

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: Gage Froerer

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 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;



- 26 ▶ modifies provisions relating to the evaluation process;
- 27 ▶ modifies best and final offer provisions;
- 28 ▶ modifies provisions relating to awarding and canceling a contract and the
- 29 disqualification of offerors;
- 30 ▶ modifies provisions relating to exceptions to standard procurement processes;
- 31 ▶ modifies provisions relating to procurement protests;
- 32 ▶ modifies a provision relating to reporting unlawful conduct; and
- 33 ▶ makes technical and conforming changes.

34 **Money Appropriated in this Bill:**

35 None

36 **Other Special Clauses:**

37 This bill provides a special effective date.

38 This bill provides a coordination clause.

39 **Utah Code Sections Affected:**

40 AMENDS:

- 41 **17B-2a-818.5**, as last amended by Laws of Utah 2014, Chapter 425
- 42 **19-1-206**, as last amended by Laws of Utah 2014, Chapter 425
- 43 **53A-1a-511**, as last amended by Laws of Utah 2015, Chapters 138, 150, and 232
- 44 **63A-5-205**, as last amended by Laws of Utah 2014, Chapter 425
- 45 **63C-9-403**, as last amended by Laws of Utah 2014, Chapter 425
- 46 **63F-1-205**, as last amended by Laws of Utah 2015, Chapters 114 and 283
- 47 **63G-6a-103**, as last amended by Laws of Utah 2015, Chapters 218 and 464
- 48 **63G-6a-105**, as last amended by Laws of Utah 2015, Chapters 218 and 464
- 49 **63G-6a-106**, as last amended by Laws of Utah 2015, Chapters 218 and 362
- 50 **63G-6a-107**, as last amended by Laws of Utah 2015, Chapters 218, 306, and 464
- 51 **63G-6a-109**, as last amended by Laws of Utah 2015, Chapter 464
- 52 **63G-6a-203**, as last amended by Laws of Utah 2013, Chapters 278 and 445
- 53 **63G-6a-401**, as enacted by Laws of Utah 2012, Chapter 347
- 54 **63G-6a-501**, as enacted by Laws of Utah 2012, Chapter 347
- 55 **63G-6a-603**, as last amended by Laws of Utah 2014, Chapter 196
- 56 **63G-6a-604**, as last amended by Laws of Utah 2013, Chapter 445

- 57 **63G-6a-606**, as last amended by Laws of Utah 2015, Chapter 97
- 58 **63G-6a-609**, as last amended by Laws of Utah 2015, Chapter 218
- 59 **63G-6a-611**, as last amended by Laws of Utah 2014, Chapter 196
- 60 **63G-6a-703**, as last amended by Laws of Utah 2014, Chapter 196
- 61 **63G-6a-707**, as last amended by Laws of Utah 2015, Chapters 97 and 218
- 62 **63G-6a-707.5**, as renumbered and amended by Laws of Utah 2014, Chapter 196
- 63 **63G-6a-708**, as last amended by Laws of Utah 2014, Chapter 196
- 64 **63G-6a-709**, as last amended by Laws of Utah 2014, Chapter 196
- 65 **63G-6a-802**, as last amended by Laws of Utah 2014, Chapter 196
- 66 **63G-6a-803**, as enacted by Laws of Utah 2012, Chapter 347
- 67 **63G-6a-806**, as enacted by Laws of Utah 2013, Chapter 445
- 68 **63G-6a-1206**, as last amended by Laws of Utah 2014, Chapter 196
- 69 **63G-6a-1206.5**, as enacted by Laws of Utah 2015, Chapter 218
- 70 **63G-6a-1502**, as last amended by Laws of Utah 2015, Chapter 218
- 71 **63G-6a-1503.5**, as enacted by Laws of Utah 2015, Chapter 218
- 72 **63G-6a-1601**, as enacted by Laws of Utah 2012, Chapter 347
- 73 **63G-6a-1602**, as last amended by Laws of Utah 2014, Chapter 196
- 74 **63G-6a-1603**, as last amended by Laws of Utah 2015, Chapter 218
- 75 **63G-6a-1702**, as last amended by Laws of Utah 2015, Chapters 218, 258, and 464
- 76 **63G-6a-1703**, as last amended by Laws of Utah 2015, Chapter 218
- 77 **63G-6a-1903**, as last amended by Laws of Utah 2015, Chapter 218
- 78 **63G-6a-2003**, as last amended by Laws of Utah 2013, Chapter 445
- 79 **63G-6a-2105**, as last amended by Laws of Utah 2014, Chapter 196
- 80 **63G-6a-2404**, as enacted by Laws of Utah 2014, Chapter 196
- 81 **63G-6a-2407**, as enacted by Laws of Utah 2014, Chapter 196
- 82 **63G-10-403**, as last amended by Laws of Utah 2015, Chapter 258
- 83 **72-6-107.5**, as last amended by Laws of Utah 2014, Chapter 425
- 84 **79-2-404**, as last amended by Laws of Utah 2014, Chapter 425

85 ENACTS:

- 86 **63G-6a-106.5**, Utah Code Annotated 1953
- 87 **63G-6a-113**, Utah Code Annotated 1953

- 88 [63G-6a-114](#), Utah Code Annotated 1953
- 89 [63G-6a-115](#), Utah Code Annotated 1953
- 90 [63G-6a-410](#), Utah Code Annotated 1953
- 91 [63G-6a-507](#), Utah Code Annotated 1953
- 92 [63G-6a-802.3](#), Utah Code Annotated 1953
- 93 [63G-6a-802.7](#), Utah Code Annotated 1953
- 94 [63G-6a-1206.3](#), Utah Code Annotated 1953
- 95 [63G-6a-1601.5](#), Utah Code Annotated 1953

96 REPEALS AND REENACTS:

- 97 [63G-6a-303](#), as last amended by Laws of Utah 2015, Chapters 218, 258, and 283
- 98 [63G-6a-605](#), as last amended by Laws of Utah 2013, Chapter 445
- 99 [63G-6a-706](#), as enacted by Laws of Utah 2012, Chapter 347

100 RENUMBERS AND AMENDS:

- 101 [63G-6a-110](#), (Renumbered from 63G-6a-402, as last amended by Laws of Utah 2015,
102 Chapter 218)
- 103 [63G-6a-111](#), (Renumbered from 63G-6a-407, as last amended by Laws of Utah 2013,
104 Chapter 445)
- 105 [63G-6a-112](#), (Renumbered from 63G-6a-406, as last amended by Laws of Utah 2014,
106 Chapter 196)
- 107 [63G-6a-409](#), (Renumbered from 63G-6a-502, as enacted by Laws of Utah 2012,
108 Chapter 347)
- 109 [63G-6a-506](#), (Renumbered from 63G-6a-408, as last amended by Laws of Utah 2015,
110 Chapter 218)

111 REPEALS:

- 112 [63G-6a-104](#), as last amended by Laws of Utah 2015, Chapter 218
- 113 [63G-6a-403](#), as last amended by Laws of Utah 2015, Chapter 97
- 114 [63G-6a-404](#), as last amended by Laws of Utah 2014, Chapter 196
- 115 [63G-6a-503](#), as last amended by Laws of Utah 2013, Chapter 445
- 116 [63G-6a-504](#), as enacted by Laws of Utah 2012, Chapter 347
- 117 [63G-6a-505](#), as enacted by Laws of Utah 2013, Chapter 445

118 **Utah Code Sections Affected by Coordination Clause:**

119 [63G-6a-103](#), as last amended by Laws of Utah 2015, Chapters 218 and 464
120 [63G-6a-116](#), Utah Code Annotated 1953

121

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

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

124 **17B-2a-818.5. Contracting powers of public transit districts -- Health insurance**
125 **coverage.**

126 (1) For purposes of this section:

127 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
128 [34A-2-104](#) who:

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

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

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

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

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

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

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

140 (ii) A subcontractor is subject to this section if a subcontract is in the amount of
141 \$750,000 or greater.

142 (3) This section does not apply if:

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

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

145 (c) the contract is an emergency procurement.

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

149 (b) A person who intentionally uses change orders or contract modifications to

150 circumvent the requirements of Subsection (2) is guilty of an infraction.

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

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

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

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

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

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

169 (6) The public transit district shall adopt ordinances:

170 (a) in coordination with:

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

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

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

174 (iv) the State Capitol Preservation Board in accordance with Section [63C-9-403](#); and

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

176 (b) which establish:

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

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

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

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

184 (I) the Utah Insurance Department;

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

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

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

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

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

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

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

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

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

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

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

210 (I) actuary; or

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

212 or

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

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

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

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

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

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

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

228 **19-1-206. Contracting powers of department -- Health insurance coverage.**

229 (1) For purposes of this section:

230 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
231 [34A-2-104](#) who:

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

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

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

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

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

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

242 (b) (i) A prime contractor is subject to this section if the prime contract is in the

243 amount of \$1,500,000 or greater.

244 (ii) A subcontractor is subject to this section if a subcontract is in the amount of
245 \$750,000 or greater.

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

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

249 (b) the contract or agreement is between:

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

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

252 (B) the federal government;

253 (C) another state;

254 (D) an interstate agency;

255 (E) a political subdivision of this state; or

256 (F) a political subdivision of another state;

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

260 (d) the contract is:

261 (i) a sole source contract; or

262 (ii) an emergency procurement.

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

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

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

272 (b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall
273 demonstrate to the executive director that the subcontractor has and will maintain an offer of

274 qualified health insurance coverage for the subcontractor's employees and the employees'
275 dependents during the duration of the contract.

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

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

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

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

286 (6) The department shall adopt administrative rules:

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

288 (b) in coordination with:

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

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

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

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

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

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

295 (c) which establish:

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

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

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

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

303 (I) the Utah Insurance Department;

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

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

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

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

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

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

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

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

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

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

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

329 (I) an actuary; or

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

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

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

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

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

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

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

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

347 **53A-1a-511. Waivers from state board rules -- Application of statutes and rules**
348 **to charter schools.**

349 (1) A charter school shall operate in accordance with its charter and is subject to Title
350 53A, State System of Public Education, and other state laws applicable to public schools,
351 except as otherwise provided in this part.

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

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

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

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

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

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

365 (i) school libraries;

366 (ii) required school administrative and supervisory services; and

367 (iii) required expenditures for instructional supplies.

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

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

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

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

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

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

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

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

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

383 (6) Each charter school shall be subject to:

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

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

386 (7) A charter school is exempt from Section [51-2a-201.5](#), requiring accounting reports
387 of certain nonprofit corporations. A charter school is subject to the requirements of Section
388 [53A-1a-507](#).

389 (8) (a) The State Charter School Board shall, in concert with the charter schools, study
390 existing state law and administrative rules for the purpose of determining from which laws and
391 rules charter schools should be exempt.

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

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

396 Section 4. Section [63A-5-205](#) is amended to read:

397 **[63A-5-205](#). Contracting powers of director -- Retainage -- Health insurance**

398 coverage.

399 (1) As used in this section:

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

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

402 (c) "Employee" means an "employee," "worker," or "operative" as defined in Section
403 [34A-2-104](#) who:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

428 (c) A person who intentionally uses change orders or contract modifications to

429 circumvent the requirements of Subsection (3)(a) is guilty of an infraction.

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

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

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

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

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

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

447 (f) The division shall adopt administrative rules:

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

449 (ii) in coordination with:

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

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

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

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

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

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

456 (iii) which establish:

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

459 (I) that a contractor will not have to demonstrate compliance with Subsection (3)(d)(i)

460 or (ii) more than twice in any 12-month period; and

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

464 (Aa) the Utah Insurance Department;

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

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

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

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

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

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

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

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

482 (g) (i) In addition to the penalties imposed under Subsection (3)(f)(iii), a contractor or
483 subcontractor who intentionally violates the provisions of this section shall be liable to the
484 employee for health care costs that would have been covered by qualified health insurance
485 coverage.

