibited from knowing, or having access to, any

2339 information relating to the cost, or the scoring of the cost, of a proposal until after the

2340 evaluation committee submits its final recommended scores on all other criteria to the issuing

2341 procurement unit.

2342 (b) The issuing procurement unit shall:

2343 (i) if applicable, assign an individual who is not a member of the evaluation committee

2344 to calculate scores for cost based on the applicable scoring formula, weighting, and other

2345 scoring procedures contained in the request for proposals;

2346 (ii) review the evaluation committee's scores and correct any errors, scoring

2347 inconsistencies, and reported noncompliance with this chapter;

2348 (iii) add the scores calculated for cost, if applicable, to the evaluation committee's final

2349 recommended scores on criteria other than cost to derive the total combined score for each

2350 responsive and responsible proposal; and

2351 (iv) provide to the evaluation committee the total combined score calculated for each  
 2352 responsive and responsible proposal, including any applicable cost formula, weighting, and  
 2353 scoring procedures used to calculate the total combined scores.

2354 (c) The evaluation committee may not:

2355 (i) change its final recommended scores described in Subsection [~~(5)~~] (6)(a) after the  
 2356 evaluation committee has submitted those scores to the issuing procurement unit; or

2357 (ii) change cost scores calculated by the issuing procurement unit.

2358 [~~(6)~~] (7) (a) As used in this Subsection [~~(6)~~] (7), "management fee" includes only the  
 2359 following fees of the construction manager/general contractor:

2360 (i) preconstruction phase services;

2361 (ii) monthly supervision fees for the construction phase; and

2362 (iii) overhead and profit for the construction phase.

2363 (b) When selecting a construction manager/general contractor for a construction  
 2364 project, the evaluation committee:

2365 (i) may score a construction manager/general contractor based upon criteria contained  
 2366 in the solicitation, including qualifications, performance ratings, references, management plan,  
 2367 certifications, and other project specific criteria described in the solicitation;

2368 (ii) may, as described in the solicitation, weight and score the management fee as a  
 2369 fixed rate or as a fixed percentage of the estimated contract value;

2370 (iii) may, at any time after the opening of the responses to the request for proposals,  
 2371 have access to, and consider, the management fee proposed by the offerors; and

2372 (iv) except as provided in Subsection [~~(8)~~] (9), may not know or have access to any  
 2373 other information relating to the cost of construction submitted by the offerors, until after the  
 2374 evaluation committee submits its final recommended scores on all other criteria to the issuing  
 2375 procurement unit.

2376 [~~(7)~~] (8) (a) The deliberations of an evaluation committee may be held in private.

2377 (b) If the evaluation committee is a public body, as defined in Section 52-4-103, the  
 2378 evaluation committee shall comply with Section 52-4-205 in closing a meeting for its  
 2379 deliberations.

2380 [~~(8)~~] (9) An issuing procurement unit is not required to comply with Subsection [~~(5)~~]

2381 (6) ~~§~~ → or (7)(b)(iv), as applicable, ← ~~§~~ if the head of the issuing procurement unit or a person  
 2381a designated by rule made by the



2382 applicable rulemaking authority:

2383 (a) signs a written statement:

2384 (i) indicating that, due to the nature of the proposal or other circumstances, it is in the

2385 best interest of the procurement unit to waive compliance with Subsection [~~(5)~~] (6) ~~§~~→ or

2385a (7)(b)(iv), as the case may be ←~~§~~ ; and

2386 (ii) describing the nature of the proposal and the other circumstances relied upon to

2387 waive compliance with Subsection [~~(5)~~] (6) ~~§~~→ or (7)(b)(iv) ←~~§~~ ; and

2388 (b) makes the written statement available to the public, upon request.

2389 Section 36. Section **63G-6a-707.5** is amended to read:

2390 **63G-6a-707.5. Best and final offers.**

2391 (1) At any time during the evaluation process, the evaluation committee, with the

2392 approval of the director or the head of the issuing procurement unit, may:

2393 (a) request best and final offers from responsible [~~and~~] offerors who have submitted

2394 responsive [~~offerors~~] proposals that meet the minimum qualifications, evaluation criteria, or

2395 applicable score thresholds identified in the request for proposals, if:

2396 (i) no single proposal addresses all the specifications stated in the request for

2397 proposals;

2398 (ii) all or a significant number of the proposals are ambiguous on a material point and

2399 the evaluation committee requires further clarification in order to conduct a fair evaluation of

2400 proposals;

2401 (iii) the evaluation committee needs additional information from all offerors to

2402 complete the evaluation of proposals;

2403 (iv) the differences between proposals in one or more material aspects are too slight to

2404 allow the evaluation committee to distinguish between proposals;

2405 (v) all cost proposals are too high or over budget; or

2406 (vi) another reason exists supporting a request for best and final offers, as provided in

2407 rules established by the applicable rulemaking authority; and

2408 (b) evaluate those best and final offers.

