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~~text~~ shows text that was in SB0184 but was deleted in SB0184S01.

text shows text that was not in SB0184 but was inserted into SB0184S01.

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Senator Scott K. Jenkins proposes the following substitute bill:

PROCUREMENT CODE MODIFICATIONS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott K. Jenkins

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to the Utah Procurement Code.

Highlighted Provisions:

This bill:

- ▶ modifies and adds definitions;
- ▶ rearranges some procurement provisions;
- ▶ modifies provisions relating to the head of a procurement unit with independent procurement authority;
- ▶ modifies exemptions from the procurement code;
- ▶ rewrites provisions relating to requests for statement of qualifications and approved vendor lists;
- ▶ authorizes a procurement unit to establish price based on specified established

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terms;

- ▶ modifies provisions relating to correcting immaterial errors in a solicitation and clarifying information in a solicitation response;
- ▶ modifies duties and responsibilities of the chief procurement officer;
- ▶ modifies provisions relating to a request for information;
- ▶ modifies provisions relating to standard procurement processes;
- ▶ modifies provisions relating to the evaluation process;
- ▶ modifies best and final offer provisions;
- ▶ modifies provisions relating to awarding and canceling a contract and the disqualification of offerors;
- ▶ modifies provisions relating to exceptions to standard procurement processes;
- ▶ modifies provisions relating to procurement protests;
- ▶ authorizes the attorney general to enforce procurement provisions and bring legal action;
- ▶ modifies a provision relating to reporting unlawful conduct; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

~~{ None }~~ This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

17B-2a-818.5, as last amended by Laws of Utah 2014, Chapter 425

19-1-206, as last amended by Laws of Utah 2014, Chapter 425

53A-1a-511, as last amended by Laws of Utah 2015, Chapters 138, 150, and 232

63A-5-205, as last amended by Laws of Utah 2014, Chapter 425

63C-9-403, as last amended by Laws of Utah 2014, Chapter 425

63F-1-205, as last amended by Laws of Utah 2015, Chapters 114 and 283

63G-6a-103, as last amended by Laws of Utah 2015, Chapters 218 and 464

63G-6a-105, as last amended by Laws of Utah 2015, Chapters 218 and 464

63G-6a-106, as last amended by Laws of Utah 2015, Chapters 218 and 362

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63G-6a-107, as last amended by Laws of Utah 2015, Chapters 218, 306, and 464

63G-6a-109, as last amended by Laws of Utah 2015, Chapter 464

63G-6a-203, as last amended by Laws of Utah 2013, Chapters 278 and 445

63G-6a-401, as enacted by Laws of Utah 2012, Chapter 347

63G-6a-501, as enacted by Laws of Utah 2012, Chapter 347

63G-6a-603, as last amended by Laws of Utah 2014, Chapter 196

63G-6a-604, as last amended by Laws of Utah 2013, Chapter 445

~~{63G-6a-605}~~63G-6a-606, as last amended by Laws of Utah ~~{2013, Chapter 445}~~2015,
Chapter 97

63G-6a-609, as last amended by Laws of Utah 2015, Chapter 218

63G-6a-611, as last amended by Laws of Utah 2014, Chapter 196

63G-6a-703, as last amended by Laws of Utah 2014, Chapter 196

~~{ 63G-6a-706, as enacted by Laws of Utah 2012, Chapter 347~~

~~‡~~ 63G-6a-707, as last amended by Laws of Utah 2015, Chapters 97 and 218

63G-6a-707.5, as renumbered and amended by Laws of Utah 2014, Chapter 196

63G-6a-708, as last amended by Laws of Utah 2014, Chapter 196

63G-6a-709, as last amended by Laws of Utah 2014, Chapter 196

63G-6a-802, as last amended by Laws of Utah 2014, Chapter 196

63G-6a-803, as enacted by Laws of Utah 2012, Chapter 347

63G-6a-806, as enacted by Laws of Utah 2013, Chapter 445

63G-6a-1206, as last amended by Laws of Utah 2014, Chapter 196

63G-6a-1206.5, as enacted by Laws of Utah 2015, Chapter 218

63G-6a-1502, as last amended by Laws of Utah 2015, Chapter 218

63G-6a-1503.5, as enacted by Laws of Utah 2015, Chapter 218

63G-6a-1601, as enacted by Laws of Utah 2012, Chapter 347

63G-6a-1602, as last amended by Laws of Utah 2014, Chapter 196

63G-6a-1603, as last amended by Laws of Utah 2015, Chapter 218

63G-6a-1702, as last amended by Laws of Utah 2015, Chapters 218, 258, and 464

63G-6a-1703, as last amended by Laws of Utah 2015, Chapter 218

63G-6a-1903, as last amended by Laws of Utah 2015, Chapter 218

63G-6a-2003, as last amended by Laws of Utah 2013, Chapter 445

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63G-6a-2105, as last amended by Laws of Utah 2014, Chapter 196

63G-6a-2404, as enacted by Laws of Utah 2014, Chapter 196

63G-6a-2407, as enacted by Laws of Utah 2014, Chapter 196

63G-10-403, as last amended by Laws of Utah 2015, Chapter 258

72-6-107.5, as last amended by Laws of Utah 2014, Chapter 425

79-2-404, as last amended by Laws of Utah 2014, Chapter 425

ENACTS:

63G-6a-106.5, Utah Code Annotated 1953

63G-6a-113, Utah Code Annotated 1953

63G-6a-114, Utah Code Annotated 1953

63G-6a-115, Utah Code Annotated 1953

63G-6a-410, Utah Code Annotated 1953

63G-6a-507, Utah Code Annotated 1953

63G-6a-802.3, Utah Code Annotated 1953

63G-6a-802.7, Utah Code Annotated 1953

63G-6a-906, Utah Code Annotated 1953

63G-6a-1206.3, Utah Code Annotated 1953

63G-6a-1601.5, Utah Code Annotated 1953

63G-6a-2408, Utah Code Annotated 1953

REPEALS AND REENACTS:

63G-6a-303, as last amended by Laws of Utah 2015, Chapters 218, 258, and 283

63G-6a-605, as last amended by Laws of Utah 2013, Chapter 445

63G-6a-706, as enacted by Laws of Utah 2012, Chapter 347

RENUMBERS AND AMENDS:

63G-6a-110, (Renumbered from 63G-6a-402, as last amended by Laws of Utah 2015, Chapter 218)

63G-6a-111, (Renumbered from 63G-6a-407, as last amended by Laws of Utah 2013, Chapter 445)

63G-6a-112, (Renumbered from 63G-6a-406, as last amended by Laws of Utah 2014, Chapter 196)

63G-6a-409, (Renumbered from 63G-6a-502, as enacted by Laws of Utah 2012,

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Chapter 347)

63G-6a-506, (Renumbered from 63G-6a-408, as last amended by Laws of Utah 2015, Chapter 218)

REPEALS:

63G-6a-104, as last amended by Laws of Utah 2015, Chapter 218

63G-6a-403, as last amended by Laws of Utah 2015, Chapter 97

63G-6a-404, as last amended by Laws of Utah 2014, Chapter 196

63G-6a-503, as last amended by Laws of Utah 2013, Chapter 445

63G-6a-504, as enacted by Laws of Utah 2012, Chapter 347

63G-6a-505, as enacted by Laws of Utah 2013, Chapter 445

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

Section 1. Section 17B-2a-818.5 is amended to read:

17B-2a-818.5. Contracting powers of public transit districts -- Health insurance coverage.

(1) For purposes of this section:

(a) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who:

(i) works at least 30 hours per calendar week; and

(ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following 60 days from the date of hire.

(b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

(c) "Qualified health insurance coverage" is as defined in Section 26-40-115.

(d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

(2) (a) Except as provided in Subsection (3), this section applies to a design or construction contract entered into by the public transit district on or after July 1, 2009, and to a prime contractor or to a subcontractor in accordance with Subsection (2)(b).

(b) (i) A prime contractor is subject to this section if the prime contract is in the amount of \$1,500,000 or greater.

(ii) A subcontractor is subject to this section if a subcontract is in the amount of \$750,000 or greater.

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(3) This section does not apply if:

- (a) the application of this section jeopardizes the receipt of federal funds;
- (b) the contract is a sole source contract; or
- (c) the contract is an emergency procurement.

(4) (a) This section does not apply to a change order as defined in Section 63G-6a-103, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection (2).

(b) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection (2) is guilty of an infraction.

(5) (a) A contractor subject to Subsection (2) shall demonstrate to the public transit district that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employee's dependents during the duration of the contract.

(b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor shall demonstrate to the public transit district that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employee's dependents during the duration of the contract.

(c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with an ordinance adopted by the public transit district under Subsection (6).

(B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (5)(b).

(ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the duration of the contract is subject to penalties in accordance with an ordinance adopted by the public transit district under Subsection (6).

(B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (5)(a).

(6) The public transit district shall adopt ordinances:

- (a) in coordination with:
 - (i) the Department of Environmental Quality in accordance with Section 19-1-206;
 - (ii) the Department of Natural Resources in accordance with Section 79-2-404;

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- (iii) the State Building Board in accordance with Section 63A-5-205;
- (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403; and
- (v) the Department of Transportation in accordance with Section 72-6-107.5; and

(b) which establish:

(i) the requirements and procedures a contractor shall follow to demonstrate to the public transit district compliance with this section which shall include:

(A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or (b) more than twice in any 12-month period; and

(B) that the actuarially equivalent determination required for the qualified health insurance coverage in Subsection (1) is met by the contractor if the contractor provides the department or division with a written statement of actuarial equivalency from either:

(I) the Utah Insurance Department;

(II) an actuary selected by the contractor or the contractor's insurer; or

(III) an underwriter who is responsible for developing the employer group's premium rates;

(ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:

(A) a three-month suspension of the contractor or subcontractor from entering into future contracts with the public transit district upon the first violation;

(B) a six-month suspension of the contractor or subcontractor from entering into future contracts with the public transit district upon the second violation;

(C) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6a-904 upon the third or subsequent violation; and

(D) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for employees and dependents of employees of the contractor or subcontractor who were not offered qualified health insurance coverage during the duration of the contract; and

(iii) a website on which the district shall post the benchmark for the qualified health insurance coverage identified in Subsection (1)(c).

(7) (a) (i) In addition to the penalties imposed under Subsection (6)(b)(ii), a contractor or subcontractor who intentionally violates the provisions of this section shall be liable to the

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employee for health care costs that would have been covered by qualified health insurance coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection (7)(a)(i) if:

(A) the employer relied in good faith on a written statement of actuarial equivalency provided by an:

(I) actuary; or

(II) underwriter who is responsible for developing the employer group's premium rates;

or

(B) a department or division determines that compliance with this section is not required under the provisions of Subsection (3) or (4).

(b) An employee has a private right of action only against the employee's employer to enforce the provisions of this Subsection (7).

(8) Any penalties imposed and collected under this section shall be deposited into the Medicaid Restricted Account created in Section 26-18-402.

(9) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this section:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section ~~63G-6a-1603~~ 63G-6a-1602 or any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.

Section 2. Section 19-1-206 is amended to read:

19-1-206. Contracting powers of department -- Health insurance coverage.

(1) For purposes of this section:

(a) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who:

(i) works at least 30 hours per calendar week; and

(ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following 60 days from the date of hire.

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(b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

(c) "Qualified health insurance coverage" is as defined in Section 26-40-115.

(d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

(2) (a) Except as provided in Subsection (3), this section applies to a design or construction contract entered into by or delegated to the department or a division or board of the department on or after July 1, 2009, and to a prime contractor or subcontractor in accordance with Subsection (2)(b).

(b) (i) A prime contractor is subject to this section if the prime contract is in the amount of \$1,500,000 or greater.

(ii) A subcontractor is subject to this section if a subcontract is in the amount of \$750,000 or greater.

(3) This section does not apply to contracts entered into by the department or a division or board of the department if:

(a) the application of this section jeopardizes the receipt of federal funds;

(b) the contract or agreement is between:

(i) the department or a division or board of the department; and

(ii) (A) another agency of the state;

(B) the federal government;

(C) another state;

(D) an interstate agency;

(E) a political subdivision of this state; or

(F) a political subdivision of another state;

(c) the executive director determines that applying the requirements of this section to a particular contract interferes with the effective response to an immediate health and safety threat from the environment; or

(d) the contract is:

(i) a sole source contract; or

(ii) an emergency procurement.

(4) (a) This section does not apply to a change order as defined in Section 63G-6a-103, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection (2).

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(b) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection (2) is guilty of an infraction.

(5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive director that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employees' dependents during the duration of the contract.

(b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall demonstrate to the executive director that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the contract.

(c) (i) (A) A contractor who fails to comply with Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (5)(b).

(ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (5)(a).

(6) The department shall adopt administrative rules:

(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(b) in coordination with:

(i) a public transit district in accordance with Section 17B-2a-818.5;

(ii) the Department of Natural Resources in accordance with Section 79-2-404;

(iii) the State Building Board in accordance with Section 63A-5-205;

(iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

(v) the Department of Transportation in accordance with Section 72-6-107.5; and

(vi) the Legislature's Administrative Rules Review Committee; and

(c) which establish:

(i) the requirements and procedures a contractor shall follow to demonstrate to the

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public transit district compliance with this section that shall include:

(A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or (b) more than twice in any 12-month period; and

(B) that the actuarially equivalent determination required for the qualified health insurance coverage in Subsection (1) is met by the contractor if the contractor provides the department or division with a written statement of actuarial equivalency from either:

(I) the Utah Insurance Department;

(II) an actuary selected by the contractor or the contractor's insurer; or

(III) an underwriter who is responsible for developing the employer group's premium rates;

(ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:

(A) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation;

(B) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation;

(C) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6a-904 upon the third or subsequent violation; and

(D) notwithstanding Section 19-1-303, monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for an employee and the dependents of an employee of the contractor or subcontractor who was not offered qualified health insurance coverage during the duration of the contract; and

(iii) a website on which the department shall post the benchmark for the qualified health insurance coverage identified in Subsection (1)(c).

(7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or subcontractor who intentionally violates the provisions of this section shall be liable to the employee for health care costs that would have been covered by qualified health insurance coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection (7)(a)(i) if:

(A) the employer relied in good faith on a written statement of actuarial equivalency

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provided by:

(I) an actuary; or

(II) an underwriter who is responsible for developing the employer group's premium rates; or

(B) the department determines that compliance with this section is not required under the provisions of Subsection (3) or (4).

(b) An employee has a private right of action only against the employee's employer to enforce the provisions of this Subsection (7).

(8) Any penalties imposed and collected under this section shall be deposited into the Medicaid Restricted Account created in Section 26-18-402.

(9) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this section:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section ~~63G-6a-1603~~ 63G-6a-1602 or any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.

Section 3. Section 53A-1a-511 is amended to read:

53A-1a-511. Waivers from state board rules -- Application of statutes and rules to charter schools.

(1) A charter school shall operate in accordance with its charter and is subject to Title 53A, State System of Public Education, and other state laws applicable to public schools, except as otherwise provided in this part.

(2) (a) A charter school or any other public school or school district may apply to the State Board of Education for a waiver of any state board rule that inhibits or hinders the school or the school district from accomplishing its mission or educational goals set out in its strategic plan or charter.

(b) The state board may grant the waiver, unless:

(i) the waiver would cause the school district or the school to be in violation of state or federal law; or

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(ii) the waiver would threaten the health, safety, or welfare of students in the district or at the school.

(c) If the State Board of Education denies the waiver, the reason for the denial shall be provided in writing to the waiver applicant.

(3) (a) Except as provided in Subsection (3)(b), State Board of Education rules governing the following do not apply to a charter school:

- (i) school libraries;
- (ii) required school administrative and supervisory services; and
- (iii) required expenditures for instructional supplies.

(b) A charter school shall comply with rules implementing statutes that prescribe how state appropriations may be spent.

(4) The following provisions of Title 53A, State System of Public Education, and rules adopted under those provisions, do not apply to a charter school:

(a) Sections 53A-1a-108 and 53A-1a-108.5, requiring the establishment of a school community council and school improvement plan;

(b) Section 53A-3-420, requiring the use of activity disclosure statements;

(c) Section 53A-12-207, requiring notification of intent to dispose of textbooks;

(d) Section 53A-13-107, requiring annual presentations on adoption;

(e) Chapter 19, Part 1, Fiscal Procedures, pertaining to fiscal procedures of school districts and local school boards; and

(f) Section 53A-14-107, requiring an independent evaluation of instructional materials.

(5) For the purposes of Title 63G, Chapter 6a, Utah Procurement Code, a charter school is considered an educational procurement unit as defined in ~~Subsection 63G-6a-104(7)~~ Section 63G-6a-103.

(6) Each charter school shall be subject to:

(a) Title 52, Chapter 4, Open and Public Meetings Act; and

(b) Title 63G, Chapter 2, Government Records Access and Management Act.