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

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

490 (I) an actuary; or

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

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

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

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

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

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

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

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

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

512 (6) If any payment on a contract with a private contractor to do work for the division or
513 the State Building Board is retained or withheld, it shall be retained or withheld and released as
514 provided in Section [13-8-5](#).

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

516 **63C-9-403. Contracting power of executive director -- Health insurance coverage.**

517 (1) For purposes of this section:

518 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
519 [34A-2-104](#) who:

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

521 (ii) meets employer eligibility waiting requirements for health care insurance which

522 may not exceed the first of the calendar month following 60 days from the date of hire.

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

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

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

526 (2) (a) Except as provided in Subsection (3), this section applies to a design or
527 construction contract entered into by the board or on behalf of the board on or after July 1,
528 2009, and to a prime contractor or a subcontractor in accordance with Subsection (2)(b).

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

531 (ii) A subcontractor is subject to this section if a subcontract is in the amount of
532 \$750,000 or greater.

533 (3) This section does not apply if:

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

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

536 (c) the contract is an emergency procurement.

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

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

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

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

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

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

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

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

560 (6) The department shall adopt administrative rules:

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

562 (b) in coordination with:

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

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

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

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

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

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

569 (c) which establish:

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

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

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

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

577 (I) the Utah Insurance Department;

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

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

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

583 (A) a three-month suspension of the contractor or subcontractor from entering into

584 future contracts with the state upon the first violation;

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

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

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

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

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

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

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

603 (I) an actuary; or

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

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

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

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

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

614 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,

615 or contractor under Section [~~63G-6a-1603~~] [63G-6a-1602](#) or any other provision in Title 63G,
616 Chapter 6a, Utah Procurement Code; and

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

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

621 **63F-1-205. Approval of acquisitions of information technology.**

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

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

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

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

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

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

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

645 (b) for purchases, leases, or rentals not covered by an existing statewide contract,

646 [provide] certify in writing to the chief procurement officer in the Division of Purchasing and
647 General Services that:

- 648 (i) the analysis required in Subsection (2)(a) was completed; and
- 649 (ii) based on the analysis, the proposed purchase, lease, rental, or master contract of
650 services, products, or supplies is practical, efficient, and economically beneficial to the state
651 and the executive branch agency or subscriber of services.

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

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

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

- 659 (i) the executive branch strategic plan;
- 660 (ii) the applicable agency information technology plan;
- 661 (iii) the budget for the executive branch agency or department as adopted by the

662 Legislature;

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

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

665 and

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

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

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

672 (1).

673 (b) Beginning July 1, 2006 and in accordance with administrative rules established by
674 the department under Section 63F-1-206, no new technology projects may be initiated by an
675 executive branch agency or the department unless the technology project is described in a
676 formal project plan and the business case analysis has been approved by the chief information

677 officer and agency head. The project plan and business case analysis required by this
678 Subsection (4) shall be in the form required by the chief information officer, and shall include:

- 679 (i) a statement of work to be done and existing work to be modified or displaced;
680 (ii) total cost of system development and conversion effort, including system analysis
681 and programming costs, establishment of master files, testing, documentation, special
682 equipment cost and all other costs, including overhead;
683 (iii) savings or added operating costs that will result after conversion;
684 (iv) other advantages or reasons that justify the work;
685 (v) source of funding of the work, including ongoing costs;
686 (vi) consistency with budget submissions and planning components of budgets; and
687 (vii) whether the work is within the scope of projects or initiatives envisioned when the
688 current fiscal year budget was approved.

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

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

694 Section 7. Section **63G-6a-103** is amended to read:

695 **63G-6a-103. Definitions.**

696 As used in this chapter:

697 (1) "Applicable rulemaking authority" means:

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

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

700 (c) (i) only to the extent of the procurement authority expressly granted to the

701 procurement unit by statute:

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

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

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

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

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

739 mutual agreement of the parties to the contract.

740 ~~[(4)]~~ (11) "Chief procurement officer" means the chief procurement officer appointed
741 under Subsection [63G-6a-302\(1\)](#).

742 ~~[(5)]~~ (12) "Conducting procurement unit" means a procurement unit that conducts all
743 aspects of a procurement:

744 (a) except:

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

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

747 (b) including:

748 (i) preparing any solicitation document;

749 (ii) appointing an evaluation committee;

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

751 [63G-6a-707](#)~~[(5)]~~(6)(b) relating to scores calculated for costs of proposals;

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

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

754 procurement unit's approval; and

755 (vi) ~~administering a~~ contract administration.

756 (13) "Conservation district" means the same as that term is defined in Section

757 [17D-3-102](#).

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

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

762 (14) "Construction":

763 (a) means services, including work, and supplies for a project for the construction,
764 renovation, alteration, improvement, or repair of a public facility on real property; and

765 (b) does not include services and supplies for the routine operation, repair, or
766 maintenance of an existing public facility.

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

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

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

770 (ii) that allows the contractor to subcontract for additional labor and materials that are
771 not included in the contractor's cost proposal submitted at the time of the procurement of the
772 contractor's services[-]; and

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

777 [~~(8)~~] (16) "Contract" means an agreement for [~~the~~] a procurement [~~or disposal of a~~
778 ~~procurement item~~].

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

782 (a) implementing the contract;

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

785 (c) executing change orders;

786 (d) processing contract amendments;

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

788 (f) curing contract errors and deficiencies;

789 (g) terminating a contract;

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

791 (i) computing payments under the contract; and

792 (j) closing out a contract.

793 [~~(9)~~] (18) "Contractor" means a person who is awarded a contract with a procurement
794 unit.

795 [~~(10)~~] (19) "Cooperative procurement" means procurement conducted by, or on behalf
796 of:

797 (a) more than one procurement unit; or

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

799 (20) "Cooperative purchasing organization" means an organization, association, or
800 alliance of purchasers established to combine purchasing power in order to obtain the best

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

802 ~~[(11)]~~ (21) "Cost-plus-a-percentage-of-cost contract" means a contract ~~[where]~~ under
803 which the contractor is paid a percentage ~~[over and above]~~ of the total actual expenses or costs
804 in addition to the contractor's actual expenses or costs.

805 ~~[(12)]~~ (22) "Cost-reimbursement contract" means a contract under which a contractor
806 is reimbursed for costs which are allowed and allocated in accordance with the contract terms
807 and the provisions of this chapter, and a fee, if any.

808 ~~[(13)]~~ (23) "Days" means calendar days, unless expressly provided otherwise.

809 ~~[(14)]~~ (24) "Definite quantity contract" means a fixed price contract that provides for
810 ~~[the supply of]~~ a specified amount of ~~[goods]~~ supplies over a specified period, with deliveries
811 scheduled according to a specified schedule.

812 ~~[(15)]~~ (25) "Design-build" means the procurement of design professional services and
813 construction by the use of a single contract ~~[with the design-build provider]~~.

814 ~~[(16)]~~ (26) "Design professional" means:

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

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

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

822 ~~[(17)]~~ (28) "Design professional services" means:

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

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

826 (c) master planning and programming services.

827 ~~[(18)] "Directed procurement" means a procurement of a procurement item in which the~~
828 ~~source of the funds used to procure the procurement item:]~~

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

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

831 ~~[(19)]~~ (29) "Director" means the director of the division.

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

834 (31) "Educational procurement unit" means:

835 (a) a school district;

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

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

838 (d) the Utah Education and Telehealth Network; or

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

840 ~~[(20)]~~ (32) "Established catalogue price" means the price included in a catalogue, price
841 list, schedule, or other form that:

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

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

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

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

849 ~~[(21)]~~ (34) "Fixed price contract" means a contract that provides a price, for each
850 procurement item obtained under the contract, that is not subject to adjustment except to the
851 extent that:

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

854 (b) an adjustment is required by law.

855 ~~[(22)]~~ (35) "Fixed price contract with price adjustment" means a fixed price contract
856 that provides for an upward or downward revision of price, precisely described in the contract,
857 that:

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

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

861 ~~[(23)]~~ (36) "Grant" means an expenditure of public funds or other assistance, or an
862 agreement to expend public funds or other assistance, for a public purpose authorized by law,

863 without acquiring a procurement item in exchange.

864 ~~[(24)]~~ (37) "Head of a procurement unit" means:

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

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

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

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

870 (c) ~~[as it relates to]~~ for a judicial procurement unit:

871 (i) the Judicial Council; or

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

873 (d) ~~[as it relates to]~~ for a local government procurement unit:

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

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

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

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

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

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

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

886 (j) ~~[as it relates to]~~ for a school district or any school or entity within a school district,
887 the board of the school district, or the board's designee;

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

890 (l) ~~[as it relates to]~~ for an institution of higher education of the state, the president of
891 the institution of higher education, or the president's designee; or

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

- 894 (38) "Immaterial error":
895 (a) means an irregularity or abnormality that is:
896 (i) a matter of form that does not affect substance; or
897 (ii) an inconsequential variation from a requirement of a solicitation that has no, little,
898 or a trivial effect on the procurement process and that is not prejudicial to other vendors; and
899 (b) includes:
900 (i) a missing signature, missing acknowledgment of an addendum, or missing copy of a
901 professional license, bond, or insurance certificate;
902 (ii) a typographical error;
903 (iii) an error resulting from an inaccuracy or omission in the solicitation; and
904 (iv) any other error that the chief procurement officer or the head of a procurement unit
905 with independent procurement authority reasonably considers to be immaterial.
906 ~~[(25)]~~ (39) "Indefinite quantity contract" means a fixed price contract that:
907 (a) is for an indefinite amount of procurement items to be supplied as ordered by a
908 procurement unit; and
909 (b) (i) does not require a minimum purchase amount; or
910 (ii) provides a maximum purchase limit.
911 ~~[(26)]~~ (40) "Independent procurement authority" means authority granted to a
912 procurement unit under Subsection 63G-6a-106(4)(a).
913 ~~[(27)]~~ (41) "Invitation for bids" [~~includes all documents, including documents that are~~
914 ~~attached or incorporated by reference, used for soliciting];~~
915 (a) means a document used to solicit:
916 (i) bids to provide a procurement item to a procurement unit; or
917 (ii) quotes for a price of a procurement item to be provided to a procurement unit; and
918 (b) includes all documents attached to or incorporated by reference in a document
919 described in Subsection (41)(a).
920 ~~[(28)]~~ (42) "Issuing procurement unit" means a procurement unit that:
921 (a) reviews a solicitation to verify that it is in proper form;
922 (b) causes the notice of a solicitation to be published; and
923 (c) negotiates and approves the terms and conditions of a contract.
924 (43) "Judicial procurement unit" means:

- 925 (a) the Utah Supreme Court;
- 926 (b) the Utah Court of Appeals;
- 927 (c) the Judicial Council;
- 928 (d) a state judicial district; or
- 929 (e) an office, committee, subcommittee, or other organization within the state judicial
- 930 branch.

931 [~~29~~] (44) "Labor hour contract" is a contract [~~where~~] under which:

- 932 (a) the supplies and materials are not provided by, or through, the contractor; and
- 933 (b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and
- 934 profit for a specified number of labor hours or days.

935 (45) "Legislative procurement unit" means:

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

942 (46) "Local building authority" means the same as that term is defined in Section

943 [17D-2-102](#).