2409 (2) In requesting and evaluating best and final offers under Subsection (1), the

2410 evaluation committee shall:

2411 (a) ensure that each offeror receives fair and equal treatment with respect to the other

2412 offerors;

2692 Section 41. Section **63G-6a-802.7** is enacted to read:

2693 **63G-6a-802.7. Extension of a contract without engaging in a standard**  
 2694 **procurement process.**

2695 The chief procurement officer or the head of a procurement unit with independent  
 2696 procurement authority may extend an existing contract without engaging in a standard  
 2697 procurement process:

2698 (1) for a period of time not to exceed 120 days, if:

2699 (a) an extension of the contract is necessary to:

2700 (i) avoid a lapse in a critical government service; or

2701 (ii) to mitigate a circumstance that is likely to have a negative impact on public health,  
 2702 safety, welfare, or property; and

2703 (b) (i) (A) the procurement unit is engaged in a standard procurement process for a  
 2704 procurement item that is the subject of the contract being extended; and

2705 (B) the standard procurement process is delayed due to an unintentional error;

2706 (ii) a change in an industry standard requires one or more significant changes to  
 2707 specifications for the procurement item; or

2708 (iii) an extension is necessary:

2709 (A) to prevent the loss of federal funds;

2710 (B) to mitigate the effects of a delay of a state or federal appropriation;

2711 (C) to enable the procurement unit to continue to receive a procurement item during a  
 2712 delay in the implementation of a contract awarded pursuant to a procurement that has already  
 2713 been conducted; or

2714 (D) to enable the procurement unit to continue to receive a procurement item during a  
 2715 period of time during which negotiations with a vendor under a new contract for the  
 2716 procurement item are being conducted;

2717 (2) for the period of a protest, appeal, or court action, if the protest, appeal, or court  
 2718 action is the reason for delaying the award of a new contract; or

2719 (3) for a period of time exceeding 120 days, if the attorney general or the procurement  
 2720 unit's attorney determines in writing that the contract extension does not violate ~~§~~→ [this chapter  
 2720a or] ←~~§~~

2721 state or federal antitrust laws ~~§~~→ and is consistent with the purpose of ensuring the fair and  
 2721a equitable treatment of all persons who deal with the procurement system ←~~§~~ .

2722 Section 42. Section **63G-6a-803** is amended to read:

- 2940 (b) the day that is seven days after the day on which the person knows or first has  
 2941 constructive knowledge of the facts giving rise to the protest, if:
- 2942 (i) the protestor did not know and did not have constructive knowledge of the facts  
 2943 giving rise to the protest before:
- 2944 (A) the opening of bids, for a protest relating to a procurement under a bidding process;  
 2945 (B) the deadline for submitting responses to the solicitation, for a protest relating to  
 2946 another standard procurement process; or
- 2947 (C) the closing of the procurement stage that is the subject of the protest, if the protest  
 2948 relates to a multiple-stage procurement; or
- 2949 (ii) the protest relates to a procurement process not described in Subsection (2)(a).
- 2950 (3) (a) A protestor shall include in a protest:
- 2951 ~~[(a)]~~ (i) the ~~[person's]~~ protestor's mailing address ~~[of record]~~ and email address ~~[of~~  
 2952 record]; and
- 2953 ~~[(b)]~~ (ii) a concise statement of the ~~[grounds upon which the protest is made.]~~ facts and  
 2954 evidence:
- 2955 (A) leading the protestor to claim that the protestor has been aggrieved in connection  
 2956 with a procurement and providing the grounds for the protestor's protest; and
- 2957 (B) supporting the protestor's claim of standing.
- 2958 (b) A protest may not be considered unless it contains facts and evidence that, if true,  
 2959 would establish:
- 2960 (i) a violation of this chapter or other applicable law or rule;
- 2961 (ii) the procurement unit's failure to follow a provision of a solicitation;
- 2962 (iii) an error made by an evaluation committee or conducting procurement unit;
- 2963 (iv) a bias exercised by an evaluation committee or an individual committee member,  
 2964 excluding a bias that is a preference arising during the evaluation process because of how well  
 2965 a solicitation response meets criteria in the solicitation;
- 2966 (v) a failure to correctly apply or calculate a scoring criterion; or
- 2967 (vi) that specifications in a solicitation are unduly restrictive or unduly anticompetitive.
- 2968 (4) A protest may not be based on ~~§~~ :
- 2968a **(a) the rejection of a solicitation response due to a protestor's failure to attend or**  
 2968b **participate in a mandatory conference, meeting, or site visit held before the deadline for**  
 2968c **submitting a solicitation response; or**
- 2968d **(b) ~~←~~§ a vague or unsubstantiated allegation.**
- 2969 (5) A protest may not include a request for:
- 2970 (a) an explanation of the rationale or scoring of evaluation committee members;