(7) A charter school is exempt from Section 51-2a-201.5, requiring accounting reports of certain nonprofit corporations. A charter school is subject to the requirements of Section 53A-1a-507.

(8) (a) The State Charter School Board shall, in concert with the charter schools, study

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existing state law and administrative rules for the purpose of determining from which laws and rules charter schools should be exempt.

(b) (i) The State Charter School Board shall present recommendations for exemption to the State Board of Education for consideration.

(ii) The State Board of Education shall consider the recommendations of the State Charter School Board and respond within 60 days.

Section 4. Section 63A-5-205 is amended to read:

63A-5-205. Contracting powers of director -- Retainage -- Health insurance coverage.

(1) As used in this section:

(a) "Capital developments" has the same meaning as provided in Section 63A-5-104.

(b) "Capital improvements" has the same meaning as provided in Section 63A-5-104.

(c) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who:

(i) works at least 30 hours per calendar week; and

(ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following 60 days from the date of hire.

(d) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

(e) "Qualified health insurance coverage" is as defined in Section 26-40-115.

(f) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

(2) In accordance with Title 63G, Chapter 6a, Utah Procurement Code, the director may:

(a) subject to Subsection (3), enter into contracts for any work or professional services which the division or the State Building Board may do or have done; and

(b) as a condition of any contract for architectural or engineering services, prohibit the architect or engineer from retaining a sales or agent engineer for the necessary design work.

(3) (a) Except as provided in Subsection (3)(b), this Subsection (3) applies to all design or construction contracts entered into by the division or the State Building Board on or after July 1, 2009, and:

(i) applies to a prime contractor if the prime contract is in the amount of \$1,500,000 or greater; and

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(ii) applies to a subcontractor if the subcontract is in the amount of \$750,000 or greater.

(b) This Subsection (3) does not apply:

(i) if the application of this Subsection (3) jeopardizes the receipt of federal funds;

(ii) if the contract is a sole source contract;

(iii) if the contract is an emergency procurement; or

(iv) to a change order as defined in Section 63G-6a-103, or a modification to a contract, when the contract does not meet the threshold required by Subsection (3)(a).

(c) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection (3)(a) is guilty of an infraction.

(d) (i) A contractor subject to Subsection (3)(a) shall demonstrate to the director that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employees' dependents.

(ii) If a subcontractor of the contractor is subject to Subsection (3)(a), the contractor shall demonstrate to the director that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents.

(e) (i) (A) A contractor who fails to meet the requirements of Subsection (3)(d)(i) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the division under Subsection (3)(f).

(B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (3)(d)(ii).

(ii) (A) A subcontractor who fails to meet the requirements of Subsection (3)(d)(ii) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the division under Subsection (3)(f).

(B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (3)(d)(i).

(f) The division shall adopt administrative rules:

(i) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(ii) in coordination with:

(A) the Department of Environmental Quality in accordance with Section 19-1-206;

(B) the Department of Natural Resources in accordance with Section 79-2-404;

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- (C) a public transit district in accordance with Section 17B-2a-818.5;
- (D) the State Capitol Preservation Board in accordance with Section 63C-9-403;
- (E) the Department of Transportation in accordance with Section 72-6-107.5; and
- (F) the Legislature's Administrative Rules Review Committee; and

(iii) which establish:

(A) the requirements and procedures a contractor must follow to demonstrate to the director compliance with this Subsection (3) which shall include:

(I) that a contractor will not have to demonstrate compliance with Subsection (3)(d)(i) or (ii) more than twice in any 12-month period; and

(II) that the actuarially equivalent determination required for the qualified health insurance coverage in Subsection (1) is met by the contractor if the contractor provides the department or division with a written statement of actuarial equivalency from either:

(Aa) the Utah Insurance Department;

(Bb) an actuary selected by the contractor or the contractor's insurer; or

(Cc) an underwriter who is responsible for developing the employer group's premium rates;

(B) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this Subsection (3), which may include:

(I) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation;

(II) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation;

(III) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6a-904 upon the third or subsequent violation; and

(IV) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for an employee and the dependents of an employee of the contractor or subcontractor who was not offered qualified health insurance coverage during the duration of the contract; and

(C) a website on which the department shall post the benchmark for the qualified health insurance coverage identified in Subsection (1)(e).

(g) (i) In addition to the penalties imposed under Subsection (3)(f)(iii), a contractor or

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subcontractor who intentionally violates the provisions of this section shall be liable to the employee for health care costs that would have been covered by qualified health insurance coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection (3)(g)(i) if:

(A) the employer relied in good faith on a written statement of actuarial equivalency provided by:

(I) an actuary; or

(II) an underwriter who is responsible for developing the employer group's premium rates; or

(B) the department determines that compliance with this section is not required under the provisions of Subsection (3)(b).

(iii) An employee has a private right of action only against the employee's employer to enforce the provisions of this Subsection (3)(g).

(h) Any penalties imposed and collected under this section shall be deposited into the Medicaid Restricted Account created by Section 26-18-402.

(i) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this section:

(i) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section ~~63G-6a-1603~~ 63G-6a-1602 or any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

(ii) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.

(4) The judgment of the director as to the responsibility and qualifications of a bidder is conclusive, except in case of fraud or bad faith.

(5) The division shall make all payments to the contractor for completed work in accordance with the contract and pay the interest specified in the contract on any payments that are late.

(6) If any payment on a contract with a private contractor to do work for the division or the State Building Board is retained or withheld, it shall be retained or withheld and released as

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provided in Section 13-8-5.

Section 5. Section 63C-9-403 is amended to read:

63C-9-403. Contracting power of executive director -- Health insurance coverage.

(1) For purposes of this section:

(a) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who:

(i) works at least 30 hours per calendar week; and

(ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first of the calendar month following 60 days from the date of hire.

(b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

(c) "Qualified health insurance coverage" is as defined in Section 26-40-115.

(d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

(2) (a) Except as provided in Subsection (3), this section applies to a design or construction contract entered into by the board or on behalf of the board on or after July 1, 2009, and to a prime contractor or a subcontractor in accordance with Subsection (2)(b).

(b) (i) A prime contractor is subject to this section if the prime contract is in the amount of \$1,500,000 or greater.

(ii) A subcontractor is subject to this section if a subcontract is in the amount of \$750,000 or greater.

(3) This section does not apply if:

(a) the application of this section jeopardizes the receipt of federal funds;

(b) the contract is a sole source contract; or

(c) the contract is an emergency procurement.

(4) (a) This section does not apply to a change order as defined in Section 63G-6a-103, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection (2).

(b) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection (2) is guilty of an infraction.

(5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive director that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employees' dependents during the duration of

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the contract.

(b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor shall demonstrate to the executive director that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the contract.

(c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the division under Subsection (6).

(B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (5)(b).

(ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (5)(a).

(6) The department shall adopt administrative rules:

(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(b) in coordination with:

(i) the Department of Environmental Quality in accordance with Section 19-1-206;

(ii) the Department of Natural Resources in accordance with Section 79-2-404;

(iii) the State Building Board in accordance with Section 63A-5-205;

(iv) a public transit district in accordance with Section 17B-2a-818.5;

(v) the Department of Transportation in accordance with Section 72-6-107.5; and

(vi) the Legislature's Administrative Rules Review Committee; and

(c) which establish:

(i) the requirements and procedures a contractor must follow to demonstrate to the executive director compliance with this section which shall include:

(A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or

(b) more than twice in any 12-month period; and

(B) that the actuarially equivalent determination required for the qualified health insurance coverage in Subsection (1) is met by the contractor if the contractor provides the

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department or division with a written statement of actuarial equivalency from either:

- (I) the Utah Insurance Department;
- (II) an actuary selected by the contractor or the contractor's insurer; or
- (III) an underwriter who is responsible for developing the employer group's premium

rates;

(ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:

(A) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation;

(B) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation;

(C) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6a-904 upon the third or subsequent violation; and

(D) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for employees and dependents of employees of the contractor or subcontractor who were not offered qualified health insurance coverage during the duration of the contract; and

(iii) a website on which the department shall post the benchmark for the qualified health insurance coverage identified in Subsection (1)(c).

(7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or subcontractor who intentionally violates the provisions of this section shall be liable to the employee for health care costs that would have been covered by qualified health insurance coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection (7)(a)(i) if:

(A) the employer relied in good faith on a written statement of actuarial equivalency provided by:

- (I) an actuary; or
- (II) an underwriter who is responsible for developing the employer group's premium

rates; or

(B) the department determines that compliance with this section is not required under

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the provisions of Subsection (3) or (4).

(b) An employee has a private right of action only against the employee's employer to enforce the provisions of this Subsection (7).

(8) Any penalties imposed and collected under this section shall be deposited into the Medicaid Restricted Account created in Section 26-18-402.

(9) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this section:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section ~~[63G-6a-1603]~~ 63G-6a-1602 or any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.

Section 6. Section 63F-1-205 is amended to read:

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

(1) (a) Except as provided in Title 63N, Chapter 13, Part 2, Government Procurement Private Proposal Program, in accordance with Subsection (2), the chief information officer shall approve the acquisition by an executive branch agency of:

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

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

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

(d) Notwithstanding another provision of this section, an acquisition authorized by this section shall comply with rules made by the applicable rulemaking authority under Title 63G,

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Chapter 6a, Utah Procurement Code.

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

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

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

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

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

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

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

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

(i) the executive branch strategic plan;

(ii) the applicable agency information technology plan;

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

Legislature;

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

(v) the information technology accessibility standards described in Section 63F-1-210;

and

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

(4) (a) Each executive branch agency shall provide the chief information officer with

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complete access to all information technology records, documents, and reports:

- (i) at the request of the chief information officer; and
- (ii) related to the executive branch agency's acquisition of any item listed in Subsection

(1).

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

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

(ii) total cost of system development and conversion effort, including system analysis and programming costs, establishment of master files, testing, documentation, special equipment cost and all other costs, including overhead;

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

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

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

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

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

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

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

Section ~~[(1)]~~7. Section **63G-6a-103** is amended to read:

63G-6a-103. Definitions.

As used in this chapter:

(1) "Applicable rulemaking authority" means:

(a) for a legislative procurement unit, the Legislative Management Committee;

(b) for a judicial procurement unit, the Judicial Council;

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(c) (i) only to the extent of the procurement authority expressly granted to the procurement unit by statute:

(A) for the building board or the Division of Facilities Construction and Management, created in Section 63A-5-201, the building board;

(B) for the Office of the Attorney General, the attorney general; and

(C) for the Department of Transportation created in Section 72-1-201, the executive director of the Department of Transportation; and

(ii) for each other executive branch procurement unit, the board;

(d) for a local government procurement unit, the legislative body of the local government procurement unit;

(e) for a school district or a public school, the board, except to the extent of a school district's own nonadministrative rules that do not conflict with the provisions of this chapter;

(f) for a state institution of higher education, the State Board of Regents;

(g) for a public transit district, the chief executive of the public transit district;

(h) for a local district other than a public transit district or for 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

(i) for any other procurement unit, the board.

(2) "Approved vendor" means a vendor who has been approved through the approved vendor list process.

(3) "Approved vendor list" means a list of approved vendors established under Section 63G-6a-507.

(4) "Approved vendor list process" means the procurement process described in Section 63G-6a-507.

[+] (5) "Bidder" means a person who [responds] submits a bid or price quote in response to an invitation for bids.

(6) "Bidding process" means the procurement process described in Part 6, Bidding.

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

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

~~[(2)]~~ (9) "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.

~~[(3)]~~ (10) "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.

~~[(4)]~~ (11) "Chief procurement officer" means the chief procurement officer appointed under Subsection 63G-6a-302(1).

~~[(5)]~~ (12) "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;

(ii) appointing an evaluation committee;

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

63G-6a-707~~[(5)]~~[(6)](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 administration.

(13) "Conservation district" means the same as that term is defined in Section 17D-3-102.

~~[(6)(a)]~~ (14) "Construction":

(a) means the process of building, renovating, altering, improving, or repairing a public building or public work~~[-];~~ and

(b) ~~["Construction"]~~ does not include the routine operation, routine repair, or routine

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

~~[(7)(a)]~~ (15) "Construction manager/general contractor":

(a) means a contractor who enters into a contract:

(i) for the management of a construction project ~~[when the contract]~~; and

(ii) that 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~~[-]~~; and

(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.

~~[(8)]~~ (16) "Contract" means an agreement for the procurement or disposal of a procurement item.

(17) "Contract administration" means all functions, duties, and responsibilities associated with managing, overseeing, and carrying out a contract between a procurement unit and a contractor, including:

(a) implementing the contract;

(b) ensuring compliance with the contract terms and conditions by the conducting procurement unit and the contractor;

(c) executing change orders;

(d) processing contract amendments;

(e) resolving, to the extent practicable, contract disputes;

(f) curing contract errors and deficiencies;

(g) terminating a contract;

(h) measuring or evaluating completed work and contractor performance;

(i) computing payments under the contract; and

(j) closing out a contract.

~~[(9)]~~ (18) "Contractor" means a person who is awarded a contract with a procurement unit.

~~[(10)]~~ (19) "Cooperative procurement" means procurement conducted by, or on behalf of:

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

(20) "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.

~~[(11)]~~ (21) "Cost-plus-a-percentage-of-cost contract" means a contract [where] under which the contractor is paid a percentage [over and above] of the total actual expenses or costs in addition to the contractor's actual expenses or costs.

~~[(12)]~~ (22) "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 and the provisions of this chapter, and a fee, if any.

~~[(13)]~~ (23) "Days" means calendar days, unless expressly provided otherwise.

~~[(14)]~~ (24) "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.

~~[(15)]~~ (25) "Design-build" means the procurement of design professional services and construction by the use of a single contract with the design-build provider.

~~[(16)]~~ (26) "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.

(27) "Design professional procurement process" means the procurement process described in Part 15, Design Professional Services.

~~[(17)]~~ (28) "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.

~~[(18)] "Directed procurement" means a procurement of a procurement item in which the~~

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~~source of the funds used to procure the procurement item:]~~

~~[(a) directs from whom the procurement item is to be procured; or]~~

~~[(b) imposes requirements on how the procurement is to be administered.]~~

~~[(19)]~~ (29) "Director" means the director of the division.

(30) "Division" means the Division of Purchasing and General Services, created in Section 63A-2-101.

(31) "Educational procurement unit" means:

(a) a school district;

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

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

(d) the Utah Education and Telehealth Network; or

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

~~[(20)]~~ (32) "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.

(33) "Executive branch procurement unit" means a department, division, office, bureau, agency, or other organization within the state executive branch.

~~[(21)]~~ (34) "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 adjustment in price that is not based on cost to the contractor; or

(b) an adjustment is required by law.

~~[(22)]~~ (35) "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,

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source, or formula; and

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

~~[(23)]~~ (36) "Grant" means an expenditure of public funds or other assistance, or an agreement to expend public funds or other assistance, for a public purpose authorized by law, without acquiring a procurement item in exchange.

~~[(24)]~~ (37) "Head of a procurement unit" means:

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

(b) ~~[as it relates to]~~ for an executive branch procurement unit:

(i) the director of ~~[a]~~ the division; or

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

(c) ~~[as it relates to]~~ for 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]~~ for 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]~~ for a local district other than a public transit district, the board of trustees of the local district or a designee of the board of trustees;

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

(g) ~~[as it relates to]~~ for a local building authority, the board of directors of the local building authority or a designee of the board of directors;

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

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

(j) ~~[as it relates to]~~ for 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]~~ for a charter school, the individual or body with executive authority over the charter school, or the individual's or body's designee;

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(l) ~~[as it relates to]~~ for 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]~~ for a public transit district, the board of trustees or a designee of the board of trustees.

(38) "Immaterial error":

(a) means an irregularity or abnormality that is:

(i) a matter of form that does not affect substance; or

(ii) an inconsequential variation from a requirement of a solicitation that has no, little, or a trivial effect on the procurement process and that is not prejudicial to other vendors; and

(b) includes:

(i) a missing signature, missing acknowledgment of an addendum, missing copy of a solicitation, or missing copy of or an incorrect form of a professional license, bond, or insurance certificate;

(ii) a typographical error;

(iii) an error resulting from an inaccuracy or omission in the solicitation; and

(iv) any other error that the chief procurement officer or the head of a procurement unit with independent procurement authority considers to be immaterial.

~~[(25)]~~ (39) "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.

~~[(26)]~~ (40) "Independent procurement authority" means authority granted to a procurement unit under Subsection 63G-6a-106(4)(a).

~~[(27)]~~ (41) "Invitation for bids" [~~includes all documents, including documents that are attached or incorporated by reference, used for soliciting~~];

(a) means a document used to solicit:

(i) bids to provide a procurement item to a procurement unit; or

(ii) quotes for a price of a procurement item to be provided to a procurement unit; and

(b) includes all documents attached to or incorporated by reference in a document described in Subsection (41)(a).

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[(28)] (42) "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 and approves the terms and conditions of a contract.

(43) "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) an office, committee, subcommittee, or other organization within the state judicial branch.