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

945 (48) "Local government procurement unit" means:

- 946 (a) a county or municipality, and each office or agency of the county or municipality,
- 947 unless the county or municipality adopts its own procurement code by ordinance;
- 948 (b) a county or municipality that has adopted this entire chapter by ordinance, and each
- 949 office or agency of that county or municipality; or
- 950 (c) a county or municipality that has adopted a portion of this chapter by ordinance, to
- 951 the extent that a term in the ordinance is used in the adopted portion of this chapter, and each
- 952 office or agency of that county or municipality.

953 [~~30~~] (49) "Multiple award contracts" means the award of a contract for an indefinite

954 quantity of a procurement item to more than one bidder or offeror.

955 [~~31~~] (50) "Multiyear contract" means a contract that extends beyond a one-year

956 period, including a contract that permits renewal of the contract, without competition, beyond
957 the first year of the contract.

958 ~~[(32)]~~ (51) "Municipality" means a city or a town.

959 (52) "Nonadopting local government procurement unit" means:

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

963 (b) each office or agency of a county or municipality described in Subsection (52)(a).

964 ~~[(33)]~~ (53) "Offeror" means a person who ~~[responds]~~ submits a proposal in response to
965 a request for proposals.

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

969 ~~[(34)]~~ (55) "Preferred bidder" means a bidder that is entitled to receive a reciprocal
970 preference under the requirements of this chapter.

971 ~~[(35)]~~ (56) "Procure" means to acquire a procurement item through a procurement.

972 ~~[(36)]~~ (57) "Procurement":

973 (a) means a procurement unit's acquisition of a procurement item through an
974 expenditure of public funds, or an agreement to expend public funds~~[-in exchange for a~~
975 ~~procurement item];~~

976 (b) includes all functions that pertain to the acquisition of a procurement item,
977 including:

978 ~~[(i) the description of requirements;]~~

979 ~~[(ii) the selection process;]~~

980 ~~[(iii) solicitation of sources;]~~

981 ~~[(iv) the preparation for soliciting a procurement item; and]~~

982 ~~[(v) the award of a contract; and]~~

983 (i) preparing and issuing a solicitation; and

984 (ii) (A) conducting a standard procurement process; or

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

987 (c) does not include a grant.
 988 [~~(37) "Procurement item" means a supply, a service, construction, or technology.~~]
 989 (58) "Procurement item" means a supply, a service, or construction.
 990 [~~(38)~~ (59) "Procurement officer" means:
 991 (a) ~~[as it relates to]~~ for a procurement unit with independent procurement authority:
 992 (i) the head of the procurement unit;
 993 (ii) a designee of the head of the procurement unit; or
 994 (iii) a person designated by rule made by the applicable rulemaking authority; or
 995 (b) ~~[as it relates to]~~ for the division or a procurement unit without independent
 996 procurement authority, the chief procurement officer.

997 (60) "Procurement unit":
 998 (a) means:
 999 (i) a legislative procurement unit;
 1000 (ii) an executive branch procurement unit;
 1001 (iii) a judicial procurement unit;
 1002 (iv) an educational procurement unit;
 1003 (v) a local government procurement unit;
 1004 (vi) a local district;
 1005 (vii) a special service district;
 1006 (viii) a local building authority;
 1007 (ix) a conservation district;
 1008 (x) a public corporation; or
 1009 (xi) a public transit district; and
 1010 (b) does not include a political subdivision created under Title 11, Chapter 13,

1011 Interlocal Cooperation Act.

1012 [~~(39) "Professional service" means a service that requires a high degree of specialized~~
 1013 ~~knowledge and discretion in the performance of the service, including:]~~
 1014 [~~(a) legal services;~~]
 1015 [~~(b) consultation services;~~]
 1016 [~~(c) architectural services;~~]
 1017 [~~(d) engineering;~~]

1018 [~~(e) design;~~]

1019 [~~(f) underwriting;~~]

1020 [~~(g) bond counsel;~~]

1021 [~~(h) financial advice;~~]

1022 [~~(i) construction management;~~]

1023 [~~(j) medical services;~~]

1024 [~~(k) psychiatric services; or~~]

1025 [~~(l) counseling services.~~]

1026 (61) "Professional service" means labor, effort, or work that requires an elevated
1027 degree of specialized knowledge and discretion, including labor, effort, or work in the field of:

1028 (a) accounting;

1029 (b) architecture;

1030 (c) construction design and management;

1031 (d) engineering;

1032 (e) financial services;

1033 (f) information technology;

1034 (g) the law;

1035 (h) medicine;

1036 (i) psychiatry; or

1037 (j) underwriting.

1038 [~~(40)~~] (62) "Protest officer" means:

1039 (a) [~~as it relates to~~] for the division or a procurement unit with independent
1040 procurement authority:

1041 (i) the head of the procurement unit;

1042 (ii) a designee of the head of the procurement unit; or

1043 (iii) a person designated by rule made by the applicable rulemaking authority; or

1044 (b) [~~as it relates to~~] for a procurement unit without independent procurement authority,
1045 the chief procurement officer or the chief procurement officer's designee.

1046 (63) "Public corporation" means the same as that term is defined in Section [63E-1-102](#).

1047 (64) "Public entity" means any government entity of the state or political subdivision of
1048 the state, including:

- 1049 (a) a procurement unit;
- 1050 (b) a municipality or county, regardless of whether the municipality or county has
- 1051 adopted this chapter or any part of this chapter; and
- 1052 (c) any other government entity located in the state that expends public funds.
- 1053 (65) "Public facility" means a building, structure, infrastructure, improvement, or other
- 1054 facility of a public entity.
- 1055 (66) "Public funds" means money, regardless of its source, including from the federal
- 1056 government, that is owned, held, or administered by a public entity.
- 1057 (67) "Public transit district" means a public transit district organized under Title 17B,
- 1058 Chapter 2a, Part 8, Public Transit District Act.
- 1059 (68) "Qualified vendor" means a vendor who:
- 1060 (a) is responsible; and
- 1061 (b) submits a responsive statement of qualifications under Section [63G-6a-410](#) that
- 1062 meets the minimum mandatory requirements, evaluation criteria, and any applicable score
- 1063 thresholds set forth in the request for statement of qualifications.
- 1064 (69) "Real property" means land and any building, fixture, improvement, appurtenance,
- 1065 structure, or other development that is permanently affixed to land.
- 1066 ~~[(41)]~~ (70) "Request for information" means a nonbinding process ~~[where]~~ through
- 1067 which a procurement unit requests information relating to a procurement item.
- 1068 ~~[(42)]~~ (71) "Request for proposals" ~~[includes all documents, including documents that~~
- 1069 are attached or incorporated by reference, used for soliciting] means a document used to solicit
- 1070 proposals to provide a procurement item to a procurement unit, including all other documents
- 1071 that are attached to that document or incorporated in that document by reference.
- 1072 (72) "Request for proposals process" means the procurement process described in Part
- 1073 7, Request for Proposals.
- 1074 ~~[(43)]~~ (73) "Request for statement of qualifications" means ~~[all documents]~~ a document
- 1075 used to solicit information about the qualifications of ~~[the]~~ a person interested in responding to
- 1076 a potential procurement, including all other documents attached to that document or
- 1077 incorporated in that document by reference.
- 1078 ~~[(44)]~~ (74) "Requirements contract" means a contract:
- 1079 (a) ~~[where]~~ under which a contractor agrees to provide a procurement unit's entire

1080 requirements for certain procurement items at prices specified in the contract during the
1081 contract period; and

1082 (b) that:

1083 (i) does not require a minimum purchase amount; or

1084 (ii) provides a maximum purchase limit.

1085 ~~[(45)]~~ (75) "Responsible" means being capable, in all respects, of:

1086 (a) meeting all the requirements of a solicitation; and

1087 (b) fully performing all the requirements of the contract resulting from the solicitation,
1088 including being financially solvent with sufficient financial resources to perform the contract.

1089 ~~[(46)]~~ (76) "Responsive" means conforming in all material respects to the ~~[invitation~~
1090 ~~for bids or request for proposals]~~ requirements of a solicitation.

1091 ~~[(47)]~~ (77) "Sealed" means manually or electronically ~~[sealed and submitted bids or~~
1092 ~~proposals]~~ secured to prevent disclosure.

1093 ~~[(48) (a) "Services" means the furnishing of labor, time, or effort by a contractor, not~~
1094 ~~involving the delivery of a specific end product other than a report that is incidental to the~~
1095 ~~required performance.]~~

1096 ~~[(b) "Services" does not include an employment agreement or a collective bargaining~~
1097 ~~agreement.]~~

1098 (78) "Service":

1099 (a) means labor, effort, or work to produce a result that is beneficial to a procurement
1100 unit;

1101 (b) includes a professional service; and

1102 (c) does not include labor, effort, or work provided under an employment agreement or
1103 a collective bargaining agreement.

1104 (79) "Small purchase process" means the procurement process described in Section
1105 63G-6a-506.

1106 ~~[(49)]~~ (80) "Sole source contract" means a contract resulting from a sole source
1107 procurement.

1108 ~~[(50)]~~ (81) "Sole source procurement" means a procurement without competition
1109 pursuant to a determination under Subsection ~~63G-6a-802~~~~[(2)]~~(1)(a)(i) that there is only one
1110 source for the procurement item.

1111 ~~[(51)]~~ (82) "Solicitation" means an invitation for bids, request for proposals, notice of a
 1112 sole source procurement, request for statement of qualifications, or request for information~~[-or~~
 1113 any document used to obtain bids, proposals, pricing, qualifications, or information for the
 1114 purpose of entering into a procurement contract].

1115 (83) "Solicitation response" means:

1116 (a) a bid submitted in response to an invitation for bids;

1117 (b) a proposal submitted in response to a request for proposals; or

1118 (c) a statement of qualifications submitted in response to a request for statement of
 1119 qualifications.

1120 (84) "Special service district" means the same as that term is defined in Section
 1121 [17D-1-102](#).

1122 ~~[(52)]~~ (85) "Specification" means any description of the physical or functional
 1123 characteristics~~[-]~~ or of the nature of a procurement item included in an invitation for bids or a
 1124 request for proposals, or otherwise specified or agreed to by a procurement unit, including a
 1125 description of:

1126 (a) a requirement for inspecting or testing a procurement item; or

1127 (b) preparing a procurement item for delivery.

1128 ~~[(53)]~~ (86) "Standard procurement process" means [~~one of the following methods of~~
 1129 ~~obtaining a procurement item]~~:

1130 (a) the bidding~~[-as described in Part 6, Bidding]~~ process;

1131 (b) the request for proposals~~[-as described in Part 7, Request for Proposals]~~ process;

1132 [~~or~~]

1133 [~~(c) small purchases, in accordance with the requirements established under Section~~
 1134 ~~[63G-6a-408](#)].~~

1135 (c) the approved vendor list process;

1136 (d) the small purchase process; or

1137 (e) the design professional procurement process.

1138 ~~[(54)]~~ (87) "State cooperative contract" means a contract awarded by the division for
 1139 and in behalf of all public entities.

1140 ~~[(55)]~~ (88) "Statement of qualifications" means a written statement submitted to a
 1141 procurement unit in response to a request for statement of qualifications.

- 1142 ~~[(56)(a)]~~ (89) "Subcontractor":
- 1143 (a) means a person under contract with a contractor or another subcontractor to provide
- 1144 services or labor for design or construction[?];
- 1145 (b) ["Subcontractor"] includes a trade contractor or specialty contractor[?]; and
- 1146 (c) ["Subcontractor"] does not include a supplier who provides only materials,
- 1147 equipment, or supplies to a contractor or subcontractor.
- 1148 ~~[(57) "Supplies" means all property, including equipment, materials, and printing.]~~
- 1149 (90) "Supply" means a good, material, technology, piece of equipment, or any other
- 1150 item of personal property.
- 1151 ~~[(58)]~~ (91) "Tie bid" means that the lowest responsive [and] bids of responsible [bids]
- 1152 bidders are identical in price.
- 1153 ~~[(59)]~~ (92) "Time and materials contract" means a contract [where] under which the
- 1154 contractor is paid:
- 1155 (a) the actual cost of direct labor at specified hourly rates;
- 1156 (b) the actual cost of materials and equipment usage; and
- 1157 (c) an additional amount, expressly described in the contract, to cover overhead and
- 1158 profit, that is not based on a percentage of the cost to the contractor.
- 1159 (93) "Transitional costs":
- 1160 (a) means the costs of changing:
- 1161 (i) from an existing provider of a procurement item to another provider of that
- 1162 procurement item; or
- 1163 (ii) from an existing type of procurement item to another type;
- 1164 (b) includes:
- 1165 (i) training costs;
- 1166 (ii) conversion costs;
- 1167 (iii) compatibility costs;
- 1168 (iv) costs associated with system downtime;
- 1169 (v) disruption of service costs;
- 1170 (vi) staff time necessary to implement the change;
- 1171 (vii) installation costs; and
- 1172 (viii) ancillary software, hardware, equipment, or construction costs; and

1173 (c) does not include:

1174 (i) the costs of preparing for or engaging in a procurement process; or

1175 (ii) contract negotiation or drafting costs.

1176 (94) "Trial use contract" means a contract for a procurement item that the procurement
1177 unit acquires for a trial use or testing to determine whether the procurement item will benefit
1178 the procurement unit.

1179 (95) "Vendor":

1180 (a) means a person who is seeking to enter into a contract with a procurement unit to
1181 provide a procurement item; and

1182 (b) includes:

1183 (i) a bidder;

1184 (ii) an offeror;

1185 (iii) an approved vendor; and

1186 (iv) a design professional.

1187 Section 8. Section **63G-6a-105** is amended to read:

1188 **63G-6a-105. Application of chapter.**

1189 ~~[(1) The provisions of this chapter that are enacted on May 1, 2013, apply only to a~~
1190 ~~procurement advertised, or begun on or after May 1, 2013, unless the parties agree to have the~~
1191 ~~provisions apply with respect to a procurement that was advertised or begun before May 1,~~
1192 ~~2013, but is not completed before May 1, 2013.]~~

1193 ~~[(2)] (1) (a) Except as provided in Section **63G-6a-107**, this chapter [shall apply]~~
1194 ~~applies to every [expenditure of public funds irrespective of the source of the funds, including~~
1195 ~~federal assistance, by any procurement unit, under any contract] procurement.~~

1196 ~~(b) [The provisions of this chapter do]~~ This chapter does not apply to a public entity
1197 that is not a procurement unit.

1198 ~~[(3)] (2)~~ (2) The following procurement units shall adopt ordinances or resolutions relating
1199 to the procurement of design professional services not inconsistent with the provisions of Part
1200 15, Design Professional Services:

1201 (a) an educational procurement unit;

1202 (b) a conservation district;

1203 (c) a local building authority;

1204 (d) a local district;

1205 (e) a public corporation; or

1206 (f) a special service district.

1207 [~~(4)~~] (3) Any section of this chapter, or its implementing regulations, may be adopted

1208 by:

1209 (a) a county;

1210 (b) a municipality; or

1211 (c) the Utah Housing Corporation.

1212 [~~(5)~~] (4) Rules adopted under this chapter shall be consistent with the provisions of this
1213 chapter.

1214 [~~(6)~~] (5) An applicable rulemaking authority or a procurement unit may not adopt rules,
1215 policies, or regulations that are inconsistent with this chapter.

1216 [~~(7)~~] (6) Unless otherwise provided by statute, this chapter does not apply to
1217 [procurement] the acquisition or disposal of real property or an interest in real property.

1218 [~~(8)~~] (7) Notwithstanding any provision of this chapter, a procurement unit may
1219 administer a [direct] procurement in accordance with the requirements imposed by the source
1220 of the funds used to procure the procurement item.

1221 Section 9. Section **63G-6a-106** is amended to read:

1222 **63G-6a-106. Procurement units with specific statutory procurement authority --**
1223 **Independent procurement authority.**

1224 (1) A procurement unit with procurement authority under the following provisions has
1225 independent procurement authority to the extent of the applicable provisions and for the
1226 procurement items specified in the applicable provisions:

1227 (a) Title 53B, State System of Higher Education;

1228 (b) Title 63A, Chapter 5, State Building Board - Division of Facilities Construction
1229 and Management;

1230 (c) Title 67, Chapter 5, Attorney General;

1231 (d) Title 72, Transportation Code; and

1232 (e) Title 78A, Chapter 5, District Court.

1233 (2) Except as otherwise provided in Sections **63G-6a-105** and **63G-6a-107**, a
1234 procurement unit shall conduct a procurement in accordance with this chapter.

1235 (3) (a) The Department of Transportation may make rules governing the procurement
1236 of highway construction or improvement.

1237 (b) The applicable rulemaking authority for a public transit district may make rules
1238 governing the procurement of a transit construction project or a transit improvement project.

1239 [~~(c) This Subsection (3) supersedes Subsections (1) and (2).~~]

1240 (4) (a) A procurement unit listed in Subsection (4)(b) may, without the supervision,
1241 interference, oversight, control, or involvement of the division or the chief procurement officer,
1242 but in accordance with the requirements of this chapter:

1243 (i) engage in a standard procurement process;

1244 (ii) procure an item under an exception, as provided in this chapter, to the requirement
1245 to use a standard procurement process; or

1246 (iii) otherwise engage in an act authorized or required by this chapter.

1247 (b) The procurement units to which Subsection (4)(a) applies are:

1248 (i) a legislative procurement unit;

1249 (ii) a judicial procurement unit;

1250 (iii) an educational procurement unit;

1251 (iv) a local government procurement unit;

1252 (v) a conservation district;

1253 (vi) a local building authority;

1254 (vii) a local district;

1255 (viii) a public corporation;

1256 (ix) a special service district;

1257 (x) a public transit district; and

1258 (xi) a procurement unit referred to in Subsection (1), to the extent authorized in
1259 Subsection (1).

1260 (c) A procurement unit with independent procurement authority shall comply with the
1261 requirements of this chapter.

1262 (d) Notwithstanding Subsection (4)(a), a procurement unit with independent
1263 procurement authority may agree in writing with the division to extend the authority of the
1264 division or the chief procurement officer to the procurement unit, as provided in the agreement.

1265 [~~(e) At any stage of the procurement process, a head of a procurement unit with~~

1266 independent procurement authority who determines that a procurement over which the
1267 procurement unit has authority is out of compliance with this chapter or applicable rules may:]
1268 [~~(i) correct or amend the procurement to bring it into compliance; or]~~
1269 [~~(ii) cancel the procurement, if the head of the procurement unit determines that it is:]~~
1270 [~~(A) not feasible to bring the procurement into compliance; or]~~
1271 [~~(B) in the best interest of the procurement unit to cancel the procurement.]~~
1272 (e) With respect to a procurement or contract over which the head of a procurement
1273 unit with independent procurement authority has authority, the head of the procurement unit
1274 with independent procurement authority may:
1275 (i) manage and supervise the procurement to ensure to the extent practicable that
1276 taxpayers receive the best value;
1277 (ii) prepare and issue standard specifications for procurement items;
1278 (iii) review contracts, coordinate contract compliance, conduct contract audits, and
1279 approve change orders;
1280 (iv) delegate duties and authority to an employee of the procurement unit, as the head
1281 of the procurement unit with independent procurement authority considers appropriate;
1282 (v) for the head of an executive branch procurement unit with independent
1283 procurement authority, coordinate with the Department of Technology Services, created in
1284 Section 63F-1-103, with respect to the procurement unit's procurement of information
1285 technology services;
1286 (vi) correct, amend, or cancel a procurement at any stage of the procurement process if
1287 the procurement is out of compliance with this chapter or a rule adopted by the applicable
1288 rulemaking authority;
1289 (vii) after consultation with, as applicable, the attorney general's office or the
1290 procurement unit's legal counsel, correct, amend, or cancel a contract at any time during the
1291 term of the contract if:
1292 (A) the contract is out of compliance with this chapter or a board rule; and
1293 (B) the head of the procurement unit with independent procurement authority
1294 determines that correcting, amending, or canceling the contract is in the best interest of the
1295 procurement unit; and
1296 (viii) attempt to resolve a contract dispute in coordination with the legal counsel of the

1297 procurement unit with independent procurement authority.

1298 (f) The head of a procurement unit with independent procurement authority serves as
1299 the protest officer for a protest involving the procurement unit.

1300 [(f)] (g) If, at any time during the term of a contract awarded by a procurement unit
1301 with independent procurement authority, the head of the procurement unit determines that the
1302 contract is out of compliance with this chapter or applicable rules, the head of the procurement
1303 unit may correct or amend the contract to bring it into compliance or cancel the contract:

1304 (i) if the head of the procurement unit determines that correcting, amending, or
1305 canceling the contract is in the best interest of the procurement unit; and

1306 (ii) after consulting with legal counsel.

1307 (5) (a) The attorney general may, in accordance with the provisions of this chapter, but
1308 without involvement by the division or the chief procurement officer:

1309 (i) retain outside counsel, subject to Section 67-5-33 if the attorney general retains
1310 outside counsel under a contingent fee contract, as defined in that section; or

1311 (ii) procure litigation support services, including retaining an expert witness.

1312 (b) A procurement unit with independent procurement authority that is not represented
1313 by the attorney general's office may, in accordance with the provisions of this chapter, but
1314 without involvement by the division or the chief procurement officer:

1315 (i) retain outside counsel; or

1316 (ii) procure litigation support services, including retaining an expert witness.

1317 (6) The state auditor's office may, in accordance with the provisions of this chapter, but
1318 without involvement by the division or the chief procurement officer, procure audit services.

1319 (7) The state treasurer may, in accordance with the provisions of this chapter, but
1320 without involvement by the division or the chief procurement officer, procure:

1321 (a) deposit services; and

1322 (b) services related to issuing bonds.

1323 Section 10. Section 63G-6a-106.5 is enacted to read:

1324 **63G-6a-106.5. Policy for legislative procurement units.**

1325 The Legislative Management Committee shall adopt a policy establishing requirements
1326 applicable to a legislative procurement unit.

1327 Section 11. Section 63G-6a-107 is amended to read:

1328 **63G-6a-107. Exemptions from chapter -- Compliance with other provisions.**

1329 (1) Except for Part 24, Unlawful Conduct and Penalties, the provisions of this chapter
1330 do not apply to:

1331 (a) funds administered under the Percent-for-Art Program of the Utah Percent-for-Art
1332 Act;

1333 (b) a grant;

1334 (c) a contract between procurement units;

1335 (d) medical supplies or medical equipment, including service agreements for medical
1336 equipment, obtained [~~through a purchasing consortium by the Utah State Hospital, the Utah~~
1337 ~~State Developmental Center,] by the University of Utah Hospital[, or any other hospital owned
1338 ~~by the state or a political subdivision of the state,] through a purchasing consortium if:~~~~

1339 (i) the consortium uses a competitive procurement process; and

1340 (ii) the chief administrative officer of the hospital makes a written finding that the
1341 prices for purchasing medical supplies and medical equipment through the consortium are
1342 competitive with market prices;

1343 (e) the purchase of firefighting supplies or equipment by the Division of Forestry, Fire,
1344 and State Lands, created in Section [65A-1-4](#), through the federal General Services
1345 Administration or the National Fire Cache system;

1346 (f) [~~goods~~] supplies purchased for resale to the public; or

1347 (g) activities related to the management of investments by a public entity granted
1348 investment authority by law.