[(29)] (44) "Labor hour contract" is a contract [~~where~~] under which:

- (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.

(45) "Legislative procurement unit" means:

- (a) the Legislature;
- (b) the Senate;
- (c) the House of Representatives;
- (d) a staff office of the Legislature, the Senate, or the House of Representatives; or
- (e) an office, committee, subcommittee, commission, or other organization within the state legislative branch.

(46) "Local building authority" means the same as that term is defined in Section 17D-2-102.

(47) "Local district" means the same as that term is defined in Section 17B-1-102.

(48) "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 that has adopted this entire chapter by ordinance, and each office or agency of that county or municipality; or
- (c) a county or municipality that has adopted a portion of this chapter by ordinance, to

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the extent that a term in the ordinance is used in the adopted portion of this chapter, and each office or agency of that county or municipality.

~~[(30)]~~ (49) "Multiple award contracts" means the award of a contract for an indefinite quantity of a procurement item to more than one bidder or offeror.

~~[(31)]~~ (50) "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.

~~[(32)]~~ (51) "Municipality" means a city or a town.

(52) "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 (52)(a).

~~[(33)]~~ (53) "Offeror" means a person who ~~[responds]~~ submits a proposal in response to a request for proposals.

(54) "Person" means the same as that term is defined in Section 68-3-12.5, excluding a political subdivision and a government office, department, division, bureau, or other body of government.

~~[(34)]~~ (55) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference under the requirements of this chapter.

~~[(35)]~~ (56) "Procure" means to acquire a procurement item through a procurement.

~~[(36)]~~ (57) "Procurement":

(a) means:

(i) a procurement unit's acquisition of a procurement item through an expenditure of public funds, regardless of the source of the funds, including federal funds, or an agreement to expend public funds~~[, in exchange for a procurement item]; or~~

(ii) a procurement unit's engagement of a person~~;~~

~~— (A) to provide a service or benefit to the public or to promote an interest or objective of the procurement unit or state;~~

~~— (B) that does not involve the~~, without an expenditure of public funds ~~or an agreement to expend public funds; and~~

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~~(C) that involves the person's use of~~, to provide a service;

(A) under a right awarded by a procurement unit allowing the person to use the property, name, influence, or other thing of value of the state or the procurement unit, whether or not the person compensates the procurement unit for that use;

(B) according to conditions specified by the procurement unit;

(C) within the jurisdiction of the procurement unit; and

(D) to benefit the procurement unit or ~~state~~ individuals or groups specified by the procurement unit;

(b) includes all functions that pertain to the acquisition of a procurement item, as described in Subsection (57)(a)(i), or the engagement of a person, as described in Subsection (57)(a)(ii), 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; and]~~

(i) preparing and issuing a solicitation;

(ii) conducting a standard procurement process; and

(iii) conducting a procurement process that is an exception to a standard procurement process under Part 8, Exceptions to Procurement Requirements; and

(c) does not include a grant.

~~(37)~~ (58) "Procurement item" means a supply, a service, construction, or technology.

~~(38)~~ (59) "Procurement officer" means:

(a) ~~[as it relates to]~~ for 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]~~ for the division or a procurement unit without independent procurement authority, the chief procurement officer.

(60) "Procurement unit":

(a) means:

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- (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; and
- (b) does not include a political subdivision created under Title 11, Chapter 13,

Interlocal Cooperation Act.

~~[(39)]~~ (61) "Professional service" means a service that requires a high degree of specialized knowledge and discretion in the performance of ~~[the]~~ a service, including:

- (a) legal ~~[services]~~ service;
- (b) consultation ~~[services]~~ service;
- (c) architectural ~~[services]~~ service;
- (d) engineering;
- (e) design;
- (f) underwriting;
- (g) bond counsel;
- (h) financial advice;
- (i) construction management;
- (j) medical ~~[services]~~ service;
- (k) psychiatric ~~[services]~~ service; or
- (l) counseling ~~[services]~~ service.

~~[(40)]~~ (62) "Protest officer" means:

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

- (i) the head of the procurement unit;

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- (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]~~ for a procurement unit without independent procurement authority,

the chief procurement officer or the chief procurement officer's designee.

(63) "Public corporation" means the same as that term is defined in Section 63E-1-102.

(64) "Public entity" means any government entity of the state or 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 the state that expends public funds.

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

(66) "Qualified vendor" means a vendor who:

(a) is responsible; and

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

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

~~[(41)]~~ ~~(67)~~ (68) "Request for information" means a nonbinding process ~~[where]~~ through which a procurement unit requests information relating to a procurement item.

~~[(42)]~~ ~~(68)~~ (69) "Request for proposals" ~~[includes all documents, including documents that are attached or incorporated by reference, used for soliciting]~~ means a document used to solicit proposals to provide a procurement item to a procurement unit, including all other documents that are attached to that document or incorporated in that document by reference.

~~(69)~~ (70) "Request for proposals process" means the procurement process described in Part 7, Request for Proposals.

~~[(43)]~~ ~~(70)~~ (71) "Request for statement of qualifications" means ~~[all documents]~~ a document used to solicit information about the qualifications of ~~[the]~~ a person interested in responding to a potential procurement, including all other documents attached to that document

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or incorporated in that document by reference.

[(44)] (~~(71)~~72) "Requirements contract" means a contract:

(a) [~~where~~] under which 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.

[(45)] (~~(72)~~73) "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.

[(46)] (~~(73)~~74) "Responsive" means conforming in all material respects to the [~~invitation for bids or request for proposals~~] requirements of a solicitation.

[(47)] (~~(74)~~75) "Sealed" means manually or electronically [~~sealed and submitted bids or proposals~~] secured to prevent disclosure.

[(48)](a) (~~(75)~~76) "Services":

(a) 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[-]; and

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

(~~(76)~~77) "Small purchase process" means the procurement process described in Section 63G-6a-506.

[(49)] (~~(77)~~78) "Sole source contract" means a contract resulting from a sole source procurement.

[(50)] (~~(78)~~79) "Sole source procurement" means a procurement without competition pursuant to a determination under Subsection 63G-6a-802[~~(2)~~](1)(a)(i) that there is only one source for the procurement item.

[(51)] (~~(79)~~80) "Solicitation" means an invitation for bids, request for proposals, notice of a sole source procurement, request for statement of qualifications, or request for

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information~~], or any document used to obtain bids, proposals, pricing, qualifications, or information for the purpose of entering into a procurement contract].~~

~~(80)~~ 81 "Solicitation response" means:

(a) a bid submitted in response to an invitation for bids;

(b) a proposal submitted in response to a request for proposals; or

(c) a statement of qualifications submitted in response to a request for statement of qualifications.

~~(81)~~ 82 "Special service district" means the same as that term is defined in Section 17D-1-102.

~~(52)~~ ~~(82)~~ 83 "Specification" means any description of the physical or functional characteristics~~;~~ or of the 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.

~~(53)~~ ~~(83)~~ 84 "Standard procurement process" means ~~[one of the following methods of obtaining a procurement item]:~~

(a) the bidding~~], as described in Part 6, Bidding]~~ process;

(b) the request for proposals~~], as described in Part 7, Request for Proposals]~~ process;

~~[or]~~

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

(c) the approved vendor list process;

(d) the small purchase process; or

(e) the design professional procurement process.

~~(54)~~ ~~(84)~~ 85 "State cooperative contract" means a contract awarded by the division for and in behalf of all public entities.

~~(55)~~ ~~(85)~~ 86 "Statement of qualifications" means a written statement submitted to a procurement unit in response to a request for statement of qualifications.

~~(56)(a)~~ ~~(86)~~ 87 "Subcontractor":

(a) means a person under contract with a contractor or another subcontractor to provide

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services or labor for design or construction[-];

(b) ["Subcontractor"] includes a trade contractor or specialty contractor[-]; and

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

~~(57)~~ ~~(87;88)~~ "Supplies" means all property, including equipment, materials, and printing.

~~(58)~~ ~~(88;89)~~ "Tie bid" means that the lowest responsive [~~and~~] bids of responsible [bids] bidders are identical in price.

~~(59)~~ ~~(89;90)~~ "Time and materials contract" means a contract [~~where~~] under which 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.

~~(90;91)~~ "Transitional costs":

(a) means the costs of changing:

(i) from an existing provider of a procurement item to another provider of that procurement item; or

(ii) from an existing type of procurement item to another type;

(b) includes:

(i) training costs;

(ii) conversion costs;

(iii) compatibility costs;

(iv) costs associated with system downtime;

(v) disruption of service costs;

(vi) staff time necessary to implement the change;

(vii) installation costs; and

(viii) ancillary software, hardware, equipment, or construction costs; and

(c) does not include:

(i) the costs of preparing for or engaging in a procurement process; or

(ii) contract negotiation or drafting costs.

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~~(91)92~~ "Trial use contract" means a contract for a procurement item that the procurement unit acquires for a trial use or testing to determine whether the procurement item will benefit the procurement unit.

~~(92)93~~ "Vendor":

(a) means a person who is seeking to enter into a contract with a procurement unit to provide a procurement item; and

(b) includes:

(i) a bidder;

(ii) an offeror;

(iii) an approved vendor; and

(iv) a design professional.

Section ~~(2)8~~. 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) (1) (a) Except as provided in Section 63G-6a-107, this chapter [shall apply] applies to every expenditure of public funds irrespective of the source of the funds, including federal assistance, by any procurement unit, under any contract]~~ procurement.

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

~~[(3) (2) The following procurement units shall adopt ordinances or resolutions relating to the procurement of design professional services not inconsistent with the provisions of Part 15, 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.

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~~[(4)]~~ (3) Any section of this chapter, or its implementing regulations, may be adopted by:

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

~~[(5)]~~ (4) Rules adopted under this chapter shall be consistent with the provisions of this chapter.

~~[(6)]~~ (5) An applicable rulemaking authority or a procurement unit may not adopt rules, policies, or regulations that are inconsistent with this chapter.

~~[(7)]~~ (6) Unless otherwise provided by statute, this chapter does not apply to ~~[procurement]~~ the acquisition or disposal of real property.

~~[(8)]~~ (7) Notwithstanding any provision of this chapter, a procurement unit may administer a ~~[direct]~~ procurement in accordance with the requirements imposed by the source of the funds used to procure the procurement item.

Section ~~3~~9. 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

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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:

(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:]~~

~~[(f) correct or amend the procurement to bring it into compliance; or]~~

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~~[(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.]~~

(e) With respect to a procurement or contract over which the head of a procurement unit with independent procurement authority has authority, the head of the procurement unit with independent procurement authority may:

(i) manage and supervise the procurement to ensure to the extent practicable that taxpayers receive the best value;

(ii) prepare and issue standard specifications for procurement items;

(iii) review contracts, coordinate contract compliance, conduct contract audits, and approve change orders;

(iv) delegate duties and authority to an employee of the procurement unit, as the head of the procurement unit with independent procurement authority considers appropriate;

(v) for an executive branch procurement unit, coordinate with the executive director of the Department of Technology Services, created in Section 63F-1-103, with respect to the procurement unit's procurement of information technology services;

(vi) correct, amend, or cancel a procurement at any stage of the procurement process if the procurement is out of compliance with this chapter or a board rule;

(vii) after consultation with, as applicable, the attorney general's office or the procurement unit's legal counsel, correct, amend, or cancel a contract at any time during the term of the contract if:

(A) the contract is out of compliance with this chapter or a board rule; and

(B) the head of the procurement unit with independent procurement authority determines that correcting, amending, or canceling the contract is in the best interest of the state; and

(viii) attempt to resolve a contract dispute in coordination with the legal counsel of the procurement unit with independent procurement authority.

(f) The head of a procurement unit with independent procurement authority serves as the protest officer for a protest involving the procurement unit.

~~[(f)]~~ (g) 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, subject to Section 67-5-33 if the attorney general retains outside counsel under a contingent fee contract, as defined in that section; 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 services; and
- (b) services related to issuing bonds.

Section ~~{4}~~10. Section **63G-6a-106.5** is enacted to read:

63G-6a-106.5. Policy for legislative procurement units.

The Legislative Management Committee shall adopt a policy establishing requirements applicable to a legislative procurement unit.

Section ~~{5}~~11. Section **63G-6a-107** is amended to read:

63G-6a-107. Exemptions from chapter -- Compliance with other provisions.

(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;

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(b) a grant;

(c) a contract between procurement units;

(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,~~] by the University of Utah Hospital[~~, or any other hospital owned by the state or a political subdivision of the state,~~] through a purchasing consortium 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;

(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;

(f) goods purchased for resale to the public; or

(g) 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)]~~ (2) 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 comply with mandatory applicable federal or state law and regulations not reflected in this chapter.

~~[(4)]~~ (3) 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.

(4) This chapter does not apply to a procurement unit's hiring a mediator, arbitrator, or arbitration panel member to participate in the procurement unit's dispute resolution efforts.

Section ~~63G-12~~12. Section **63G-6a-109** is amended to read:

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

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

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

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

~~[(b) An executive branch procurement unit administering a directed procurement is both the issuing procurement unit and the conducting procurement unit.]~~

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

(3) A conducting procurement unit is responsible for contract administration.

Section ~~{7}~~13. Section **63G-6a-110**, which is renumbered from Section 63G-6a-402 is renumbered and amended to read:

~~[63G-6a-402].~~ **63G-6a-110. 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~~{}~~ ~~{}~~63G-6a-410, 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) a standard procurement process; or

(B) 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:

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(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.

~~[(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)]~~ (3) The State Building Board rules governing procurement of construction, design professional services, and leases apply to the procurement of construction, 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.]~~

(4) An individual or body that makes rules as required or authorized in this chapter shall make the rules:

(a) in accordance with Chapter 3, Utah Administrative Rulemaking Act, if the individual or body is subject to Chapter 3, Utah Administrative Rulemaking Act; or

(b) in accordance with the established process for making rules or their equivalent, if the individual or body is not subject to 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

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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 ~~{8}~~14. Section **63G-6a-111**, which is renumbered from Section 63G-6a-407 is renumbered and amended to read:

~~[63G-6a-407]~~. **63G-6a-111**. **Purpose of specifications.**

(1) All specifications shall seek to promote the overall economy and best use for the purposes intended and encourage competition in satisfying the needs of the procurement unit, and may not be unduly restrictive.

(2) The requirements of this part regarding the purposes and nonrestrictiveness of specifications shall apply to all specifications, including those prepared by architects, engineers, designers, and draftsmen for public contracts.

Section ~~{9}~~15. Section **63G-6a-112**, which is renumbered from Section 63G-6a-406 is renumbered and amended to read:

~~[63G-6a-406]~~. **63G-6a-112**. **Public notice of certain solicitations.**

(1) The division or a procurement unit with independent procurement authority that issues a solicitation required to be published in accordance with this section, shall provide public notice that includes:

- (a) the name of the conducting procurement unit;
- (b) the name of the procurement unit acquiring the procurement item;
- (c) information on how to contact the issuing procurement unit;
- (d) the date of the opening and closing of the solicitation;
- (e) information on how to obtain a copy of the procurement documents;
- (f) a general description of the procurement items that will be obtained through the standard procurement process or sole source procurement; and
- (g) for a notice of a sole source procurement:
 - (i) contact information and other information relating to contesting or obtaining additional information relating to the sole source procurement; and
 - (ii) the earliest date that the procurement unit may make the sole source procurement.

(2) Except as provided in Subsection (4), the issuing procurement unit shall publish the

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notice described in Subsection (1):

(a) at least seven days before the day of the deadline for submission of a bid or other response; and

(b) (i) in a newspaper of general circulation in the state;

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

(A) directly impacted by the procurement; or

(B) over which the procurement unit has jurisdiction;

(iii) on the main website for the issuing procurement unit or the procurement unit acquiring the procurement item; or

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

(3) Except as provided in Subsection (4), for a sole source procurement for which notice is required to be published in accordance with this section, the issuing procurement unit shall publish the notice described in Subsection (1):

(a) at least seven days before the acquisition of the sole source procurement item; and

(b) (i) in a newspaper of general circulation in the state;

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

(A) directly impacted by the procurement; or

(B) over which the procurement unit has jurisdiction;

(iii) on the main website for the procurement unit acquiring the procurement item; or
(iv) on a state website that is owned by, managed by, or provided under contract with, the division for posting a procurement notice.

(4) An issuing procurement unit may reduce the seven-day period described in Subsection (2) or (3), if the procurement officer or the procurement officer's designee signs a written statement that:

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

(b) determines that competition from multiple sources may be obtained within the shorter period of time.

(5) (a) An issuing procurement unit shall make a copy of the solicitation documents available for public inspection at the main office of the issuing procurement unit or on the website described in Subsection (2)(b) until the award of the contract or the cancellation of the

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procurement.

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

(c) A procurement unit shall maintain all records in accordance with Part 20, Records.