1349 [~~(2) This chapter does not prevent a procurement unit from complying with the terms~~
1350 ~~and conditions of any grant, gift, or bequest that is otherwise consistent with law.]~~

1351 [~~(3)~~] (2) Notwithstanding any conflicting provision of this chapter, when a
1352 procurement involves the expenditure of federal or state assistance, federal contract funds,
1353 local matching funds, or federal financial participation funds, the procurement unit shall
1354 comply with mandatory applicable federal or state law and regulations not reflected in this
1355 chapter.

1356 [~~(4)~~] (3) This chapter does not supersede the requirements for retention or withholding
1357 of construction proceeds and release of construction proceeds as provided in Section [13-8-5](#).

1358 (4) This chapter does not apply to a procurement unit's hiring a mediator, arbitrator, or

1359 arbitration panel member to participate in the procurement unit's dispute resolution efforts.

1360 Section 12. Section **63G-6a-109** is amended to read:

1361 **63G-6a-109. Issuing procurement unit and conducting procurement unit.**

1362 (1) [~~(a) Except as provided in Subsection (1)(b), with~~] With respect to a procurement
1363 by an executive branch procurement unit:

1364 [(i)] (a) the division is the issuing procurement unit; and

1365 [(ii)] (b) the executive branch procurement unit is the conducting procurement unit and
1366 is responsible to ensure that the procurement is conducted in compliance with this chapter.

1367 [~~(b) An executive branch procurement unit administering a directed procurement is~~
1368 ~~both the issuing procurement unit and the conducting procurement unit.~~]

1369 (2) With respect to a procurement by any other procurement unit, the procurement unit
1370 is both the issuing procurement unit and the conducting procurement unit.

1371 (3) A conducting procurement unit is responsible for contract administration.

1372 Section 13. Section **63G-6a-110**, which is renumbered from Section 63G-6a-402 is
1373 renumbered and amended to read:

1374 [~~63G-6a-402~~]. **63G-6a-110. Procurement unit required to comply with Utah**
1375 **Procurement Code and applicable rules -- Rulemaking authority -- Reporting.**

1376 (1) Except as otherwise provided in Section **63G-6a-107**, [~~Section 63G-6a-403~~
1377 ~~63G-6a-410, Part 8, Exceptions to Procurement Requirements, or elsewhere in this chapter,~~] a
1378 procurement unit may not obtain a procurement item, unless:

1379 (a) if the procurement unit is the division or a procurement unit with independent
1380 procurement authority, the procurement unit:

1381 (i) uses:

1382 (A) a standard procurement process; or

1383 (B) an exception to a standard procurement process, described in Part 8, Exceptions to
1384 Procurement Requirements; and

1385 (ii) complies with:

1386 (A) the requirements of this chapter; and

1387 (B) the rules made pursuant to this chapter by the applicable rulemaking authority;

1388 (b) if the procurement unit is a county, a municipality, or the Utah Housing

1389 Corporation, the procurement unit complies with:

1390 (i) the requirements of this chapter that are adopted by the procurement unit; and
1391 (ii) all other procurement requirements that the procurement unit is required to comply
1392 with; or

1393 (c) if the procurement unit is not a procurement unit described in Subsection (1)(a) or
1394 (b), the procurement unit:

1395 (i) obtains the procurement item under the direction and approval of the division,
1396 unless otherwise provided by a rule made by the board;

1397 (ii) uses a standard procurement process; and

1398 (iii) complies with:

1399 (A) the requirements of this chapter; and

1400 (B) the rules made pursuant to this chapter by the applicable rulemaking authority.

1401 (2) Subject to Subsection (3), the applicable rulemaking authority shall make rules
1402 relating to the management and control of procurements and procurement procedures by a
1403 procurement unit.

1404 ~~[(3)(a) Rules made under Subsection (2) shall ensure compliance with the federal~~
1405 ~~contract prohibition provisions of the Sudan Accountability and Divestment Act of 2007 (Pub.~~
1406 ~~L. No. 110-174) that prohibit contracting with a person doing business in Sudan.]~~

1407 ~~[(b)]~~ (3) The State Building Board rules governing procurement of construction, design
1408 professional services, and leases apply to the procurement of construction, design professional
1409 services, and leases of real property by the Division of Facilities Construction and
1410 Management.

1411 ~~[(4) An applicable rulemaking authority that is subject to Title 63G, Chapter 3, Utah~~
1412 ~~Administrative Rulemaking Act, shall make the rules described in this chapter in accordance~~
1413 ~~with the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.]~~

1414 (4) An individual or body that makes rules as required or authorized in this chapter
1415 shall make the rules:

1416 (a) in accordance with Chapter 3, Utah Administrative Rulemaking Act, if the
1417 individual or body is subject to Chapter 3, Utah Administrative Rulemaking Act; or

1418 (b) in accordance with the established process for making rules or their equivalent, if
1419 the individual or body is not subject to Chapter 3, Utah Administrative Rulemaking Act.

1420 (5) The State Building Board shall make a report on or before July 1 of each year to a

1421 legislative interim committee, designated by the Legislative Management Committee created
1422 under Section 36-12-6, on the establishment, implementation, and enforcement of the rules
1423 made by the State Building Board under this chapter.

1424 (6) The rules of the applicable rulemaking authority for the executive branch
1425 procurement unit shall require, for each contract and request for proposals, the inclusion of a
1426 clause that requires the issuing procurement unit, for the duration of the contract, to make
1427 available contact information of the winning contractor to the Department of Workforce
1428 Services in accordance with Section 35A-2-203. This requirement does not preclude a
1429 contractor from advertising job openings in other forums throughout the state.

1430 Section 14. Section 63G-6a-111, which is renumbered from Section 63G-6a-407 is
1431 renumbered and amended to read:

1432 ~~[63G-6a-407]~~. **63G-6a-111. Purpose of specifications.**

1433 (1) All specifications shall seek to promote the overall economy and best use for the
1434 purposes intended and encourage competition in satisfying the needs of the procurement unit,
1435 and may not be unduly restrictive.

1436 (2) The requirements of this part regarding the purposes and nonrestrictiveness of
1437 specifications shall apply to all specifications, including those prepared by architects,
1438 engineers, designers, and draftsmen for public contracts.

1439 Section 15. Section 63G-6a-112, which is renumbered from Section 63G-6a-406 is
1440 renumbered and amended to read:

1441 ~~[63G-6a-406]~~. **63G-6a-112. Public notice of certain solicitations.**

1442 (1) The division or a procurement unit with independent procurement authority that
1443 issues a solicitation required to be published in accordance with this section, shall provide
1444 public notice that includes:

- 1445 (a) the name of the conducting procurement unit;
1446 (b) the name of the procurement unit acquiring the procurement item;
1447 (c) information on how to contact the issuing procurement unit;
1448 (d) the date of the opening and closing of the solicitation;
1449 (e) information on how to obtain a copy of the procurement documents;
1450 (f) a general description of the procurement items that will be obtained through the
1451 standard procurement process or sole source procurement; and

- 1452 (g) for a notice of a sole source procurement:
1453 (i) contact information and other information relating to contesting or obtaining
1454 additional information relating to the sole source procurement; and
1455 (ii) the earliest date that the procurement unit may make the sole source procurement.
1456 (2) Except as provided in Subsection (4), the issuing procurement unit shall publish the
1457 notice described in Subsection (1):
1458 (a) at least seven days before the day of the deadline for submission of a bid or other
1459 response; and
1460 (b) (i) in a newspaper of general circulation in the state;
1461 (ii) in a newspaper of local circulation in the area:
1462 (A) directly impacted by the procurement; or
1463 (B) over which the procurement unit has jurisdiction;
1464 (iii) on the main website for the issuing procurement unit or the procurement unit
1465 acquiring the procurement item; or
1466 (iv) on a state website that is owned, managed by, or provided under contract with, the
1467 division for posting a public procurement notice.
1468 (3) Except as provided in Subsection (4), for a sole source procurement for which
1469 notice is required to be published in accordance with this section, the issuing procurement unit
1470 shall publish the notice described in Subsection (1):
1471 (a) at least seven days before the acquisition of the sole source procurement item; and
1472 (b) (i) in a newspaper of general circulation in the state;
1473 (ii) in a newspaper of local circulation in the area:
1474 (A) directly impacted by the procurement; or
1475 (B) over which the procurement unit has jurisdiction;
1476 (iii) on the main website for the procurement unit acquiring the procurement item; or
1477 (iv) on a state website that is owned by, managed by, or provided under contract with,
1478 the division for posting a procurement notice.
1479 (4) An issuing procurement unit may reduce the seven-day period described in
1480 Subsection (2) or (3), if the procurement officer or the procurement officer's designee signs a
1481 written statement that:
1482 (a) states that a shorter time is needed; and

1483 (b) determines that competition from multiple sources may be obtained within the
1484 shorter period of time.

1485 (5) (a) An issuing procurement unit shall make a copy of the solicitation documents
1486 available for public inspection at the main office of the issuing procurement unit or on the
1487 website described in Subsection (2)(b) until the award of the contract or the cancellation of the
1488 procurement.

1489 (b) A procurement unit issuing a sole source procurement shall make a copy of
1490 information related to the sole source procurement available for public inspection at the main
1491 office of the procurement unit or on the website described in Subsection (3)(b) until the award
1492 of the contract or the cancellation of the procurement.

1493 (c) A procurement unit shall maintain all records in accordance with Part 20, Records.

1494 (6) A procurement unit that issues a request for statement of qualifications as part of an
1495 approved vendor list process that results in the establishment of an open-ended vendor list, as
1496 defined in Section 63G-6a-507, shall keep the request for statement of qualifications posted on
1497 a website described in Subsection (2)(b)(iii) or (iv) during the entire period of the open-ended
1498 vendor list.

1499 Section 16. Section **63G-6a-113** is enacted to read:

1500 **63G-6a-113. Contract price may be based on established terms.**

1501 A procurement unit acquiring a procurement item may establish the price of the
1502 procurement item based on:

1503 (1) a price list, rate schedule, or price catalog:

1504 (a) submitted by a vendor and accepted by the procurement unit; or

1505 (b) mandated by the procurement unit or a federal agency; or

1506 (2) a federal regulation for a health and human services program.

1507 Section 17. Section **63G-6a-114** is enacted to read:

1508 **63G-6a-114. Correcting an immaterial error in a solicitation response.**

1509 (1) The chief procurement officer or the head of a procurement unit with independent
1510 procurement authority:

1511 (a) may allow a vendor to correct an immaterial error in a solicitation response as
1512 provided in this section; and

1513 (b) may not allow a vendor to:

1514 (i) correct a deficiency, inaccuracy, or mistake in a solicitation response that is not an
1515 immaterial error;

1516 (ii) correct an incomplete submission of documents that the solicitation required to be
1517 submitted with the solicitation response;

1518 (iii) correct a failure to submit a timely solicitation response;

1519 (iv) substitute or alter a required form or other document specified in the solicitation;

1520 (v) remedy a cause for a vendor being considered to be not responsible or a solicitation
1521 response not responsive; or

1522 (vi) correct a defect or inadequacy resulting in a determination that a vendor's
1523 solicitation response does not meet the mandatory minimum requirements, evaluation criteria,
1524 or applicable score thresholds established in the solicitation.

1525 (2) (a) The chief procurement officer or the head of a procurement unit with
1526 independent procurement authority shall establish a deadline by which a vendor is required to
1527 submit a correction under this section.

1528 (b) The chief procurement officer or the head of a procurement unit with independent
1529 procurement authority may not allow a vendor to correct an immaterial error in a solicitation
1530 response if the vendor submits the correction after the deadline established under Subsection
1531 (2)(a).

1532 (3) If the chief procurement officer or the head of a procurement unit with independent
1533 procurement authority allows a vendor to correct an immaterial error in a solicitation response,
1534 the chief procurement officer or head shall prepare and sign a written document supporting the
1535 reason for allowing the correction.

1536 Section 18. Section **63G-6a-115** is enacted to read:

1537 **63G-6a-115. Clarifying information in a solicitation response.**

1538 (1) A procurement unit may at any time request a vendor to clarify information
1539 contained in a solicitation response.

1540 (2) A procurement unit may allow a vendor to respond to a request under Subsection
1541 (1):

1542 (a) in writing;

1543 (b) by submitting a printed document; or

1544 (c) by an oral discussion or presentation.

1545 (3) (a) A procurement unit that requests a vendor to clarify information contained in a
1546 solicitation response under this section shall establish a deadline by which the vendor is
1547 required to submit the clarifying information.

1548 (b) A procurement unit may not allow a vendor to submit clarifying information after
1549 the deadline established under Subsection (3)(a).

1550 (4) A vendor's response to a request under Subsection (2)(a):

1551 (a) may only explain, illustrate, or interpret the contents of the vendor's original
1552 solicitation response;

1553 (b) if presented orally, shall be confirmed in writing;

1554 (c) may not be used to address criteria or specifications not contained in the vendor's
1555 original solicitation response; and

1556 (d) may not be used to:

1557 (i) correct a deficiency, inaccuracy, or mistake in a solicitation response that is not an
1558 immaterial error;

1559 (ii) correct an incomplete submission of documents that the solicitation required to be
1560 submitted with the solicitation response;

1561 (iii) correct a failure to submit a timely solicitation response;

1562 (iv) substitute or alter a required form or other document specified in the solicitation;

1563 (v) remedy a cause for a vendor being considered to be not responsible or a solicitation
1564 response not responsive; or

1565 (vi) correct a defect or inadequacy resulting in a determination that a vendor does not
1566 meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds
1567 established in the solicitation.

1568 Section 19. Section **63G-6a-203** is amended to read:

1569 **63G-6a-203. Powers and duties of board.**

1570 (1) In addition to making rules in accordance with Section [~~63G-6a-402~~] [63G-6a-110](#)
1571 and the other provisions of this chapter, the board shall consider and decide matters of policy
1572 within the provisions of this chapter, including those referred to it by the chief procurement
1573 officer.

1574 (2) (a) The board may:

1575 (i) audit and monitor the implementation of its rules and the requirements of this

1576 chapter;

1577 (ii) upon the request of a procurement unit with an applicable rulemaking authority
1578 other than the board, review the procurement unit's proposed rules to ensure that they are not
1579 inconsistent with the provisions of this chapter or rules made by the board; and

1580 (iii) approve the use of innovative procurement processes.

1581 (b) Except as provided in Section [63G-6a-1702](#), the board may not exercise authority
1582 over:

1583 (i) the award or administration of any particular contract; or

1584 (ii) any dispute, claim, or litigation pertaining to any particular contract.

1585 (3) Except as otherwise expressly provided in this chapter, the board does not have
1586 authority over a matter involving a procurement unit with independent procurement authority.

1587 Section 20. Section [63G-6a-303](#) is repealed and reenacted to read:

1588 **63G-6a-303. Duties and authority of chief procurement officer.**

1589 (1) The chief procurement officer:

1590 (a) is the director of the division;

1591 (b) serves as the central procurement officer of the state;

1592 (c) serves as a voting member of the board; and

1593 (d) serves as the protest officer for a protest relating to a procurement of an executive
1594 branch procurement unit without independent procurement authority or a state cooperative
1595 contract procurement.

1596 (2) Except as otherwise provided in this chapter, the chief procurement officer shall:

1597 (a) develop procurement policies and procedures supporting ethical procurement
1598 practices, fair and open competition among vendors, and transparency within the state's
1599 procurement process;

1600 (b) administer the state's cooperative purchasing program, including state cooperative
1601 contracts and associated administrative fees;

1602 (c) enter into an agreement with a public entity for services provided by the division, if
1603 the agreement is in the best interest of the state;

1604 (d) ensure the division's compliance with any applicable law, rule, or policy, including
1605 a law, rule, or policy applicable to the division's role as an issuing procurement unit or
1606 conducting procurement unit, or as the state's central procurement organization;

- 1607 (e) manage the division's electronic procurement system;
- 1608 (f) oversee the recruitment, training, career development, certification requirements,
- 1609 and performance evaluation of the division's procurement personnel;
- 1610 (g) make procurement training available to procurement units and persons who do
- 1611 business with procurement units;
- 1612 (h) provide exemplary customer service and continually improve the division's
- 1613 procurement operations; and
- 1614 (i) exercise all other authority, fulfill all other duties and responsibilities, and perform
- 1615 all other functions authorized under this chapter.
- 1616 (3) With respect to a procurement or contract over which the chief procurement officer
- 1617 has authority under this chapter, the chief procurement officer, except as otherwise provided in
- 1618 this chapter:
- 1619 (a) shall:
- 1620 (i) manage and supervise a procurement to ensure to the extent practicable that
- 1621 taxpayers receive the best value;
- 1622 (ii) prepare and issue standard specifications for procurement items;
- 1623 (iii) review contracts, coordinate contract compliance, conduct contract audits, and
- 1624 approve change orders;
- 1625 (iv) in accordance with Section [63F-1-205](#), coordinate with the Department of
- 1626 Technology Services, created in Section [63F-1-103](#), with respect to the procurement of
- 1627 information technology services by an executive branch procurement unit;
- 1628 (v) correct, amend, or cancel a procurement at any stage of the procurement process if
- 1629 the procurement is out of compliance with this chapter or a board rule;
- 1630 (vi) after consultation with the attorney general's office, correct, amend, or cancel a
- 1631 contract at any time during the term of the contract if:
- 1632 (A) the contract is out of compliance with this chapter or a board rule; and
- 1633 (B) the chief procurement officer determines that correcting, amending, or canceling
- 1634 the contract is in the best interest of the state; and
- 1635 (vii) make a reasonable attempt to resolve a contract dispute, in coordination with the
- 1636 attorney general's office; and
- 1637 (b) may:

- 1638 (i) delegate limited purchasing authority to a state agency, with appropriate oversight
1639 and control to ensure compliance with this chapter;
- 1640 (ii) delegate duties and authority to an employee of the division, as the chief
1641 procurement officer considers appropriate;
- 1642 (iii) negotiate and settle contract overcharges, undercharges, and claims, in accordance
1643 with the law and after consultation with the attorney general's office;
- 1644 (iv) authorize a procurement unit to make a procurement pursuant to a regional
1645 solicitation, as defined in Subsection 63G-6a-2105(2), even if the procurement item is also
1646 offered under a state cooperative contract, if the chief procurement officer determines that the
1647 procurement pursuant to a regional solicitation is in the best interest of the acquiring
1648 procurement unit; and
- 1649 (v) remove an individual from the procurement process or contract administration for:
- 1650 (A) having a conflict of interest or the appearance of a conflict of interest with a person
1651 responding to a solicitation or with a contractor;
- 1652 (B) having a bias or the appearance of bias for or against a person responding to a
1653 solicitation or for or against a contractor;
- 1654 (C) making an inconsistent or unexplainable score for a solicitation response;
- 1655 (D) having inappropriate contact or communication with a person responding to a
1656 solicitation;
- 1657 (E) socializing inappropriately with a person responding to a solicitation or with a
1658 contractor;
- 1659 (F) engaging in any other action or having any other association that causes the chief
1660 procurement officer to conclude that the individual cannot fairly evaluate a solicitation
1661 response or administer a contract; or
- 1662 (G) any other violation of a law, rule, or policy.
- 1663 (4) The chief procurement office may not delegate to an individual outside the division
1664 the chief procurement officer's authority over a procurement described in Subsection (3)(a)(iv).
- 1665 (5) The chief procurement officer has final authority to determine whether an executive
1666 branch procurement unit's anticipated expenditure of public funds, anticipated agreement to
1667 expend public funds, or provision of a benefit constitutes a procurement that is subject to this
1668 chapter.

1700 (ii) comply with an exception to the requirement to use a standard procurement
1701 process, as described in Part 8, Exceptions to Procurement Requirements.

1702 (4) A response to a request for information is not an offer and may not be accepted to
1703 form a binding contract.

1704 (5) A request for information may seek a wide range of information, including:

1705 (a) availability of a procurement item;

1706 (b) delivery schedules;

1707 (c) industry standards and practices;

1708 (d) product specifications;

1709 (e) training;

1710 (f) new technologies;

1711 (g) capabilities of potential providers of a procurement item; and

1712 (h) alternate solutions.

1713 (6) A record containing information submitted to or by a governmental entity in
1714 response to a request for information is a protected record under Section [63G-2-305](#).

1715 Section 23. Section **63G-6a-410** is enacted to read:

1716 **63G-6a-410. Request for statement of qualifications -- Process.**

1717 (1) (a) A procurement unit may use the process described in this section:

1718 (i) as one of the stages of a multiple-stage:

1719 (A) bidding process;

1720 (B) request for proposals process; or

1721 (C) design professional procurement process; and

1722 (ii) to identify qualified vendors to participate in other stages of the multiple-stage
1723 procurement process.

1724 (b) A procurement unit shall use the process described in this section as part of the
1725 approved vendor list process, if the procurement unit intends to establish an approved vendor
1726 list.

1727 (2) A procurement unit may not:

1728 (a) award a contract based solely on the process described in this section; or

1729 (b) solicit costs, pricing, or rates or negotiate fees through the process described in this
1730 section.

1731 (3) The process of identifying qualified vendors in a multiple-stage procurement
1732 process or of establishing an approved vendor list under Section 63G-6a-507 is initiated by a
1733 procurement unit issuing a request for statement of qualifications.

1734 (4) A request for statement of qualifications in a multiple-stage procurement process
1735 shall include:

1736 (a) a statement indicating that participation in other stages of the multiple-stage
1737 procurement process will be limited to qualified vendors;

1738 (b) the minimum mandatory requirements, evaluation criteria, and applicable score
1739 thresholds that will be used to identify qualified vendors, including, as applicable:

1740 (i) experience and work history;

1741 (ii) management and staff requirements or standards;

1742 (iii) licenses, certifications, and other qualifications;

1743 (iv) performance ratings or references;

1744 (v) financial stability; and

1745 (vi) other information pertaining to vendor qualifications that the chief procurement
1746 officer or the head of a procurement unit with independent procurement authority considers
1747 relevant or important; and

1748 (c) the deadline by which a vendor is required to submit a statement of qualifications.