(6) A procurement unit that issues a request for statement of qualifications as part of an approved vendor list process that results in the establishment of an open-ended vendor list, as defined in Section 63G-6a-507, shall keep the request for statement of qualifications posted on a website described in Subsection (2)(b)(iii) or (iv) during the entire period of the open-ended vendor list.

Section ~~{10}~~16. Section **63G-6a-113** is enacted to read:

63G-6a-113. Contract price may be based on established terms.

A procurement unit acquiring a procurement item may establish the price of the procurement item based on:

(1) a price list, rate schedule, or price catalog:

(a) submitted by a vendor and accepted by the procurement unit; or

(b) mandated by the procurement unit or a federal agency; or

(2) a federal regulation for a health and human services program.

Section ~~{11}~~17. Section **63G-6a-114** is enacted to read:

63G-6a-114. Correcting an immaterial error in a solicitation response.

(1) The chief procurement officer or the head of a procurement unit with independent procurement authority:

(a) may allow a vendor to correct an immaterial error in a solicitation response as provided in this section; and

(b) may not allow a vendor to:

(i) correct a deficiency, inaccuracy, or mistake in a solicitation response that is not an immaterial error;

(ii) correct an incomplete submission of documents that the solicitation required to be submitted with the solicitation response;

(iii) correct a failure to submit a timely solicitation response;

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

(v) remedy a cause for a vendor being considered to be not responsible or a solicitation response not responsive; or

(vi) correct a defect or inadequacy resulting in a determination that a vendor's solicitation response does not meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds established in the solicitation.

(2) ~~{A}~~If the chief procurement officer ~~{who}~~ allows a vendor to correct an immaterial error under this section, **the chief procurement officer:**

(a) shall establish a deadline by which the vendor is required to submit the correction; and

(b) may not allow the vendor to correct an immaterial error in a solicitation response if the vendor submits the correction after the deadline.

(3) ~~{A}~~If the chief procurement officer or the head of a procurement unit with independent procurement authority ~~{who}~~ allows a vendor to correct an immaterial error in a solicitation response, **the chief procurement officer or head** shall prepare and sign a written document supporting the reason for allowing the correction.

Section ~~{12}~~18. Section **63G-6a-115** is enacted to read:

63G-6a-115. Clarifying information in a solicitation response.

(1) A procurement unit may at any time request a vendor to clarify information contained in a solicitation response.

(2) A procurement unit may allow a vendor to respond to a request under Subsection (1):

(a) in writing;

(b) by submitting a printed document; or

(c) by an oral discussion or presentation.

(3) A procurement unit that requests a vendor to clarify information contained in a solicitation response under this section:

(a) shall establish a deadline by which the vendor is required to submit the clarifying information; and

(b) may not allow the vendor to submit clarifying information after the deadline.

(4) A vendor's response to a request under Subsection (2)(a):

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(a) may only explain, illustrate, or interpret the contents of the vendor's original solicitation response;

(b) if presented orally, shall be confirmed in writing;

(c) may not be used to address criteria or specifications not contained in the vendor's original solicitation response; and

(d) may not be used to:

(i) correct a deficiency, inaccuracy, or mistake in a solicitation response that is not an immaterial error;

(ii) correct an incomplete submission of documents that the solicitation required to be submitted with the solicitation response;

(iii) correct a failure to submit a timely solicitation response;

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

(v) remedy a cause for a vendor being considered to be not responsive or a solicitation response not responsive; or

(vi) correct a defect or inadequacy resulting in a determination that a vendor does not meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds established in the solicitation.

Section 19. Section 63G-6a-203 is amended to read:

63G-6a-203. Powers and duties of board.

(1) In addition to making rules in accordance with Section ~~[63G-6a-402]~~ 63G-6a-110 and the other provisions of this chapter, the board shall consider and decide matters of policy within the provisions of this chapter, including those referred to it by the chief procurement officer.

(2) (a) The board may:

(i) audit and monitor the implementation of its rules and the requirements of this chapter;

(ii) upon the request of a procurement unit with an applicable rulemaking authority other than the board, review the procurement unit's proposed rules to ensure that they are not inconsistent with the provisions of this chapter or rules made by the board; and

(iii) approve the use of innovative procurement processes.

(b) Except as provided in Section 63G-6a-1702, the board may not exercise authority

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over:

- (i) the award or administration of any particular contract; or
- (ii) any dispute, claim, or litigation pertaining to any particular contract.

(3) Except as otherwise expressly provided in this chapter, the board does not have authority over a matter involving a procurement unit with independent procurement authority.

Section ~~13~~20. Section **63G-6a-303** is repealed and reenacted to read:

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

(1) The chief procurement officer:

(a) is the director of the division;

(b) serves as the central procurement officer of the state;

(c) serves as a voting member of the board; and

(d) serves as the protest officer for a protest relating to a procurement of an executive branch procurement unit without independent procurement authority or a state cooperative contract procurement.

(2) Except as otherwise provided in this chapter, the chief procurement officer shall:

(a) develop procurement policies and procedures supporting ethical procurement practices, fair and open competition among vendors, and transparency within the state's procurement process;

(b) administer the state's cooperative purchasing program, including state cooperative contracts and associated administrative fees;

(c) enter into an agreement with a public entity for services provided by the division, if the agreement is in the best interest of the state;

(d) ensure the division's compliance with any applicable law, rule, or policy, including a law, rule, or policy applicable to the division's role as an issuing procurement unit or conducting procurement unit, or as the state's central procurement organization;

(e) manage the division's electronic procurement system;

(f) oversee the recruitment, training, career development, certification requirements, and performance evaluation of the division's procurement personnel;

(g) make procurement training available to procurement units and persons who do business with procurement units;

(h) provide exemplary customer service and continually improve the division's

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procurement operations; and

(i) exercise all other authority, fulfill all other duties and responsibilities, and perform all other functions authorized under this chapter.

(3) With respect to a procurement or contract over which the chief procurement officer has authority under this chapter, the chief procurement officer, except as otherwise provided in this chapter:

(a) shall:

(i) manage and supervise a procurement to ensure to the extent practicable that taxpayers receive the best value;

(ii) prepare and issue standard specifications for procurement items;

(iii) review contracts, coordinate contract compliance, conduct contract audits, and approve change orders;

(iv) ~~in accordance with Section 63F-1-205,~~ coordinate with the executive director of the Department of Technology Services, created in Section 63F-1-103, with respect to the procurement of information technology services by an executive branch procurement unit;

(v) correct, amend, or cancel a procurement at any stage of the procurement process if the procurement is out of compliance with this chapter or a board rule;

(vi) after consultation with the attorney general's office, correct, amend, or cancel a contract at any time during the term of the contract if:

(A) the contract is out of compliance with this chapter or a board rule; and

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

(vii) make a reasonable attempt to resolve a contract dispute, in coordination with the attorney general's office; and

(b) may:

(i) delegate limited purchasing authority to a state agency, with appropriate oversight and control to ensure compliance with this chapter;

(ii) delegate duties and authority to an employee of the division, as the chief procurement officer considers appropriate;

(iii) negotiate and settle contract overcharges, undercharges, and claims, in accordance with the law and after consultation with the attorney general's office;

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(iv) authorize a procurement unit to make a procurement pursuant to a regional solicitation, as defined in Subsection 63G-6a-2105(2), even if the procurement item is also offered under a state cooperative contract, if the chief procurement officer determines that the procurement pursuant to a regional solicitation is in the best interest of the acquiring procurement unit; and

(v) remove an individual from the procurement process or contract administration for:

(A) having a conflict of interest or the appearance of a conflict of interest with a person responding to a solicitation or with a contractor;

(B) having a bias or the appearance of bias for or against a person responding to a solicitation or for or against a contractor;

(C) making an inconsistent or unexplainable score for a solicitation response;

(D) having inappropriate contact or communication with a person responding to a solicitation;

(E) socializing inappropriately with a person responding to a solicitation or with a contractor;

(F) engaging in any other action or having any other association that causes the chief procurement officer to conclude that the individual cannot fairly evaluate a solicitation response or administer a contract; or

(G) any other violation of a law, rule, or policy.

(4) The chief procurement office may not delegate to an individual outside the division the chief procurement officer's authority over a procurement described in Subsection (3)(a)(iv).

(~~14~~5) The chief procurement officer has final authority to determine whether an executive branch procurement unit's anticipated expenditure of public funds, anticipated agreement to expend public funds, or provision of a benefit constitutes a procurement that is subject to this chapter.

(~~15~~6) Except as otherwise provided in this chapter, the chief procurement officer shall review, monitor, and audit the procurement activities and delegated procurement authority of an executive branch procurement unit without independent procurement authority to ensure compliance with this chapter, rules made by the applicable rulemaking authority, and division policies.

Section (~~14~~21). Section **63G-6a-401** is amended to read:

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Part 4. Supplemental Procurement Procedures

63G-6a-401. Title.

This part is known as [~~"General Procurement Provisions."~~] "Supplemental Procurement Procedures."

Section ~~{15}~~22. Section **63G-6a-409**, which is renumbered from Section 63G-6a-502 is renumbered and amended to read:

~~[63G-6a-502].~~ **63G-6a-409. Request for information.**

(1) The purpose of a request for information is to:

(a) obtain information, comments, or suggestions from potential bidders or offerors before issuing an invitation for bids or request for proposals;

(b) determine whether to issue an invitation for bids or a request for proposals; and

(c) generate interest in a potential invitation for bids or [a] request for proposals.

(2) A request for information may be useful in order to:

(a) prepare to issue an invitation for bids or request for proposals for an unfamiliar or complex procurement;

(b) determine the market availability of a procurement item; or

(c) determine best practices, industry standards, performance standards, product specifications, and innovations relating to a procurement item.

(3) (a) A request for information is not a procurement process and may not be used to:

(i) solicit cost, pricing, or rate information;

(ii) negotiate fees;

(iii) make a purchase; or

(iv) enter into a contract.

(b) To make a purchase or enter into a contract, a procurement unit is required to:

(i) use a standard procurement process; or

(ii) comply with an exception to the requirement to use a standard procurement process, as described in Part 8, Exceptions to Procurement Requirements.

(4) A response to a request for information is not an offer and may not be accepted to form a binding contract.

(5) A request for information may seek a wide range of information, including:

(a) availability of a procurement item;

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- (b) delivery schedules;
- (c) industry standards and practices;
- (d) product specifications;
- (e) training;
- (f) new technologies;
- (g) capabilities of potential providers of a procurement item; and
- (h) alternate solutions.

(6) A record containing information submitted to or by a governmental entity in response to a request for information is a protected record under Section 63G-2-305.

Section ~~16~~23. Section **63G-6a-410** is enacted to read:

63G-6a-410. Request for statement of qualifications -- Process.

(1) (a) A procurement unit may use the process described in this section:

(i) as one of the stages of a multiple-stage:

(A) bidding process;

(B) request for proposals process; or

(C) design professional procurement process; and

(ii) to identify qualified vendors to participate in other stages of the multiple-stage procurement process.

(b) A procurement unit shall use the process described in this section as part of the approved vendor list process, if the procurement unit intends to establish an approved vendor list.

(2) A procurement unit may not:

(a) award a contract based solely on the process described in this section; or

(b) solicit costs, pricing, or rates or negotiate fees through the process described in this section.

(3) The process of identifying qualified vendors in a multiple-stage procurement process or of establishing an approved vendor list under Section 63G-6a-507 is initiated by a procurement unit issuing a request for statement of qualifications.

(4) A request for statement of qualifications in a multiple-stage procurement process shall include:

(a) a statement indicating that participation in other stages of the multiple-stage

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procurement process will be limited to qualified vendors;

(b) the minimum mandatory requirements, evaluation criteria, and applicable score thresholds that will be used to identify qualified vendors, including, as applicable:

(i) experience and work history;

(ii) management and staff requirements or standards;

(iii) licenses, certifications, and other qualifications;

(iv) performance ratings or references;

(v) financial stability; and

(vi) other information pertaining to vendor qualifications that the chief procurement officer or the head of a procurement unit with independent procurement authority considers relevant or important; and

(c) the deadline by which a vendor is required to submit a statement of qualifications.

(5) A request for statement of qualifications in an approved vendor list process under Section 63G-6a-507 shall include:

(a) a general description of, as applicable:

(i) the procurement item that the procurement unit seeks to acquire;

(ii) the type of project or scope or category of work that will be the subject of a procurement by the procurement unit;

(iii) the procurement process the procurement unit will use to acquire the procurement item; and

(iv) the type of vendor the procurement unit seeks to provide the procurement item;

(b) the minimum mandatory requirements, evaluation criteria, and applicable score thresholds that vendors are required to meet to be included on the approved vendor list;

(c) a statement indicating that the approved vendor list will include only responsible vendors that:

(i) submit a responsive statement of qualifications; and

(ii) meet the minimum mandatory requirements, evaluation criteria, and applicable score thresholds described in the request for statement of qualifications;

(d) a statement indicating that only vendors on the approved vendor list will be able to participate in the procurements identified in the request for statement of qualifications;

(e) a statement indicating whether the procurement unit will use a performance rating

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system for evaluating the performance of vendors on the approved vendor list, including whether a vendor on the approved vendor list may be disqualified and removed from the list;

(f) (i) a statement indicating whether the procurement unit uses a closed-ended approved vendor list, as defined in Section 63G-6a-507, or an open-ended approved vendor list, as defined in Section 63G-6a-507; and

(ii) (A) if the procurement unit uses a closed-ended approved vendor list, the deadline by which a vendor is required to submit a statement of qualifications and a specified period of time after which the approved vendor list will expire; or

(B) if the procurement unit uses an open-ended approved vendor list, the deadline by which a vendor is required to submit a statement of qualifications to be considered for the initial approved vendor list, a schedule indicating when a vendor not on the initial approved vendor list may submit a statement of qualifications to be considered to be added to the approved vendor list, and the specified period of time after which a vendor is required to submit a new statement of qualifications for evaluation before the vendor's status as an approved vendor on the approved vendor list may be renewed; and

(g) a description of any other criteria or requirements specific to the procurement item or scope of work that is the subject of the procurement.

(6) A procurement unit issuing a request for statement of qualifications shall publish the request as provided in Section 63G-6a-112.

(7) After the deadline for submitting a statement of qualifications, the chief procurement officer or the head of a procurement unit with independent procurement authority may correct an immaterial error in a statement of qualifications, as provided in Subsection 63G-6a-114(1).

(8) The conducting procurement unit may reject a statement of qualifications if the conducting procurement unit determines that:

(a) the person submitting the statement of qualifications is not responsible; or

(b) the statement of qualifications:

(i) is not responsive; or

(ii) does not meet mandatory minimum requirements, evaluation criteria, or applicable score thresholds stated in the request for statement of qualifications.

(9) (a) (i) After the issuance of a request for statement of qualifications, the conducting

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procurement unit shall appoint an evaluation committee consisting of at least three individuals with at least a general familiarity with or basic understanding of:

(A) the technical requirements relating to the type of procurement item that is the subject of the request for statement of qualifications; or

(B) the need that the procurement item is intended to address.

(ii) The conducting procurement unit shall ensure that each member of the evaluation committee and each individual participating in the evaluation committee process:

(A) does not have a conflict of interest with any vendor that submits a statement of qualifications;

(B) can fairly evaluate each statement of qualifications;

(C) does not contact or communicate with a vendor concerning the evaluation process or procurement outside the official evaluation committee process; and

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

(b) A conducting procurement unit may authorize an evaluation committee to receive assistance:

(i) from an expert or consultant who:

(A) is not a member of the evaluation committee; and

(B) does not participate in the evaluation scoring; and

(ii) to better understand a technical issue involved in the procurement.

(c) An evaluation committee appointed under this Subsection (9):

(i) shall evaluate and score statements of qualifications submitted in response to a request for statement of qualifications using the minimum mandatory requirements, evaluation criteria, and applicable score thresholds set forth in the request for statement of qualifications;

(ii) may not evaluate or score a statement of qualifications using criteria not included in the request for statement of qualifications; and

(iii) may, with the approval of the head of the conducting procurement unit, request the vendor to clarify the vendor's statement of qualifications, as provided in Section 63G-6a-115.

(d) After the evaluation committee completes its evaluation and scoring of the statements of qualifications, the evaluation committee shall submit the statements of qualifications and evaluation scores to the head of the procurement unit for review and final

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determination of:

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

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

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

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

(ii) 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.

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

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

(12) (a) A procurement unit may at any time:

(i) take steps to confirm the accuracy of a statement of qualifications; or

(ii) allow the voluntary withdrawal of an unintentionally erroneous statement of qualifications.

(b) If a vendor fails to respond to a procurement unit's request to confirm the accuracy of the vendor's statement of qualifications by the deadline established by the procurement unit, the procurement unit shall consider the statement of qualifications to be accurate and may proceed with the procurement process.