1749 (5) A request for statement of qualifications in an approved vendor list process under
1750 Section 63G-6a-507 shall include:

1751 (a) a general description of, as applicable:

1752 (i) the procurement item that the procurement unit seeks to acquire;

1753 (ii) the type of project or scope or category of work that will be the subject of a
1754 procurement by the procurement unit;

1755 (iii) the procurement process the procurement unit will use to acquire the procurement
1756 item; and

1757 (iv) the type of vendor the procurement unit seeks to provide the procurement item;

1758 (b) the minimum mandatory requirements, evaluation criteria, and applicable score
1759 thresholds that vendors are required to meet to be included on the approved vendor list;

1760 (c) a statement indicating that the approved vendor list will include only responsible
1761 vendors that:

- 1762 (i) submit a responsive statement of qualifications; and
1763 (ii) meet the minimum mandatory requirements, evaluation criteria, and applicable
1764 score thresholds described in the request for statement of qualifications;
1765 (d) a statement indicating that only vendors on the approved vendor list will be able to
1766 participate in the procurements identified in the request for statement of qualifications;
1767 (e) a statement indicating whether the procurement unit will use a performance rating
1768 system for evaluating the performance of vendors on the approved vendor list, including
1769 whether a vendor on the approved vendor list may be disqualified and removed from the list;
1770 (f) (i) a statement indicating whether the procurement unit uses a closed-ended
1771 approved vendor list, as defined in Section 63G-6a-507, or an open-ended approved vendor
1772 list, as defined in Section 63G-6a-507; and
1773 (ii) (A) if the procurement unit uses a closed-ended approved vendor list, the deadline
1774 by which a vendor is required to submit a statement of qualifications and a specified period of
1775 time after which the approved vendor list will expire; or
1776 (B) if the procurement unit uses an open-ended approved vendor list, the deadline by
1777 which a vendor is required to submit a statement of qualifications to be considered for the
1778 initial approved vendor list, a schedule indicating when a vendor not on the initial approved
1779 vendor list may submit a statement of qualifications to be considered to be added to the
1780 approved vendor list, and the specified period of time after which a vendor is required to
1781 submit a new statement of qualifications for evaluation before the vendor's status as an
1782 approved vendor on the approved vendor list may be renewed; and
1783 (g) a description of any other criteria or requirements specific to the procurement item
1784 or scope of work that is the subject of the procurement.
1785 (6) A procurement unit issuing a request for statement of qualifications shall publish
1786 the request as provided in Section 63G-6a-112.
1787 (7) After the deadline for submitting a statement of qualifications, the chief
1788 procurement officer or the head of a procurement unit with independent procurement authority
1789 may correct an immaterial error in a statement of qualifications, as provided in Subsection
1790 63G-6a-114(1).
1791 (8) The conducting procurement unit may reject a statement of qualifications if the
1792 conducting procurement unit determines that:

- 1793 (a) the person submitting the statement of qualifications is not responsible; or
1794 (b) the statement of qualifications:
1795 (i) is not responsive; or
1796 (ii) does not meet mandatory minimum requirements, evaluation criteria, or applicable
1797 score thresholds stated in the request for statement of qualifications.
1798 (9) (a) (i) After the issuance of a request for statement of qualifications, the conducting
1799 procurement unit shall appoint an evaluation committee consisting of at least three individuals
1800 with at least a general familiarity with or basic understanding of:
1801 (A) the technical requirements relating to the type of procurement item that is the
1802 subject of the request for statement of qualifications; or
1803 (B) the need that the procurement item is intended to address.
1804 (ii) The conducting procurement unit shall ensure that each member of the evaluation
1805 committee and each individual participating in the evaluation committee process:
1806 (A) does not have a conflict of interest with any vendor that submits a statement of
1807 qualifications;
1808 (B) can fairly evaluate each statement of qualifications;
1809 (C) does not contact or communicate with a vendor concerning the evaluation process
1810 or procurement outside the official evaluation committee process; and
1811 (D) conducts or participates in the evaluation in a manner that ensures a fair and
1812 competitive process and avoids the appearance of impropriety.
1813 (b) A conducting procurement unit may authorize an evaluation committee to receive
1814 assistance:
1815 (i) from an expert or consultant who:
1816 (A) is not a member of the evaluation committee; and
1817 (B) does not participate in the evaluation scoring; and
1818 (ii) to better understand a technical issue involved in the procurement.
1819 (c) An evaluation committee appointed under this Subsection (9):
1820 (i) shall evaluate and score statements of qualifications submitted in response to a
1821 request for statement of qualifications using the minimum mandatory requirements, evaluation
1822 criteria, and applicable score thresholds set forth in the request for statement of qualifications;
1823 (ii) may not evaluate or score a statement of qualifications using criteria not included in

1824 the request for statement of qualifications; and

1825 (iii) may, with the approval of the head of the conducting procurement unit, request the
1826 vendor to clarify the vendor's statement of qualifications, as provided in Section [63G-6a-115](#).

1827 (d) After the evaluation committee completes its evaluation and scoring of the
1828 statements of qualifications, the evaluation committee shall submit the statements of
1829 qualifications and evaluation scores to the head of the procurement unit for review and final
1830 determination of:

1831 (i) qualified vendors, if the request for statement of qualifications process is used as
1832 one of the stages of a multiple-stage process; or

1833 (ii) vendors to be included on an approved vendor list, if the request for statement of
1834 qualifications process is used as part of the approved vendor list process.

1835 (e) The issuing procurement unit shall review the evaluation committee's scores and
1836 correct any errors, scoring inconsistencies, and reported noncompliance with this chapter.

1837 (f) (i) The deliberations of an evaluation committee under this Subsection (9) may be
1838 held in private.

1839 (ii) If the evaluation committee is a public body, as defined in Section [52-4-103](#), the
1840 evaluation committee shall comply with Section [52-4-205](#) in closing a meeting for its
1841 deliberations.

1842 (10) A procurement unit may at any time request a vendor to clarify information
1843 contained in a statement of qualifications, as provided in Section [63G-6a-115](#).

1844 (11) A vendor may voluntarily withdraw a statement of qualifications at any time
1845 before a contract is awarded with respect to which the statement of qualifications was
1846 submitted.

1847 (12) (a) A procurement unit may at any time:

1848 (i) take steps to confirm the accuracy of a statement of qualifications; or

1849 (ii) allow the voluntary withdrawal of an unintentionally erroneous statement of
1850 qualifications.

1851 (b) If a vendor fails to respond to a procurement unit's request to confirm the accuracy
1852 of the vendor's statement of qualifications by the deadline established by the procurement unit,
1853 the procurement unit shall consider the statement of qualifications to be accurate and may
1854 proceed with the procurement process.

1855 (13) (a) A conducting procurement unit may disqualify a vendor for:
1856 (i) a violation of this chapter;
1857 (ii) not being responsible or for filing a statement of qualifications that is not
1858 responsive;
1859 (iii) a violation of a requirement contained in the request for statement of
1860 qualifications;
1861 (iv) unlawful or unethical conduct;
1862 (v) a change in the vendor's circumstances after the vendor submits a statement of
1863 qualifications that, if the change had been known at the time the statement of qualifications was
1864 submitted, would have caused the vendor not to have a qualifying score; or
1865 (vi) a performance rating below the satisfactory performance threshold specified in the
1866 request for statement of qualifications.
1867 (b) A procurement unit that disqualifies a vendor under Subsection (13)(a) shall:
1868 (i) make a written finding, stating the reasons for the disqualification; and
1869 (ii) provide a copy of the written finding to the disqualified vendor.
1870 (14) If only one vendor meets the minimum qualifications, evaluation criteria, and
1871 applicable score thresholds set forth in the request for statement of qualifications that the
1872 procurement unit is using as part of an approved vendor list process, the conducting
1873 procurement unit:
1874 (a) shall cancel the request for statement of qualifications; and
1875 (b) may not establish an approved vendor list based on the canceled request for
1876 statement of qualifications or on statements of qualifications submitted in response to the
1877 request for statement of qualifications.
1878 (15) If a conducting procurement unit cancels a request for statement of qualifications,
1879 the conducting procurement unit shall make available for public inspection a written
1880 justification for the cancellation.
1881 (16) After receiving and reviewing the statements of qualifications and evaluation
1882 scores submitted by the evaluation committee, as provided in Subsection (9)(c), the head of the
1883 procurement unit using the request for statement of qualifications process under this section as
1884 one of the stages of a multiple-stage procurement process shall identify those vendors meeting
1885 the minimum mandatory requirements, evaluation criteria, and applicable score thresholds as

1886 qualified vendors who are allowed to participate in the remaining stages of the multiple-stage
1887 procurement process.

1888 (17) The applicable rulemaking authority may make rules pertaining to the request for
1889 statement of qualifications and the process described in this section.

1890 Section 24. Section **63G-6a-501** is amended to read:

1891 **Part 5. Other Standard Procurement Processes**

1892 **63G-6a-501. Title.**

1893 This part is known as [~~"Request for Information."~~] "Other Standard Procurement
1894 Processes."

1895 Section 25. Section **63G-6a-506**, which is renumbered from Section 63G-6a-408 is
1896 renumbered and amended to read:

1897 [~~63G-6a-408~~]. **63G-6a-506. Small purchases.**

1898 (1) As used in this section:

1899 (a) "Annual cumulative threshold" means the maximum total annual amount,
1900 established by the applicable rulemaking authority under Subsection (2)(a)(i), that a
1901 procurement unit may expend to obtain procurement items from the same source under this
1902 section.

1903 (b) "Individual procurement threshold" means the maximum amount, established by
1904 the applicable rulemaking authority under Subsection (2)(a)(ii), for which a procurement unit
1905 may purchase a procurement item under this section.

1906 (c) "Single procurement aggregate threshold" means the maximum total amount,
1907 established by the applicable rulemaking authority under Subsection (2)(a)(iii), that a
1908 procurement unit may expend to obtain multiple procurement items from one source at one
1909 time under this section.

1910 (2) (a) The applicable rulemaking authority may make rules governing small purchases
1911 of any procurement item, including construction, job order contracting, design professional
1912 services, other professional services, information technology, and goods.

1913 (b) Rules under Subsection (2)(a) may include provisions:

1914 (i) establishing expenditure thresholds, including:

1915 (A) an annual cumulative threshold;

1916 (B) an individual procurement threshold; and

1917 (C) a single procurement aggregate threshold;

1918 (ii) establishing procurement requirements relating to the thresholds described in

1919 Subsection (2)(b)(i); and

1920 (iii) providing for the use of electronic, telephone, or written quotes.

1921 (3) Expenditures made under this section by a procurement unit may not exceed a

1922 threshold established by the applicable rulemaking authority, unless the chief procurement

1923 officer or the head of a procurement unit with independent procurement authority gives written

1924 authorization to exceed the threshold that includes the reasons for exceeding the threshold.

1925 (4) Except as provided in Subsection (5), an executive branch procurement unit may

1926 not obtain a procurement item through a small purchase standard procurement process if the

1927 procurement item may be obtained through a state cooperative contract or a contract awarded

1928 by the chief procurement officer under Subsection [63G-6a-2105\(1\)](#).

1929 (5) Subsection (4) does not apply if:

1930 (a) the procurement item is obtained for an unanticipated, urgent [~~or unanticipated~~], or

1931 emergency condition, including:

1932 (i) an item needed to avoid stopping a public construction project;

1933 (ii) an immediate repair to a facility or equipment; or

1934 (iii) another emergency condition; or

1935 (b) the chief procurement officer or the head of a procurement unit that is an executive

1936 branch procurement unit with independent procurement authority:

1937 (i) determines in writing that it is in the best interest of the procurement unit to obtain

1938 an individual procurement item outside of the state contract, comparing:

1939 (A) the contract terms and conditions applicable to the procurement item under the

1940 state contract with the contract terms and conditions applicable to the procurement item if the

1941 procurement item is obtained outside of the state contract;

1942 (B) the maintenance and service applicable to the procurement item under the state

1943 contract with the maintenance and service applicable to the procurement item if the

1944 procurement item is obtained outside of the state contract;

1945 (C) the warranties applicable to the procurement item under the state contract with the

1946 warranties applicable to the procurement item if the procurement item is obtained outside of

1947 the state contract;

1948 (D) the quality of the procurement item under the state contract with the quality of the
1949 procurement item if the procurement item is obtained outside of the state contract; and

1950 (E) the cost of the procurement item under the state contract with the cost of the
1951 procurement item if the procurement item is obtained outside of the state contract;

1952 (ii) for a procurement item that, if defective in its manufacture, installation, or
1953 performance, may result in serious physical injury, death, or substantial property damage,
1954 determines in writing that the terms and conditions, relating to liability for injury, death, or
1955 property damage, available from the source other than the contractor who holds the state
1956 contract, are similar to, or better than, the terms and conditions available under the state
1957 contract; and

1958 (iii) grants an exception, in writing, to the requirement described in Subsection (4).