(13) (a) A conducting procurement unit may disqualify a vendor for:

(i) a violation of this chapter;

(ii) not being responsible or for filing a statement of qualifications that is not responsive;

(iii) a violation of a requirement contained in the request for statement of qualifications;

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(iv) unlawful or unethical conduct;

(v) a change in the vendor's circumstances after the vendor submits a statement of qualifications that, if the change had been known at the time the statement of qualifications was submitted, would have caused the vendor not to have a qualifying score; or

(vi) a performance rating below the satisfactory performance threshold specified in the request for statement of qualifications.

(b) A procurement unit that disqualifies a vendor under Subsection (13)(a) shall:

(i) make a written finding, stating the reasons for the disqualification; and

(ii) provide a copy of the written finding to the disqualified vendor.

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

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

(b) may not establish an approved vendor list based on the canceled request for statement of qualifications or on statements of qualifications submitted in response to the request for statement of qualifications.

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

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

(17) The applicable rulemaking authority may make rules ~~in accordance with the provisions of Chapter 3, Utah Administrative Rulemaking Act,~~ pertaining to the request for statement of qualifications and the process described in this section.

Section ~~{17}~~24. Section **63G-6a-501** is amended to read:

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Part 5. Other Standard Procurement Processes

63G-6a-501. Title.

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

Section ~~{18}25~~. Section **63G-6a-506**, which is renumbered from Section 63G-6a-408 is renumbered and amended to read:

~~[63G-6a-408].~~ **63G-6a-506. 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, 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 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:

(i) establishing expenditure thresholds, including:

(A) an annual cumulative threshold;

(B) an individual procurement threshold; and

(C) a single procurement aggregate threshold;

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

(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

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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~~], or emergency condition, including:

- (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

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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

(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

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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]~~ 63G-6a-2404.

(11) The Division of Finance within the Department of Administrative Services may 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 ~~{19}~~26. Section **63G-6a-507** is enacted to read:

63G-6a-507. Approved vendor list procurement process.

(1) As used in this section:

(a) "Closed-ended approved vendor list" means an approved vendor list that is subject to:

(i) a short period of time, specified by the procurement unit, during which vendors may be added to the list; and

(ii) a specified period of time after which the list will expire.

(b) "Open-ended approved vendor list" means an approved vendor list that is subject to:

(i) an indeterminate period of time during which vendors may be added to the list;

(ii) the addition of vendors to the list throughout the term of the list; and

(iii) a specified period of time after which a vendor on the list is required to submit the vendor's qualifications for evaluation before the vendor may be renewed as an approved vendor.

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(2) A procurement unit may not establish an approved vendor list unless the procurement unit has first completed the statement of qualifications process described in Section 63G-6a-410.

(3) (a) A procurement unit may establish an approved vendor list for:

(i) a project or procurement item with an identified, fully defined scope of work; or

(ii) a future project or procurement item that does not have an identified, fully defined scope of work at the time the request for statement of qualifications is issued, if the request for statement of qualifications contains a general description of the:

(A) scope or category of work;

(B) type of vendor that the procurement unit seeks to provide the procurement item;

and

(C) project or procurement item.

(b) A procurement unit may not award a contract to a vendor on an approved vendor list for work that is outside the scope of the general description of the work contained in the request for statement of qualifications.

(4) After receiving the statements of qualifications and evaluation scores submitted by the evaluation committee, as provided in Subsection 63G-6a-410(9)(c), the head of the conducting procurement unit using the request for statement of qualifications process under Section 63G-6a-410 as part of an approved vendor list process shall:

(a) include on an approved vendor list those vendors meeting the minimum mandatory requirements, evaluation criteria, and applicable score thresholds; and

(b) reject any vendor not meeting the minimum mandatory requirements, evaluation criteria, and applicable score thresholds as ineligible for inclusion on the approved vendor list.

(5) (a) A procurement unit shall include approved vendors on a closed-ended approved vendor list or an open-ended approved vendor list.

(b) (i) A closed-ended approved vendor list shall expire no later than 18 months after the publication of the closed-ended approved vendor list.

(ii) A procurement unit shall require a vendor on an open-ended approved vendor list, in order to remain on the approved vendor list, to submit an updated statement of qualifications for evaluation no later than 18 months after the vendor was added to the list as an approved vendor.

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(6) A procurement unit may:

(a) (i) using a standard procurement process, award a contract to a vendor on an approved vendor list for any procurement item or type of procurement item specified by the procurement unit in the request for statement of qualifications, including procurement items that the procurement unit intends to acquire in a series of upcoming procurements described in the request for statement of qualifications; and

(ii) limit participation in a standard procurement process to vendors on an approved vendor list; or

(b) award a contract to a vendor on an approved vendor list at a price established as provided in Section 63G-6a-113.

(7) After establishing an approved vendor list as provided in this section, the conducting procurement unit shall, before using the approved vendor list, submit the approved vendor list to the issuing procurement unit for publication by the issuing procurement unit.

(8) A conducting procurement unit administering an open-ended approved vendor list shall:

(a) require a vendor seeking inclusion on the approved vendor list to submit a statement of qualifications that complies with all requirements applicable at the time of the initial request for statement of qualifications;

(b) if modifying the requirements for inclusion on the approved vendor list, apply any new or additional requirement to all vendors equally, whether a vendor is seeking inclusion on the approved vendor list for the first time or is already included on the approved vendor list; and

(c) keep the request for statement of qualifications posted on a website as required under Subsection 63G-6a-112(6).

(9) The applicable rulemaking authority shall ~~}, in accordance with the provisions of Chapter 3, Utah Administrative Rulemaking Act, }~~ make rules pertaining to an approved vendor list process, including:

(a) procedures to ensure that all vendors on an approved vendor list have a fair and equitable opportunity to compete for a contract or be assigned to provide work or a procurement item; and

(b) requirements for using an approved vendor list with the small purchase process.

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Section 27. Section 63G-6a-603 is amended to read:

63G-6a-603. Invitation for bids -- Requirements -- Publication.

(1) The bidding standard procurement process begins when the issuing procurement unit issues an invitation for bids.

(2) An invitation for bids shall:

- (a) state the period of time during which bids will be accepted;
- (b) describe the manner in which a bid shall be submitted;
- (c) state the place where a bid shall be submitted; and
- (d) include, or incorporate by reference:
 - (i) a description of the procurement items sought;
 - (ii) the objective criteria that will be used to evaluate the bids; and
 - (iii) the required contractual terms and conditions.

(3) An issuing procurement unit shall publish an invitation for bids in accordance with the requirements of Section ~~[63G-6a-406]~~ 63G-6a-112.

Section ~~{20}~~28. Section **63G-6a-604** is amended to read:

63G-6a-604. Bid opening and acceptance.

(1) Bids shall be opened:

- (a) publicly, except as provided in Section 63G-6a-611;
- (b) in the presence of one or more witnesses, unless an electronic bid opening process is used where bidders may see the opening of the bid electronically; and
- (c) at the time and place indicated in the invitation for bids.

(2) Bids shall be accepted unconditionally, without alteration or correction, except as otherwise authorized by this chapter.

(3) (a) The procurement officer shall reject a bid ~~[that]~~ if the bid is not responsive or the bid is submitted by a bidder who is not responsible.

(b) A bid that is not responsive includes a bid that:

- (i) is conditional;
 - (ii) attempts to modify the bid requirements;
 - (iii) contains additional terms or conditions; or
 - (iv) fails to conform with the requirements or specifications of the invitation for bids.
- (c) A bid that is submitted by a bidder who is not responsible includes a bid where the

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procurement officer reasonably concludes that the bidder or an employee, agent, or subcontractor of the bidder, at any tier, is unable to satisfactorily fulfill the bid requirements.

(4) An issuing procurement unit may not accept a bid after the time for submission of a bid has expired.

(5) The procurement officer shall:

(a) record the name of each bidder and the amount of each bid; and

(b) after the bid is awarded, make the information described in Subsection (5)(a)

available for public disclosure.

Section ~~{21}~~29. Section 63G-6a-605 is ~~{amended}~~repealed and reenacted to read:

63G-6a-605. Correction or clarification of bids.

(1) The chief procurement officer or the head of a procurement unit with independent procurement authority may:

(a) allow a vendor to correct an immaterial error in a bid, as provided in Section 63G-6a-114; and

(b) request a vendor to clarify information contained in a bid, as provided in Section 63G-6a-115.

~~{(1) Correction or withdrawal of inadvertently erroneous bids, or the cancellation of an award or a contract that is based on an unintentionally erroneous bid, may be made in accordance with the rules of the applicable rulemaking authority.}~~

~~{(2) Notwithstanding Subsection (1), ~~{the following changes}~~ a vendor may not ~~{be made to}~~ change a bid price after the bid opening ~~{.}~~}~~

~~{(a) changes in bid pricing;}~~

~~{(b) changes in the cost evaluation formula; or}~~

~~{(c) changes in other provisions that are prejudicial to fair competition or to the interest of the procurement unit.}~~

~~{(3) A decision to permit the correction or withdrawal of a bid or the cancellation of an award or a contract under Subsection (1) shall be supported in a written document, signed by the chief procurement officer, the procurement officer, or the head of the procurement unit with independent procurement authority.}~~

Section 30. Section 63G-6a-606 is amended to read:

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

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(1) A procurement unit that conducts a procurement using a bidding standard procurement process shall evaluate each bid using the objective criteria described in the invitation for bids, which may include:

- (a) experience;
- (b) performance ratings;
- (c) inspection;
- (d) testing;
- (e) quality;
- (f) workmanship;
- (g) time and manner of delivery;
- (h) references;
- (i) financial stability;
- (j) cost;
- (k) suitability for a particular purpose;
- (l) the contractor's work site safety program, including any requirement that the contractor imposes on subcontractors for a work site safety program; or
- (m) other objective criteria specified in the invitation for bids.

(2) Criteria not described in the invitation for bids may not be used to evaluate a bid.

(3) The conducting procurement unit shall:

(a) award the contract as soon as practicable to:

(i) the ~~lowest responsive and~~ responsible bidder who:

(A) submits the lowest responsive bid; and

(B) meets the objective criteria described in the invitation for bids; or

(ii) if, in accordance with Subsection (4), the procurement officer or the head of the

conducting procurement unit ~~disqualifies the bidder~~ rejects a bid described in Subsection

(3)(a)(i), the ~~next lowest responsive and~~ responsible bidder who:

(A) submits the next lowest responsive bid; and

(B) meets the objective criteria described in the invitation for bids; or

(b) cancel the invitation for bids without awarding a contract.

(4) In accordance with Subsection (5), the procurement officer or the head of the conducting procurement unit may ~~disqualify a bidder~~ reject a bid for:

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(a) a violation of this chapter by the bidder who submitted the bid;

(b) a violation of a requirement of the invitation for bids;

(c) unlawful or unethical conduct by the bidder who submitted the bid; or

(d) a change in circumstance that, had the change been known at the time the bid was submitted, would have caused the [bidder] bid to not be the lowest responsive [and] bid from a responsible bidder who meets the objective criteria described in the invitation for bids.

(5) A procurement officer or head of a conducting procurement unit who [disqualifies a bidder] rejects a bid under Subsection (4) shall:

(a) make a written finding, stating the reasons for [disqualification] the rejection; and

(b) provide a copy of the written finding to the [disqualified] bidder who submitted the rejected bid.

(6) If a conducting procurement unit cancels an invitation for bids without awarding a contract, the conducting procurement unit shall make available for public inspection a written justification for the cancellation.

Section 31. Section 63G-6a-609 is amended to read:

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

(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.

(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] 63G-6a-410;

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

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

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

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

(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.

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

Section 32. Section 63G-6a-611 is amended to read:

63G-6a-611. Invitation for bids for reverse auction -- Requirements -- Publication of invitation.

(1) The reverse auction bidding process begins when the issuing procurement unit issues an invitation for bids to prequalify bidders to participate in the reverse auction.

(2) The invitation for bids shall:

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

(b) state that the bid will be conducted by reverse auction;

(c) describe the procurement items sought;

(d) describe the minimum requirements to become prequalified;

(e) state the required contractual terms and conditions; and

(f) describe the procedure that the conducting procurement unit will follow in the reverse auction.

(3) In order to participate in a reverse auction, a bidder shall agree to:

(a) the specifications, and contractual terms and conditions, of the procurement; and

(b) be trained in, and abide by, the procedure that the division or the procurement unit with independent procurement authority will follow in conducting the reverse auction.

(4) The division or a procurement unit with independent procurement authority shall publish an invitation for bids for a reverse auction in accordance with the requirements of Section ~~[63G-6a-406]~~ 63G-6a-112.

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Section ~~{22}~~33. Section **63G-6a-703** is amended to read:

63G-6a-703. Request for proposals -- Requirements -- Publication of request.

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

(2) A request for proposals shall:

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

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

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

(d) include, or incorporate by reference:

(i) a description of the procurement items sought;

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

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

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

(f) state the formula that will be used to determine the score awarded for the cost of each proposal;

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

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

(h) state that best and final offers may be allowed, as provided in Section 63G-6a-707.5, from responsible offerors who submit responsive proposals that meet minimum qualifications, evaluation criteria, or applicable score thresholds identified in the request for proposals.

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

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Section ~~{23}~~34. Section **63G-6a-706** is ~~{amended}~~repealed and reenacted to read:

63G-6a-706. Correction or clarification of proposal.

(1) The chief procurement officer or the head of a procurement unit with independent procurement authority may:

(~~{1}~~)a) allow a vendor to correct an immaterial error in a proposal, as provided in Section 63G-6a-114; and

(~~{2}~~)b) request a vendor to clarify information contained in a proposal, as provided in Section 63G-6a-115.

~~{(1) Correction or withdrawal of an unintentionally erroneous proposal, or the cancellation of an award or contract that is based on an unintentionally erroneous proposal, may be made in accordance with the rules of the applicable rulemaking authority.}~~

~~— [(2) A decision to permit the correction or withdrawal of a proposal or the cancellation of an award or a contract under]~~(2) Notwithstanding Subsection (1) ~~{shall be supported in a written document, signed by the procurement officer.}~~

~~— Section 24}~~and except as provided in Section 63G-6a-707.5, after the deadline for submitting a cost proposal a vendor may not change the amount of a cost proposal.

Section 35. 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;

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- (i) financial solvency;
 - (j) suitability for a particular purpose;
 - (k) management plans;
 - (l) the presence and quality of a work site safety program, including any requirement that the offeror imposes on subcontractors for a work site safety program;
 - (m) cost; or
 - (n) 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:
- (a) appoint an evaluation committee consisting of at least three individuals with at least a general familiarity with or basic understanding of:
 - (i) the technical requirements relating to the type of procurement item that is the subject of the procurement; or
 - (ii) the need that the procurement item is intended to address; and
 - (b) ensure that the evaluation committee and each [~~member of the evaluation committee~~] individual participating in the evaluation committee process:
 - (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 or participates in the evaluation in a manner that ensures a fair and competitive process and avoids the appearance of impropriety.
- (4) A conducting procurement unit may authorize an evaluation committee to receive assistance:
- (a) from an expert or consultant who:
 - (i) is not a member of the evaluation committee; and
 - (ii) does not participate in the evaluation scoring; and
 - (b) to better understand a technical issue involved in the procurement.
- [~~(4)~~] (5) The evaluation committee may, with the approval of the head of the conducting procurement unit, enter into discussions or conduct interviews with, or attend

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presentations by, the offerors.

~~[(5)]~~ (6) (a) Except as provided in Subsections ~~[(5)(b) and (8)]~~ (6)(b) and (9), 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)]~~ (6)(a) after the evaluation committee has submitted those scores to the issuing procurement unit; or

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

~~[(6)]~~ (7) (a) As used in this Subsection ~~[(6)]~~ (7), "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,

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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 ~~[(8)]~~ (9), 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)]~~ (8) (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)]~~ (9) An issuing procurement unit is not required to comply with Subsection ~~[(5)]~~ (6) 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)]~~ (6); and

(ii) describing the nature of the proposal and the other circumstances relied upon to waive compliance with Subsection ~~[(5)]~~ (6); and

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

Section ~~{25}~~ 36. Section **63G-6a-707.5** is amended to read:

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

(1) At any time during the evaluation process, the evaluation committee, with the approval of the director or the head of the issuing procurement unit, may:

(a) request best and final offers from responsible ~~[and]~~ offerors who have submitted responsive [offerors] proposals that meet the minimum qualifications, evaluation criteria, or applicable score thresholds identified in the request for proposals, if:

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

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(ii) all or a significant number of the proposals are ambiguous on a material point and the evaluation committee requires further clarification in order to conduct a fair evaluation of proposals;

(iii) the evaluation committee needs additional information from all offerors to complete the evaluation of proposals;

(iv) the differences between proposals in one or more material aspects are too slight to allow the evaluation committee to distinguish between proposals;

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

(vi) another reason exists supporting a request for best and final offers, as provided in rules established by the applicable rulemaking authority; and

(b) evaluate those best and final offers.

(2) In requesting and evaluating best and final offers under Subsection (1), the evaluation committee shall:

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

(b) establish a schedule and procedures for conducting discussions;

(c) ensure that information in each proposal and information gathered during discussions is not shared with other offerors until the contract is awarded;

(d) ensure that auction tactics are not used in the discussion process, including discussing and comparing the costs and features of other proposals; and

(e) set a common date and time for the submission of best and final offers.

(3) In a best and final offer, an offeror:

(a) may address only the issues described in the request for best and final offers; and

(b) may not correct a material error or deficiency in the offeror's proposal or address any other issue not described in the request for best and final offers.

~~(3)~~ (4) If an offeror chooses not to participate in a discussion or does not make a timely best and final offer, the offer submitted by the offeror before the conduct of discussions shall be treated as the offeror's best and final offer.

(5) An applicable rulemaking authority shall make rules governing best and final offers under this section.

Section 37. Section 63G-6a-708 is amended to read:

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63G-6a-708. Justification statement -- Cost-benefit analysis.

(1) (a) In determining which proposal provides the best value to the procurement unit, the evaluation committee and the conducting procurement unit shall prepare a written justification statement that:

(i) explains the score assigned to each evaluation category;

(ii) explains how the proposal with the highest total combined score provides the best value to the procurement unit in comparison to the other proposals;

(iii) if applicable, includes the cost-benefit analysis described in Subsection (2) and how the cost-benefit analysis relates to the best value to the procurement unit; and

(iv) if applicable, includes the written determination described in Subsection (5).

(b) An explanation under Subsection (1)(a)(i) need not address each criterion within each category.

(2) If, in determining the best value to the procurement unit, the evaluation committee awards the highest score, including the score for cost, to a proposal other than the lowest cost proposal, and the difference between the cost of the highest scored proposal and the lowest cost proposal exceeds the greater of \$10,000 or 5% of the lowest cost proposal, the evaluation committee and the conducting procurement unit shall prepare an informal written cost-benefit analysis that:

(a) explains, in general terms, the advantage to the procurement unit of awarding the contract to the higher cost offeror; and

(b) except as provided in Subsection (5):

(i) includes the estimated added financial value to the procurement unit of each criterion that justifies awarding the contract to the higher cost offeror; and

(ii) demonstrates that the value of the advantage to the procurement unit of awarding the contract to the higher cost offeror exceeds the value of the difference between the cost of the higher cost proposal and the cost of the lower cost proposals.

(3) If the informal cost-benefit analysis described in Subsection (2) does not justify awarding the contract to the offeror that received the highest score, the issuing procurement unit:

(a) may not award the contract to the offeror that received the highest score; and

(b) may award the contract to the offeror that received the next highest score, unless:

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(i) an informal cost-benefit analysis is required, because the difference between the cost proposed by the offeror that received the next highest score and the lowest cost proposal exceeds the greater of \$10,000 or 5% of the lowest cost proposal; and

(ii) the informal cost-benefit analysis does not justify award of the contract to the offeror that received the next highest score.

(4) If the informal cost-benefit analysis described in Subsection (2) does not justify award of the contract to the offeror, described in Subsection (3), that received the next highest score, the issuing procurement unit:

(a) may not award the contract to the offeror that received the next highest score; and

(b) shall continue with the process described in Subsection (3) for each offeror that received the next highest score, until the issuing procurement unit:

(i) awards the contract in accordance with the provisions of this section; or

(ii) cancels the request for proposals.

(5) (a) The evaluation committee, with the issuing procurement unit's approval, may waive, in whole or in part, a requirement under Subsection (2)(b) if the evaluation committee determines in writing that assigning a financial value to a particular procurement item or evaluation criterion is not practicable.

(b) A written determination under Subsection (5)(a):

(i) shall explain:

(A) why it is not practicable to assign a financial value to the procurement item or evaluation criterion; and

(B) in nonfinancial terms, why awarding the contract to the higher cost offeror provides the best value to the procurement unit; and

(ii) may be included as part of the justification statement.

(6) (a) An issuing procurement unit is not required to make the cost-benefit analysis described in this section for a contract with a construction manager/general contractor if the contract is awarded based solely on the qualifications of the construction manager/general contractor and the management fee described in Subsection 63G-6a-707~~(6)~~(7).

(b) The applicable rulemaking authority shall make rules that establish procedures and criteria for awarding a contract described in Subsection (6)(a) to ensure that:

(i) a competitive process is maintained; and

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(ii) the contract awarded is in the best interest of the procurement unit.

Section ~~{26}~~38. Section **63G-6a-709** is amended to read:

63G-6a-709. Award of contract -- Cancellation -- Disqualification.

(1) After the completion of the evaluation and scoring of proposals and the justification statement, including any required cost-benefit analysis, the evaluation committee shall submit the proposals, evaluation scores, and justification statement to the head of the procurement unit or designee for review and final determination of a contract award.

(2) After reviewing the proposals, evaluation scores, and justification statement, including any required cost-benefit analysis, the head of the issuing procurement unit [~~or designee~~] shall:

(a) (i) award the contract as soon as practicable to~~[(i)]~~ the [~~responsive and~~] responsible offeror with the responsive proposal receiving the highest total score; or

~~[(ii) if, in accordance with Subsection (3), the procurement officer or the head of the issuing procurement unit disqualifies the offeror described in Subsection (2)(a)(i), the responsive and responsible offeror with the next highest total score; or]~~

(ii) (A) if the head of the issuing procurement unit disqualifies an offeror under Subsection (3) who would otherwise have been awarded a contract, award the contract to the responsible offeror with the responsive proposal receiving the next highest total score; and

(B) if the head of the issuing procurement unit disqualifies an offeror under Subsection (3) who would otherwise have been awarded a contract under Subsection (2)(a)(ii)(A), repeat the process described in Subsection (2)(a)(ii)(A) as many times as necessary until a contract is awarded to a responsible offeror who is not disqualified; or

(b) cancel the request for proposals without awarding a contract.

(3) [~~In accordance with Subsection (4), the procurement officer or the~~] The head of the issuing procurement unit may disqualify an offeror for:

(a) a violation of this chapter;

(b) not being responsive or responsible;

(c) a violation of a requirement of the request for proposals;

(d) unlawful or unethical conduct; [~~or~~]

(e) a failure to sign a contract within:

(i) (A) the time specified in the solicitation; or

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(B) 90 days after the contract award, if no time is specified in the solicitation; or
(ii) a time authorized in writing by the head of the issuing procurement unit; or
~~[(e)]~~ (f) a change in circumstance that, had the change been known at the time the proposal was submitted, would have caused the proposal to not have the highest score.

(4) A ~~[procurement officer or]~~ head of an issuing procurement unit who disqualifies an offeror under Subsection (3) shall:

- (a) make a written finding, stating the reasons for disqualification; and
- (b) provide a copy of the written finding to the disqualified offeror.

(5) If an issuing procurement unit cancels a request for proposals without awarding a contract, the issuing procurement unit shall make available for public inspection a written justification for the cancellation.

Section ~~{27}~~39. Section **63G-6a-802** is amended to read:

63G-6a-802. Award of contract without competition -- Notice -- Duty to negotiate contract terms in best interest of procurement unit.

~~[(1) As used in this section:]~~

~~[(a) "Transitional costs" mean the costs of changing from an existing provider of, or type of, a procurement item to another provider of, or type of, procurement item.]~~

~~[(b) "Transitional costs" include:]~~

~~[(i) training costs;]~~

~~[(ii) conversion costs;]~~

~~[(iii) compatibility costs;]~~

~~[(iv) system downtime;]~~

~~[(v) disruption of service;]~~

~~[(vi) staff time necessary to put the transition into effect;]~~

~~[(vii) installation costs; and]~~

~~[(viii) ancillary software, hardware, equipment, or construction costs.]~~

~~[(c) "Transitional costs" do not include:]~~

~~[(i) the costs of preparing for or engaging in a procurement process; or]~~

~~[(ii) contract negotiation or contract drafting costs.]~~

~~[(d) "Trial use contract" means a contract between a procurement unit and a vendor for a procurement item that the procurement unit acquires for trial use or testing to determine~~

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~~whether the procurement item will benefit the procurement unit.]~~

~~[(2) The division or]~~ (1) (a) The chief procurement officer or the head of a procurement unit with independent procurement authority may award a contract for a procurement item without competition if the chief procurement officer[;] or the head of the procurement unit[; or a designee of either who is senior to the procurement officer or the head of the procurement unit,] determines in writing that:

~~[(a)]~~ (i) there is only one source for the procurement item;

~~[(b) the award to a specific supplier, service provider, or contractor is a condition of a donation that will fund the full cost of the supply, service, or construction item; or]~~

~~[(c) the procurement item is needed for trial use or testing to determine whether the procurement item will benefit the procurement unit.]~~

~~[(3) Circumstances under which there is only one source for a procurement item may include:]~~

~~[(a) where the most important consideration in obtaining a procurement item is the compatibility of equipment, technology, software, accessories, replacement parts, or service;]~~

~~[(b) where transitional costs are unreasonable or cost prohibitive; or]~~

~~[(c) procurement of public utility services.]~~

(ii) (A) transitional costs are a significant consideration in selecting a procurement item; and

(B) the results of a cost-benefit analysis demonstrate that transitional costs are unreasonable or cost-prohibitive, and that the award of a contract without competition is in the best interest of the procurement unit; or

(iii) the award of a contract is under circumstances, described in rules adopted by the applicable rulemaking authority, that make awarding the contract with competition impractical and not in the best interest of the procurement unit.

(b) Circumstances supporting a determination under Subsection (1)(a)(i) that there is only one source for a procurement item include:

(i) a donor imposed condition, on a donation funding the full cost of a procurement item, that the procurement unit award the contract for the procurement item to a vendor specified by the donor; and

(ii) the procurement of a public utility service.

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(2) Transitional costs associated with a trial use or testing of a procurement item under a trial use contract may not be included in a consideration of transitional costs under Subsection (1)(a)(ii).

~~[(4)] (3)~~ (a) Subject to Subsection ~~[(4)] (3)~~(b), the applicable rulemaking authority shall make rules regarding the publication of notice for a ~~[sole source]~~ procurement under Subsection (1)(a)(i) that, at a minimum, require publication of notice of ~~[a sole source]~~ the procurement, in accordance with Section ~~[63G-6a-406]~~ 63G-6a-112, if the cost of the procurement exceeds \$50,000.

(b) Publication of notice under Section ~~[63G-6a-406]~~ 63G-6a-112 is not required for:

- (i) the procurement of public utility services pursuant to a sole source contract; or
- (ii) other sole source procurements provided by rule.

~~[(5) The division or]~~ (4) The chief procurement officer or the head of a procurement unit with independent procurement authority who awards a ~~[sole source contract on behalf of another procurement unit]~~ contract without competition under this section shall negotiate with the contractor to ensure that the terms of the contract, including price and delivery, are in the best interest of the procurement unit.

~~[(6) (a) The period of trial use or testing of a procurement item under a trial use contract may not exceed 18 months, unless the procurement officer provides a written exception documenting the reason for a longer period.]~~

~~[(b) A trial use contract shall:]~~

~~[(i) state that the purpose of the contract is strictly for the purpose of the trial use or testing of a procurement item;]~~

~~[(ii) state that the contract terminates upon completion of the trial use or testing period;]~~

~~[(iii) state that, after the trial use or testing period, the procurement unit is not obligated to purchase or enter into a contract for the procurement item, regardless of the trial use or testing result;]~~

~~[(iv) state that any purchase of the procurement item beyond the terms of the trial use contract will be made in accordance with this chapter; and]~~

~~[(v) include, as applicable:]~~

~~[(A) test schedules;]~~

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~~[(B) deadlines and a termination date;]~~

~~[(C) measures that will be used to evaluate the performance of the procurement item;]~~

~~[(D) any fees and associated expenses or an explanation of the circumstances warranting a waiver of those fees and expenses;]~~

~~[(E) the obligations of the procurement unit and vendor;]~~

~~[(F) provisions regarding the ownership of the procurement item during and after the trial use or testing period;]~~

~~[(G) an explanation of the grounds upon which the contract may be terminated;]~~

~~[(H) a limitation of liability;]~~

~~[(I) a consequential damage waiver provision;]~~

~~[(J) a statement regarding the confidentiality or nondisclosure of information;]~~

~~[(K) a provision relating to any required bond or security deposit; and]~~

~~[(L) other requirements unique to the procurement item for trial use or testing.]~~

~~[(c) Publication of notice under Section 63G-6a-406 is not required for a procurement pursuant to a trial use contract.]~~

~~[(7) The division or a procurement unit with independent procurement authority may extend a contract for a reasonable period of time without engaging in a standard procurement process, if:]~~

~~[(a) the award of a new contract for the procurement item is delayed due to a protest or appeal;]~~

~~[(b) the standard procurement process is delayed due to unintentional error;]~~

~~[(c) changes in industry standards require significant changes to specifications for the procurement item;]~~

~~[(d) the extension is necessary to prevent the loss of federal funds;]~~

~~[(e) the extension is necessary to address a circumstance where the appropriation of state or federal funds has been delayed;]~~

~~[(f) the extension covers the period of time during which contract negotiations with a new provider are being conducted; or]~~

~~[(g) the extension is necessary to avoid a lapse in critical governmental services that may negatively impact public health, safety, or welfare.]~~

Section ~~{28}~~40. Section **63G-6a-802.3** is enacted to read:

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63G-6a-802.3. Trial use contracts.

(1) A procurement unit may award a trial use contract without competition if the contract is:

(a) awarded for a procurement item that is not already available to the procurement unit under an existing contract;

(b) restricted to the procurement of a procurement item in the minimum quantity and for the minimum period of time necessary to test the procurement item;

(c) the only trial use contract for that procurement unit for the same procurement item;
and

(d) not used to circumvent the purposes and policies of this chapter as set forth in Section 63G-6a-102.

(2) The period of trial use or testing of a procurement item under a trial use contract may not exceed 18 months, unless the procurement officer provides a written exception documenting the reason for a longer period.

(3) A trial use contract shall:

(a) state that the contract is strictly for the trial use or testing of a procurement item;

(b) state that the contract terminates upon completion of the trial use or testing period;

(c) state that the procurement unit is not obligated to purchase or enter into a contract for the procurement item, regardless of the trial use or testing result;

(d) state that any purchase of the procurement item that is the subject of the trial use contract will be made in accordance with this chapter; and

(e) include, as applicable:

(i) test schedules;

(ii) deadlines and a termination date;

(iii) measures that will be used to evaluate the performance of the procurement item;

(iv) any fees and associated expenses or an explanation of the circumstances warranting a waiver of those fees and expenses;

(v) the obligations of the procurement unit and vendor;

(vi) provisions regarding the ownership of the procurement item during and after the trial use or testing period;

(vii) an explanation of the grounds upon which the contract may be terminated;

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(viii) a provision relating to any required bond or security deposit; and

(ix) other requirements unique to the procurement item for trial use or testing.

(4) Publication of notice under Section 63G-6a-112 is not required for a trial use contract.

(5) The applicable rulemaking authority may make rules pertaining to a trial use contract.

Section ~~{29}~~41. Section **63G-6a-802.7** is enacted to read:

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

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

(1) for a period of time not to exceed 90 days, if:

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

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

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

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

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

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

(iii) an extension is necessary:

(A) to prevent the loss of federal funds;

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

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

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

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

(3) for a period of time exceeding 90 days, if the attorney general or the procurement unit's attorney determines in writing that the contract extension does not violate this chapter or state or federal antitrust laws.

Section ~~{30}~~42. Section **63G-6a-803** is amended to read:

63G-6a-803. Emergency procurement.

(1) Notwithstanding any other provision of this chapter, ~~[a] the chief~~ procurement officer or the [procurement officer's designee may authorize] head of a procurement unit with independent procurement authority may authorize a procurement unit to engage in an emergency procurement without using a standard procurement process [when an emergency condition exists] if the procurement is necessary to:

(a) avoid a lapse in a critical government service;

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

(c) protect the legal interests of a public entity.

(2) A procurement ~~[officer who authorizes]~~ unit conducting an emergency procurement under Subsection (1) shall:

~~[(c)]~~ (a) make the authorization in writing, stating the emergency condition upon which the emergency procurement is made; and ~~{ }~~]

~~[(b)]~~ (a) ensure that the procurement is made with as much competition as reasonably practicable while:

~~(a)i~~ avoiding a lapse in a critical government service;

~~(b)ii~~ avoiding harm, or a risk of harm, to the public health, safety, welfare, or property; or

~~(c)iii~~ protecting the legal interests of a public entity; and

(b) after the emergency has abated, prepare a written document explaining the emergency condition that necessitated the emergency procurement under Subsection (1).

Section ~~{31}~~43. Section **63G-6a-806** is amended to read:

63G-6a-806. Exception for public transit district contracting with a county or municipality.

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A public transit district, organized under Title 17B, Chapter 2a, Part 8, Public Transit District Act, may, without going through a standard procurement process or [an] another exception to a standard procurement process described in [~~Part 8, Exception to Procurement Requirements~~] this part:

- (1) contract with a county or municipality to receive money from the county or municipality; and
- (2) use the money described in Subsection (1) to fund a transportation project or a transit-related program in accordance with rules made by the applicable rulemaking authority.

Section ~~{32}~~44. Section **63G-6a-906** is enacted to read:

63G-6a-906. Attorney general enforcement.

The attorney general may enforce a remedy available under this part to a procurement unit with independent procurement authority to the same extent as if the attorney general were the head of the procurement unit.

Section ~~{33}~~45. Section **63G-6a-1206** is amended to read:

63G-6a-1206. Rules and regulations to determine allowable incurred costs -- Required information.

(1) (a) The applicable rulemaking authority may, by rule, establish the cost principles to be included in a cost-reimbursement contract to determine incurred costs for the purpose of calculating a reimbursement.

(b) The cost principles established by rule under Subsection (1)(a) may be modified, by contract, if the procurement officer or the head of the issuing procurement unit approves the modification.

(2) Except as provided in Subsection (5), a person who seeks to be, or is, a party in a cost-based contract with a procurement unit shall:

- (a) submit cost or pricing data relating to determining the cost or pricing amount; and
- (b) certify that, to the best of the contractor's knowledge and belief, the cost or pricing data submitted is accurate and complete as of the date specified by the procurement unit.

(3) The procurement officer shall ensure that the date specified under Subsection (2)(b) is before:

- (a) the pricing of any contract awarded by a standard procurement process or pursuant to a sole source procurement, if the total contract price is expected to exceed an amount

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established by rule made by the applicable rulemaking authority; or

(b) the pricing of any change order that is expected to exceed an amount established by rule made by the applicable rulemaking authority.

(4) A contract or change order that requires a certification described in Subsection (2) shall include a provision that the price to the procurement unit, including profit or fee, shall be adjusted to exclude any significant sums by which the procurement unit finds that the price was increased because the contractor provided cost or pricing data that was inaccurate, incomplete, or not current as of the date specified by the procurement officer.

(5) A procurement unit is not required to comply with Subsection (2) if:

(a) the contract price is based on adequate price competition;

(b) the contract price is based on established catalogue prices or market prices;

(c) the contract price is set by law or rule; or

(d) the procurement states, in writing:

(i) that, in accordance with rules made by the applicable rulemaking authority, the requirements of Subsection (2) may be waived; and

(ii) the reasons for the waiver.

~~[(6) The procurement officer or audit entity under contract with the procurement unit may, at reasonable times and places, only to the extent that the books and records relate to the applicable cost or pricing data, audit the books and records of:]~~

~~[(a) a person who has submitted cost or pricing data pursuant to this section; or]~~

~~[(b) a contractor or subcontractor under a contract or subcontract other than a firm fixed price contract.]~~

~~[(7) Unless a shorter time is provided for by contract:]~~

~~[(a) a person described in Subsection (6)(a) shall maintain the books and records described in Subsection (6) for three years after the day on which the fiscal year in which final payment is made under the contract ends;]~~

~~[(b) a contractor shall maintain the books and records described in Subsection (6) for three years after the day on which the fiscal year in which final payment under the prime contract ends; and]~~

~~[(c) a subcontractor shall maintain the books and records described in Subsection (6) for three years after the day on which the fiscal year in which final payment is made under the~~

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subcontract ends.]

Section ~~{34}~~46. Section **63G-6a-1206.3** is enacted to read:

63G-6a-1206.3. Auditing of books.

(1) The procurement officer or audit entity under contract with the procurement unit may, at reasonable times and places, and only to the extent that the books and records relate to the applicable contract, audit the books and records of:

(a) a person who has submitted cost or pricing data pursuant to Section 63G-6a-1206;

or

(b) a contractor or subcontractor under a contract or subcontract other than a firm fixed price contract.

(2) Unless a shorter time is provided for by contract:

(a) a person described in Subsection (1)(a) shall maintain all records related to a contract described in Subsection (1) for six years after the day on which the fiscal year in which final payment is made under the contract ends, or until all audits initiated within the six-year period have been completed, whichever is later;

(b) a contractor shall maintain all records related to a contract described in Subsection (1) for six years after the day on which the fiscal year in which final payment under the prime contract ends, or until all audits initiated within the six-year period have been completed, whichever is later; and

(c) a subcontractor shall maintain all records related to the contract described in Subsection (1) for six years after the day on which the fiscal year in which final payment is made under the subcontract ends, or until all audits initiated within the six-year period have been completed, whichever is later.

Section ~~{35}~~47. Section **63G-6a-1206.5** is amended to read:

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

A contractor may:

(1) increase the contract price only in accordance with the terms of the contract[-]; and

(2) lower the contract price at any time during the time a contract is in effect.

Section 48. Section **63G-6a-1502** is amended to read:

63G-6a-1502. Requirements regarding procurement of design professional services.

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- (1) A procurement unit seeking to procure design professional services shall:
 - (a) publicly announce all requirements for those services through a request for statement of qualifications, as provided in this part; and
 - (b) negotiate contracts for 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) 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-410, 63G-6a-506, 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 49. Section 63G-6a-1503.5 is amended 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]~~ eliminated 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 responsible design professionals submit statements of qualifications ~~[or]~~ that 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

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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 ~~{36}~~50. Section **63G-6a-1601** is amended to read:

Part 16. Protests

63G-6a-1601. Title.

This part is known as "[~~Controversies and~~] Protests."

Section ~~{37}~~51. Section **63G-6a-1601.5** is enacted to read:

63G-6a-1601.5. Definitions.

As used in this part:

(1) "Constructive knowledge":

(a) means knowledge or information that ~~f~~:

~~—— (i) } a protestor ~~{should}~~would have if the protestor exercises reasonable care or diligence, regardless of whether the protestor actually has the knowledge or information; ~~for~~~~

~~—— (ii) the law presumes a protestor to have, regardless of whether the protestor actually has the knowledge or information; }and~~

(b) includes knowledge of:

(i) applicable provisions of this chapter and other law and administrative rule;

(ii) instructions, criteria, deadlines, and requirements contained in the solicitation or in other documents made available to persons interested in the solicitation or provided in a mandatory pre-solicitation meeting;

(iii) relevant facts and evidence supporting the protest or leading the protestor to contend that the protestor has been aggrieved in connection with a procurement;

(iv) communications or actions, pertaining to the procurement, of all persons within the protestor's organization or under the supervision of the protestor; and

(v) any other applicable information discoverable by the exercise of reasonable care or diligence.

~~{ —— (2) "Protest deadline" means:~~

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~~_____ (a) (i) (A) for a protest relating to a procurement under a bidding process, the opening of bids;~~

~~_____ (B) for a protest relating to another standard procurement process, the deadline for submitting responses to the solicitation; or~~

~~_____ (C) for a protest relating to a multiple-stage procurement, the closing of the stage of the procurement that is the subject of the protest; or~~

~~_____ (ii) if the protestor did not know and did not have constructive knowledge of the facts giving rise to the protest before, as applicable, the opening of bids, the deadline for submitting responses, or the closing of the stage of the procurement that is the subject of the protest, the day that is seven days after the day on which the person knows or first had constructive knowledge of the facts giving rise to the protest; and~~

~~_____ (b) for a protest relating to a procurement process not described in Subsection (1)(a)(i), the day that is seven days after the day on which the protestor knows or first has constructive knowledge of the facts giving rise to the protest.~~

‡ ~~(3)2~~ "Protestor" means a person who files a protest under this part.

~~(4)3~~ "Standing" means to have suffered an injury or harm or to be about to suffer imminent injury or harm, if:

(a) the cause of the injury or harm is:

(i) an infringement of the protestor's own right and not the right of another person who is not a party to the procurement;

(ii) reasonably connected to the procurement unit's conduct; and

(iii) the sole reason the protestor is not considered, or is no longer considered, for an award of a contract under the procurement that is the subject of the protest;

(b) a decision on the protest in favor of the protestor:

(i) is likely to redress the injury or harm; and

(ii) would give the protestor a reasonable likelihood of being awarded a contract; and

(c) the protestor has the legal authority to file the protest on behalf of the actual or prospective bidder or offeror or prospective contractor involved in the procurement that is the subject of the protest.

Section ~~(38)52~~. Section **63G-6a-1602** is amended to read:

63G-6a-1602. Protest -- Time for filing -- Authority to resolve protest.

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(1) ~~[(a)]~~ A protest may be filed with the protest officer by ~~[(i) an actual or prospective bidder or offeror]~~ a person who:

(a) has standing; and

(b) is aggrieved in connection with a procurement[;] or an award of a contract.

~~[(ii) a prospective contractor who]~~

~~[is aggrieved in connection with an award of a contract.]~~

~~[(b) (i) A protest under Subsection (1)(a) relating to an invitation for bids or a request for proposals shall be filed:]~~

~~[(A) before the opening of bids or the closing date for proposals; or]~~

~~[(B) if the person filing the protest did not know and should not have known of the facts giving rise to the protest before the bid opening or the closing date for proposals, within seven days after the day on which the person knows or should have known of the facts giving rise to the protest.]~~

~~[(ii) A protest under Subsection (1)(a) relating to a form of procurement not described in Subsection (1)(b)(i) but involving a deadline established for the submission of a price or response shall be filed:]~~

~~[(A) before the deadline for the submission of a price or response; or]~~

~~[(B) if the person filing the protest did not know and reasonably should not have known of the facts giving rise to the protest before the deadline for the submission of a price or response, within seven days after the day on which the person knows or reasonably should have known of the facts giving rise to the protest.]~~

~~[(iii) A protest under Subsection (1)(a) relating to a form of procurement not described in Subsection (1)(b)(i) or (ii) shall be filed within seven days after the day on which the person filing the protest knows or should have known of the facts giving rise to the protest.]~~

~~[(2) A person who files a protest under this section shall include in the filing document:]~~

(2) A protest may not be filed after:

(a) (i) (A) the opening of bids, for a protest relating to a procurement under a bidding process; or

(B) the deadline for submitting responses to the solicitation, for a protest relating to another standard procurement process; or

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(ii) the closing of the procurement stage that is the subject of the protest;

(A) if the protest relates to a multiple-stage procurement; and

(B) notwithstanding Subsections (2)(a)(i)(A) and (B); or

(b) the day that is seven days after the day on which the person knows or first has constructive knowledge of the facts giving rise to the protest, if:

(i) the protestor did not know and did not have constructive knowledge of the facts giving rise to the protest before:

(A) the opening of bids, for a protest relating to a procurement under a bidding process;

(B) the deadline for submitting responses to the solicitation, for a protest relating to another standard procurement process; or

(C) the closing of the procurement stage that is the subject of the protest, if the protest relates to a multiple-stage procurement; or

(ii) the protest relates to a procurement process not described in Subsection (2)(a).

(3) (a) A protestor shall include in a protest:

[(a)] (i) the [person's] protestor's mailing address [of record] and email address [of record]; and

[(b)] (ii) a concise statement of the [grounds upon which the protest is made.] facts and evidence:

(A) leading the protestor to claim that the protestor has been aggrieved in connection with a procurement and providing the grounds for the protestor's protest; and

(B) supporting the protestor's claim of standing.

(b) A protest may not be considered unless it contains facts and evidence that, if true, would establish:

(i) a violation of this chapter or applicable administrative rule;

(ii) the procurement unit's failure to follow a provision of a solicitation;

(iii) an error made by an evaluation committee or conducting procurement unit;

(iv) a bias exercised by an evaluation committee or an individual committee member, unless the bias is based on the review of a response to a solicitation in regard to criteria in the solicitation;

(v) a failure to correctly apply or calculate a scoring criterion; or

(vi) other grounds that the chief procurement officer or the head of a procurement unit

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with independent procurement authority considers appropriate.

(4) A protest may not be based on a vague or unsubstantiated allegation.

(5) A protest may not include a request for:

(a) an explanation of the rationale or scoring of evaluation committee members;

(b) the disclosure of a protected record or protected information in addition to the information provided under the disclosure provisions of this chapter; or

(c) other information, documents, or explanations not explicitly provided for in this chapter.

~~[(3)]~~ (6) A person ~~[described in Subsection (1)]~~ who fails to file a protest ~~[within the time prescribed in Subsection (1)(b)]~~ by the protest deadline may not:

(a) protest to the protest officer a solicitation or award of a contract; or

(b) file an action or appeal challenging a solicitation or award of a contract before an appeals panel, a court, or any other forum.

~~[(4)]~~ (7) Subject to the applicable requirements of Section 63G-10-403, a protest officer or the head of a procurement unit may enter into a settlement agreement to resolve a protest.

Section ~~39~~53. 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 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.

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(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 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:

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(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~~] the protest was 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 erroneous.

Section 54. 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;

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- (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~~[(2)]~~(3); or

(ii) the day on which the 30-day period described in Subsection 63G-6a-1603(9) 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

(b) a decision is not issued and the 30-day period described in Subsection 63G-6a-1603(9), 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:

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(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 (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:

(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.

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(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, 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 ~~40~~55. 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.

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(1) [~~Except as provided by rule made under Subsection (2)(a), 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

(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.

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(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 deposit is forfeited to the 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 of the procurement unit under Subsection (5).

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(5) A security deposit that is paid, or a bond that is posted, under this section shall forfeit to the 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 56. 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~~ Section 63G-6a-1602~~(+)~~;

(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:

(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

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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 57. Section 63G-6a-2003 is amended to read:

63G-6a-2003. Records of contracts made -- Audits -- Contract requirements.

The chief procurement officer, the procurement officer, or the head of a procurement unit with independent procurement authority shall maintain a record of all contracts made under Section [~~63G-6a-408~~] 63G-6a-506, 63G-6a-802, or 63G-6a-803, in accordance with Title 63G, Chapter 2, Government Records Access and Management Act. The record shall contain each contractor's name, the amount and type of each contract, and a listing of the procurement items to which the contract relates.

Section ~~{41}~~58. Section 63G-6a-2105 is amended to read:

63G-6a-2105. Cooperative procurements -- Contracts with federal government -- Regional solicitations.

(1) The chief procurement officer may, in accordance with the requirements of this chapter, enter into a cooperative procurement, and a contract that is awarded as a result of a cooperative procurement, with:

- (a) another state;
- (b) a cooperative purchasing organization; or
- (c) a public entity inside or outside the state.

(2) A public entity, nonprofit organization, or, as permitted under federal law, an agency of the federal government, may obtain a procurement item from a state cooperative contract or a contract awarded by the chief procurement officer under Subsection (1), without signing a participating addendum if the solicitation issued by the chief procurement officer to obtain the contract includes a statement indicating that the resulting contract will be issued for

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the benefit of public entities and, as applicable, nonprofit organizations and agencies of the federal government.

(3) Except as provided in Section ~~[63G-6a-408]~~ 63G-6a-506, or as otherwise provided in this chapter, an executive branch procurement unit may not obtain a procurement item from a source other than a state cooperative contract or a contract awarded by the chief procurement officer under Subsection (1), if the procurement item is available under a state cooperative contract or a contract awarded by the chief procurement officer under Subsection (1).

(4) A Utah procurement unit may:

(a) contract with the federal government without going through a standard procurement process or an exception to a standard procurement process, described in Part 8, Exceptions to Procurement Requirements, if the procurement item obtained under the contract is provided:

(i) directly by the federal government and not by a person contracting with the federal government; or

(ii) by a person under contract with the federal government that obtained the contract in a manner that substantially complies with the provisions of this chapter;

(b) participate in, sponsor, conduct, or administer a cooperative procurement with another Utah procurement unit or another public entity in Utah, if:

(i) each party unit involved in the cooperative procurement enters into an agreement describing the rights and duties of each party;

(ii) the procurement is conducted, and the contract awarded, in accordance with the requirements of this chapter;

(iii) the solicitation:

(A) clearly indicates that the procurement is a cooperative procurement; and

(B) identifies each party that may purchase under the resulting contract; and

(iv) each party involved in the cooperative procurement signs a participating addendum describing its rights and obligations in relation to the resulting contract; or

(c) purchase under, or otherwise participate in, an agreement or contract of a cooperative purchasing organization, if:

(i) each party involved in the cooperative procurement enters into an agreement describing the rights and duties of each party;

(ii) the procurement was conducted in accordance with the requirements of this

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chapter;

(iii) the solicitation:

(A) clearly indicates that the procurement is a cooperative procurement; and

(B) identifies each party that may purchase under the resulting contract; and

(iv) each party involved in the cooperative procurement signs a participating addendum describing its rights and obligations in relation to the resulting contract.

(5) A procurement unit may not obtain a procurement item under a contract that results from a cooperative procurement described in Subsection (4), ~~[if]~~ unless the procurement unit:

(a) is ~~[not]~~ identified under Subsection (4)(b)(iii)(B) or (4)(c)(iii)(B); ~~[or]~~ and

(b) ~~[does not sign]~~ signs a participating addendum to the contract as required by this section.

(6) A procurement unit, other than a legislative procurement unit or a judicial procurement unit, may not obtain a procurement item under a contract held by the United States General Services Administration, unless, based upon documentation provided by the procurement unit, the Director of the State Division of Purchasing and General Services determines in writing that the United States General Services Administration procured the contract in a manner that substantially complies with the provisions of this chapter.

(7) (a) As used in this Subsection (7), "regional solicitation" means a solicitation issued by the chief procurement officer for the procurement of a procurement item within a specified geographical region of the state.

(b) In addition to any other duty or authority under this section, the chief procurement officer shall:

(i) after considering board recommendations, develop a plan for issuing regional solicitations;

(ii) present the plan to the Government Operations Interim Committee by September 1, 2014; and

(iii) after developing a plan, issue regional solicitations for procurement items in accordance with the plan and this chapter.

(c) A plan under Subsection (7)(b) shall:

(i) define the proposed regional boundaries for regional solicitations;

(ii) specify the types of procurement items for which a regional solicitation may be

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issued; and

(iii) identify the regional solicitations that the chief procurement officer plans to issue.

(d) A regional solicitation shall require that a person responding to the solicitation offer similar warranties and submit to similar obligations as are standard under other state cooperative contracts.

(e) [~~A~~] Except as authorized by the chief procurement officer, a procurement item that is available under a state cooperative contract may not be provided under a contract pursuant to a regional solicitation until after the expiration of the state cooperative contract.

Section ~~{42}~~59. Section **63G-6a-2404** is amended to read:

63G-6a-2404. Unlawful conduct -- Exceptions -- Classification of offenses.

(1) (a) It is unlawful for a person who has or is seeking a contract with or a grant from a public entity knowingly to give, or offer, promise, or pledge to give, a gratuity or kickback to:

(i) the public entity;

(ii) a procurement professional or contract administration professional; or

(iii) an individual who the person knows is a family member of an individual described in Subsection (1)(a)(ii).

(b) It is not unlawful for a public agency to give, offer, promise, or pledge to give a contribution to another public agency.

(c) A person is not guilty of unlawful conduct under Subsection (1)(a) for:

(i) giving or offering, promising, or pledging to give a contribution to a public entity, unless done with the intent to induce the public entity, in exchange, to:

(A) award a contract or grant;

(B) make a procurement decision; or

(C) take an action relating to the administration of a contract or grant; or

(ii) giving or offering, promising, or pledging to give something of value to an organization to which a procurement professional or contract administration professional belongs, unless done with the intent to induce a public entity, in exchange, to:

(A) award a contract or grant;

(B) make a procurement decision; or

(C) take an action relating to the administration of a contract or grant.

(2) (a) It is unlawful for a procurement professional or contract administration

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professional, or a family member of either, knowingly to receive or accept, offer or agree to receive or accept, or ask for a promise or pledge of, a gratuity or kickback from a person who has or is seeking a contract with or a grant from a public entity.

(b) An individual is not guilty of unlawful conduct under Subsection (2)(a) for receiving or accepting, offering or agreeing to receive or accept, or asking for a promise or pledge of a contribution on behalf of a public entity, unless done with the intent that the public entity, in exchange:

- (i) award a contract or grant;
- (ii) make a procurement decision; or
- (iii) take an action relating to the administration of a contract or grant.

(3) Notwithstanding Subsections (1) and (2), it is not unlawful for a person to give or receive, offer to give or receive, or promise or pledge to give or ask for a promise or pledge of, a hospitality gift, if:

- (a) the total value of the hospitality gift is less than \$10; and
- (b) the aggregate value of all hospitality gifts from the person to the recipient in a calendar year is less than \$50.

(4) A person who engages in the conduct made unlawful under Subsection (1) or (2) is guilty of:

- (a) a second degree felony, if the total value of the gratuity or kickback is \$1,000 or more;
- (b) a third degree felony, if the total value of the gratuity or kickback is \$250 or more but less than \$1,000;
- (c) a class A misdemeanor, if the total value of the gratuity or kickback is \$100 or more but less than \$250; and
- (d) a class B misdemeanor, if the total value of the gratuity or kickback is less than \$100.

(5) The criminal sanctions described in Subsection (4) do not preclude the imposition of other penalties for conduct made unlawful under this part, in accordance with other applicable law, including:

- (a) dismissal from employment or other disciplinary action;
- (b) for an elected officer listed in Section 77-6-1, removal from office as provided in

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Title 77, Chapter 6, Removal by Judicial Proceedings;

(c) requiring the public officer or employee to return the value of the unlawful gratuity or kickback; and

(d) any other civil penalty provided by law.

(6) The attorney general may prosecute a person for conduct made unlawful under this section.

Section ~~{43}~~60. Section **63G-6a-2407** is amended to read:

63G-6a-2407. Duty to report unlawful conduct.

~~[(1) A procurement professional shall notify the attorney general or other appropriate prosecuting attorney if the procurement professional has actual knowledge that a person has engaged in:]~~

(1) As used in this section, "unlawful conduct" means:

(a) conduct made unlawful under this part; or

(b) conduct, including bid rigging, improperly steering a contract to a favored vendor, exercising undue influence on an individual involved in the procurement process, or participating in collusion or other anticompetitive practices, made unlawful under other applicable law.

(2) (a) A procurement professional with actual knowledge that a person has engaged in unlawful conduct shall report the person's unlawful conduct to:

(i) the state auditor; or

(ii) the attorney general or other appropriate prosecuting attorney.

(b) An individual not subject to the requirement of Subsection (2)(a) who has actual knowledge that a person has engaged in unlawful conduct may report the person's unlawful conduct to:

(i) the state auditor; or

(ii) the attorney general or other appropriate prosecuting attorney.

~~[(2)]~~ (3) A procurement professional who fails to comply with the requirement of Subsection ~~[(1)]~~ (2)(a) is subject to any applicable disciplinary action or civil penalty identified in Subsection 63G-6a-2404(5).

Section ~~{44}~~61. Section **63G-6a-2408** is enacted to read:

63G-6a-2408. Enforcement by attorney general or other attorney.

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(1) The attorney general or other appropriate prosecuting attorney may:

(a) enforce a remedy available under this part to a procurement unit with independent procurement authority to the same extent as if the attorney general or other appropriate prosecuting attorney were the head of the procurement unit;

(b) bring a civil action or enter into a binding consent agreement to remedy past harm or prevent future harm; and

(c) bring a civil action to enforce:

(i) a provision of this chapter; or

(ii) a consent decree.

(2) In an action under this section, the attorney general may be awarded:

(a) (i) three times the actual damages; or

(ii) a civil penalty not exceeding \$10,000 per violation;

(b) costs of suit;

(c) reasonable attorney fees;

(d) injunctive relief; and

(e) any other remedy available under other applicable law.

(3) The attorney general shall disburse any money recovered in an action under this section in accordance with Section 76-10-3114.

Section ~~{45}~~62. Section 63G-10-403 is amended to read:

63G-10-403. Department of Transportation bid or request for proposals protest settlement agreement approval and review.

(1) As used in this section:

(a) "Department" means the Department of Transportation created in Section 72-1-201.

(b) "Settlement agreement" includes stipulations, consent decrees, settlement agreements, or other legally binding documents or representations resolving a dispute between the department and another party when the department is required to pay money or required to take legally binding action.

(2) The department shall obtain the approval of the Transportation Commission or the governor or review by the Legislative Management Committee of a settlement agreement that involves a bid or request for proposal protest in accordance with this section.

(3) A settlement agreement that is being settled by the department as part of a bid or

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request for proposal protest, in accordance with Subsection 63G-6a-1602[(4)](7), that might cost government entities more than \$100,000 to implement shall be presented to the Transportation Commission for approval or rejection.

(4) A settlement agreement that is being settled by the department as part of a bid or request for proposal protest, in accordance with Subsection 63G-6a-1602[(4)](7), that might cost government entities more than \$500,000 to implement shall be presented:

(a) to the Transportation Commission for approval or rejection; and

(b) to the governor for approval or rejection.

(5) (a) A settlement agreement that is being settled by the department as part of a bid or request for proposal protest, in accordance with Subsection 63G-6a-1602[(4)](7), that might cost government entities more than \$1,000,000 to implement shall be presented:

(i) to the Transportation Commission for approval or rejection;

(ii) to the governor for approval or rejection; and

(iii) if the settlement agreement is approved by the Transportation Commission and the governor, to the Legislative Management Committee.

(b) The Legislative Management Committee may recommend approval or rejection of the settlement agreement.

(6) (a) The department may not enter into a settlement agreement that resolves a bid or request for proposal protest, in accordance with Subsection 63G-6a-1602[(4)](7), that might cost government entities more than \$100,000 to implement until the Transportation Commission has approved the agreement.

(b) The department may not enter into a settlement agreement that resolves a bid or request for proposal protest, in accordance with Subsection 63G-6a-1602[(4)](7), that might cost government entities more than \$500,000 to implement until the Transportation Commission and the governor have approved the agreement.

(c) The department may not enter into a settlement agreement that resolves a bid or request for proposal protest, in accordance with Subsection 63G-6a-1602[(4)](7), that might cost government entities more than \$1,000,000 to implement until:

(i) the Transportation Commission has approved the agreement;

(ii) the governor has approved the agreement; and

(iii) the Legislative Management Committee has reviewed the agreement.

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Section 63. Section 72-6-107.5 is amended to read:

72-6-107.5. Construction of improvements of highway -- Contracts -- Health insurance coverage.

(1) For purposes of this section:

(a) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who:

(i) works at least 30 hours per calendar week; and

(ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following 60 days from the date of hire.

(b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

(c) "Qualified health insurance coverage" is as defined in Section 26-40-115.

(d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

(2) (a) Except as provided in Subsection (3), this section applies to contracts entered into by the department on or after July 1, 2009, for construction or design of highways and to a prime contractor or to a subcontractor in accordance with Subsection (2)(b).

(b) (i) A prime contractor is subject to this section if the prime contract is in the amount of \$1,500,000 or greater.

(ii) A subcontractor is subject to this section if a subcontract is in the amount of \$750,000 or greater.

(3) This section does not apply if:

(a) the application of this section jeopardizes the receipt of federal funds;

(b) the contract is a sole source contract; or

(c) the contract is an emergency procurement.

(4) (a) This section does not apply to a change order as defined in Section 63G-6a-103, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection (2).

(b) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection (2) is guilty of an infraction.

(5) (a) A contractor subject to Subsection (2) shall demonstrate to the department that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employees' dependents during the duration of the contract.

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(b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall demonstrate to the department that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the contract.

(c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (5)(b).

(ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (5)(a).

(6) The department shall adopt administrative rules:

(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(b) in coordination with:

(i) the Department of Environmental Quality in accordance with Section 19-1-206;

(ii) the Department of Natural Resources in accordance with Section 79-2-404;

(iii) the State Building Board in accordance with Section 63A-5-205;

(iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

(v) a public transit district in accordance with Section 17B-2a-818.5; and

(vi) the Legislature's Administrative Rules Review Committee; and

(c) which establish:

(i) the requirements and procedures a contractor must follow to demonstrate to the department compliance with this section which shall include:

(A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or (b) more than twice in any 12-month period; and

(B) that the actuarially equivalent determination required for qualified health insurance coverage in Subsection (1) is met by the contractor if the contractor provides the department or division with a written statement of actuarial equivalency from either:

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(I) the Utah Insurance Department;

(II) an actuary selected by the contractor or the contractor's insurer; or

(III) an underwriter who is responsible for developing the employer group's premium rates;

(ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:

(A) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation;

(B) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation;

(C) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6a-904 upon the third or subsequent violation; and

(D) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for an employee and a dependent of the employee of the contractor or subcontractor who was not offered qualified health insurance coverage during the duration of the contract; and

(iii) a website on which the department shall post the benchmark for the qualified health insurance coverage identified in Subsection (1)(c).

(7) (a) (i) In addition to the penalties imposed under Subsection (6), a contractor or subcontractor who intentionally violates the provisions of this section shall be liable to the employee for health care costs that would have been covered by qualified health insurance coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection (7)(a)(i) if:

(A) the employer relied in good faith on a written statement of actuarial equivalency provided by:

(I) an actuary; or

(II) an underwriter who is responsible for developing the employer group's premium rates; or

(B) the department determines that compliance with this section is not required under the provisions of Subsection (3) or (4).

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(b) An employee has a private right of action only against the employee's employer to enforce the provisions of this Subsection (7).

(8) Any penalties imposed and collected under this section shall be deposited into the Medicaid Restricted Account created in Section 26-18-402.

(9) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this section:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section [~~63G-6a-1603~~] 63G-6a-1602 or any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.

Section 64. Section 79-2-404 is amended to read:

79-2-404. Contracting powers of department -- Health insurance coverage.

(1) For purposes of this section:

(a) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who:

(i) works at least 30 hours per calendar week; and

(ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following 60 days from the date of hire.

(b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

(c) "Qualified health insurance coverage" is as defined in Section 26-40-115.

(d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

(2) (a) Except as provided in Subsection (3), this section applies a design or construction contract entered into by, or delegated to, the department or a division, board, or council of the department on or after July 1, 2009, and to a prime contractor or to a subcontractor in accordance with Subsection (2)(b).

(b) (i) A prime contractor is subject to this section if the prime contract is in the amount of \$1,500,000 or greater.

(ii) A subcontractor is subject to this section if a subcontract is in the amount of \$750,000 or greater.

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(3) This section does not apply to contracts entered into by the department or a division, board, or council of the department if:

(a) the application of this section jeopardizes the receipt of federal funds;

(b) the contract or agreement is between:

(i) the department or a division, board, or council of the department; and

(ii) (A) another agency of the state;

(B) the federal government;

(C) another state;

(D) an interstate agency;

(E) a political subdivision of this state; or

(F) a political subdivision of another state; or

(c) the contract or agreement is:

(i) for the purpose of disbursing grants or loans authorized by statute;

(ii) a sole source contract; or

(iii) an emergency procurement.

(4) (a) This section does not apply to a change order as defined in Section 63G-6a-103, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection (2).

(b) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection (2) is guilty of an infraction.

(5) (a) A contractor subject to Subsection (2)(b)(i) shall demonstrate to the department that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employees' dependents during the duration of the contract.

(b) If a subcontractor of the contractor is subject to Subsection (2)(b)(ii), the contractor shall demonstrate to the department that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the contract.

(c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A contractor is not subject to penalties for the failure of a subcontractor to meet the

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requirements of Subsection (5)(b).

(ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (5)(a).

(6) The department shall adopt administrative rules:

(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(b) in coordination with:

(i) the Department of Environmental Quality in accordance with Section 19-1-206;

(ii) a public transit district in accordance with Section 17B-2a-818.5;

(iii) the State Building Board in accordance with Section 63A-5-205;

(iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

(v) the Department of Transportation in accordance with Section 72-6-107.5; and

(vi) the Legislature's Administrative Rules Review Committee; and

(c) which establish:

(i) the requirements and procedures a contractor must follow to demonstrate compliance with this section to the department which shall include:

(A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or (b) more than twice in any 12-month period; and

(B) that the actuarially equivalent determination required for qualified health insurance coverage in Subsection (1) is met by the contractor if the contractor provides the department or division with a written statement of actuarial equivalency from either:

(I) the Utah Insurance Department;

(II) an actuary selected by the contractor or the contractor's insurer; or

(III) an underwriter who is responsible for developing the employer group's premium rates;

(ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:

(A) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation;

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(B) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation;

(C) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6a-904 upon the third or subsequent violation; and

(D) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for an employee and a dependent of an employee of the contractor or subcontractor who was not offered qualified health insurance coverage during the duration of the contract; and

(iii) a website on which the department shall post the benchmark for the qualified health insurance coverage identified in Subsection (1)(c).

(7) (a) (i) In addition to the penalties imposed under Subsection (6), a contractor or subcontractor who intentionally violates the provisions of this section shall be liable to the employee for health care costs that would have been covered by qualified health insurance coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection (7)(a)(i) if:

(A) the employer relied in good faith on a written statement of actuarial equivalency provided by:

(I) an actuary; or

(II) an underwriter who is responsible for developing the employer group's premium rates; or

(B) the department determines that compliance with this section is not required under the provisions of Subsection (3) or (4).

(b) An employee has a private right of action only against the employee's employer to enforce the provisions of this Subsection (7).

(8) Any penalties imposed and collected under this section shall be deposited into the Medicaid Restricted Account created in Section 26-18-402.

(9) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this section:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section [~~63G-6a-1603~~] 63G-6a-1602 or any other provision in Title 63G,

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Chapter 6a, Utah Procurement Code; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.

Section 65. Repealer.

This bill repeals:

Section 63G-6a-104, Definitions relating to governmental bodies.

Section 63G-6a-403, Prequalification of potential vendors.

Section 63G-6a-404, Approved vendor list.

Section 63G-6a-503, Request for information and response nonbinding.

Section 63G-6a-504, Contents of request for information.

Section 63G-6a-505, Protected information.

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Legislative Review Note

~~Office of Legislative Research and General Counsel~~ Section 66. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.