1959 (6) Except as otherwise expressly provided in this section, a procurement unit:

1960 (a) may not use the small purchase standard procurement process described in this
1961 section for ongoing, continuous, and regularly scheduled procurements that exceed the annual
1962 cumulative threshold; and

1963 (b) shall make its ongoing, continuous, and regularly scheduled procurements that
1964 exceed the annual cumulative threshold through a contract awarded through another standard
1965 procurement process described in this chapter or an applicable exception to another standard
1966 procurement process, described in Part 8, Exceptions to Procurement Requirements.

1967 (7) This section does not prohibit regularly scheduled payments for a procurement item
1968 obtained under another provision of this chapter.

1969 (8) (a) It is unlawful for a person to intentionally or knowingly divide a procurement
1970 into [~~one or more~~] smaller procurements with the intent to make a procurement:

1971 (i) qualify as a small purchase, if, before dividing the procurement, it would not have
1972 qualified as a small purchase; or

1973 (ii) meet a threshold established by rule made by the applicable rulemaking authority,
1974 if, before dividing the procurement, it would not have met the threshold.

1975 (b) A person who engages in the conduct made unlawful under Subsection (8)(a) is
1976 guilty of:

1977 (i) a second degree felony, if the value of the procurement before being divided is
1978 \$1,000,000 or more;

1979 (ii) a third degree felony, if the value of the procurement before being divided is
1980 \$250,000 or more but less than \$1,000,000;

1981 (iii) a class A misdemeanor, if the value of the procurement before being divided is
1982 \$100,000 or more but less than \$250,000; or

1983 (iv) a class B misdemeanor, if the value of the procurement before being divided is less
1984 than \$100,000.

1985 (9) A division of a procurement that is prohibited under Subsection (8) includes doing
1986 any of the following with the intent or knowledge described in Subsection (8):

1987 (a) making two or more separate purchases;

1988 (b) dividing an invoice or purchase order into two or more invoices or purchase orders;

1989 or

1990 (c) making smaller purchases over a period of time.

1991 (10) A person who violates Subsection (8) is subject to the criminal penalties described
1992 in Section [~~63G-6a-2405~~] [63G-6a-2404](#).

1993 (11) The Division of Finance within the Department of Administrative Services may
1994 conduct an audit of an executive branch procurement unit to verify compliance with the
1995 requirements of this section.

1996 (12) An executive branch procurement unit may not make a small purchase after
1997 January 1, 2014, unless the chief procurement officer certifies that the person responsible for
1998 procurements in the procurement unit has satisfactorily completed training on this section and
1999 the rules made under this section.

2000 Section 26. Section **63G-6a-507** is enacted to read:

2001 **63G-6a-507. Approved vendor list procurement process.**

2002 (1) As used in this section:

2003 (a) "Closed-ended approved vendor list" means an approved vendor list that is subject
2004 to:

2005 (i) a short period of time, specified by the procurement unit, during which vendors may
2006 be added to the list; and

2007 (ii) a specified period of time after which the list will expire.

2008 (b) "Open-ended approved vendor list" means an approved vendor list that is subject
2009 to:

2010 (i) an indeterminate period of time during which vendors may be added to the list;
2011 (ii) the addition of vendors to the list throughout the term of the list; and
2012 (iii) a specified period of time after which a vendor on the list is required to submit the
2013 vendor's qualifications for evaluation before the vendor may be renewed as an approved
2014 vendor.

2015 (2) A procurement unit may not establish an approved vendor list unless the
2016 procurement unit has first completed the statement of qualifications process described in
2017 Section [63G-6a-410](#).

2018 (3) (a) A procurement unit may establish an approved vendor list for:
2019 (i) a project or procurement item with an identified, fully defined scope of work; or
2020 (ii) a future project or procurement item that does not have an identified, fully defined
2021 scope of work at the time the request for statement of qualifications is issued, if the request for
2022 statement of qualifications contains a general description of the:

2023 (A) scope or category of work;
2024 (B) type of vendor that the procurement unit seeks to provide the procurement item;
2025 and
2026 (C) project or procurement item.

2027 (b) A procurement unit may not award a contract to a vendor on an approved vendor
2028 list for work that is outside the scope of the general description of the work contained in the
2029 request for statement of qualifications.

2030 (4) After receiving the statements of qualifications and evaluation scores submitted by
2031 the evaluation committee, as provided in Subsection [63G-6a-410\(9\)\(c\)](#), the head of the
2032 conducting procurement unit using the request for statement of qualifications process under
2033 Section [63G-6a-410](#) as part of an approved vendor list process shall:

2034 (a) include on an approved vendor list those vendors meeting the minimum mandatory
2035 requirements, evaluation criteria, and applicable score thresholds; and

2036 (b) reject any vendor not meeting the minimum mandatory requirements, evaluation
2037 criteria, and applicable score thresholds as ineligible for inclusion on the approved vendor list.

2038 (5) (a) A procurement unit shall include approved vendors on a closed-ended approved
2039 vendor list or an open-ended approved vendor list.

2040 (b) (i) A closed-ended approved vendor list shall expire no later than 18 months after

2041 the publication of the closed-ended approved vendor list.

2042 (ii) A procurement unit shall require a vendor on an open-ended approved vendor list,
2043 in order to remain on the approved vendor list, to submit an updated statement of qualifications
2044 for evaluation no later than 18 months after the vendor was added to the list as an approved
2045 vendor.

2046 (6) A procurement unit may:

2047 (a) (i) using a standard procurement process, award a contract to a vendor on an
2048 approved vendor list for any procurement item or type of procurement item specified by the
2049 procurement unit in the request for statement of qualifications, including procurement items
2050 that the procurement unit intends to acquire in a series of upcoming procurements described in
2051 the request for statement of qualifications; and

2052 (ii) limit participation in a standard procurement process to vendors on an approved
2053 vendor list; or

2054 (b) award a contract to a vendor on an approved vendor list at a price established as
2055 provided in Section [63G-6a-113](#).

2056 (7) After establishing an approved vendor list as provided in this section, the
2057 conducting procurement unit shall, before using the approved vendor list, submit the approved
2058 vendor list to the issuing procurement unit for publication by the issuing procurement unit.

2059 (8) A conducting procurement unit administering an open-ended approved vendor list
2060 shall:

2061 (a) require a vendor seeking inclusion on the approved vendor list to submit a
2062 statement of qualifications that complies with all requirements applicable at the time of the
2063 initial request for statement of qualifications;

2064 (b) if modifying the requirements for inclusion on the approved vendor list, apply any
2065 new or additional requirement to all vendors equally, whether a vendor is seeking inclusion on
2066 the approved vendor list for the first time or is already included on the approved vendor list;
2067 and

2068 (c) keep the request for statement of qualifications posted on a website as required
2069 under Subsection [63G-6a-112\(6\)](#).

2070 (9) The applicable rulemaking authority shall make rules pertaining to an approved
2071 vendor list process, including:

2072 (a) procedures to ensure that all vendors on an approved vendor list have a fair and
2073 equitable opportunity to compete for a contract or be assigned to provide work or a
2074 procurement item; and

2075 (b) requirements for using an approved vendor list with the small purchase process.

2076 Section 27. Section **63G-6a-603** is amended to read:

2077 **63G-6a-603. Invitation for bids -- Requirements -- Publication.**

2078 (1) The bidding standard procurement process begins when the issuing procurement
2079 unit issues an invitation for bids.

2080 (2) An invitation for bids shall:

2081 (a) state the period of time during which bids will be accepted;

2082 (b) describe the manner in which a bid shall be submitted;

2083 (c) state the place where a bid shall be submitted; and

2084 (d) include, or incorporate by reference:

2085 (i) a description of the procurement items sought;

2086 (ii) the objective criteria that will be used to evaluate the bids; and

2087 (iii) the required contractual terms and conditions.

2088 (3) An issuing procurement unit shall publish an invitation for bids in accordance with
2089 the requirements of Section [~~63G-6a-406~~] 63G-6a-112.

2090 Section 28. Section **63G-6a-604** is amended to read:

2091 **63G-6a-604. Bid opening and acceptance.**

2092 (1) Bids shall be opened:

2093 (a) publicly, except as provided in Section 63G-6a-611;

2094 (b) in the presence of one or more witnesses, unless an electronic bid opening process
2095 is used where bidders may see the opening of the bid electronically; and

2096 (c) at the time and place indicated in the invitation for bids.

2097 (2) Bids shall be accepted unconditionally, without alteration or correction, except as
2098 otherwise authorized by this chapter.

2099 (3) (a) The procurement officer shall reject a bid ~~that~~ if the bid is not responsive or
2100 the bid is submitted by a bidder who is not responsible.

2101 (b) A bid that is not responsive includes a bid that:

2102 (i) is conditional;

- 2103 (ii) attempts to modify the bid requirements;
- 2104 (iii) contains additional terms or conditions; or
- 2105 (iv) fails to conform with the requirements or specifications of the invitation for bids.

2106 (c) A bid that is submitted by a bidder who is not responsible includes a bid where the
2107 procurement officer reasonably concludes that the bidder or an employee, agent, or
2108 subcontractor of the bidder, at any tier, is unable to satisfactorily fulfill the bid requirements.

2109 (4) An issuing procurement unit may not accept a bid after the time for submission of a
2110 bid has expired.

2111 (5) The procurement officer shall:

2112 (a) record the name of each bidder and the amount of each bid; and

2113 (b) after the bid is awarded, make the information described in Subsection (5)(a)
2114 available for public disclosure.

2115 Section 29. Section **63G-6a-605** is repealed and reenacted to read:

2116 **63G-6a-605. Correction or clarification of bids.**

2117 (1) The chief procurement officer or the head of a procurement unit with independent
2118 procurement authority may:

2119 (a) allow a vendor to correct an immaterial error in a bid, as provided in Section
2120 63G-6a-114; and

2121 (b) request a vendor to clarify information contained in a bid, as provided in Section
2122 63G-6a-115.

2123 (2) (a) Notwithstanding Subsection (1), a vendor may not change the total bid price
2124 after the bid opening and before a contract is awarded.

2125 (b) Subsection (2)(a) does not apply to a change in the contract price during contract
2126 administration, as allowed under this chapter.

2127 Section 30. Section **63G-6a-606** is amended to read:

2128 **63G-6a-606. Evaluation of bids -- Award -- Cancellation -- Rejecting a bid.**

2129 (1) A procurement unit that conducts a procurement using a bidding standard
2130 procurement process shall evaluate each bid using the objective criteria described in the
2131 invitation for bids, which may include:

2132 (a) experience;

2133 (b) performance ratings;

- 2134 (c) inspection;
- 2135 (d) testing;
- 2136 (e) quality;
- 2137 (f) workmanship;
- 2138 (g) time and manner of delivery;
- 2139 (h) references;
- 2140 (i) financial stability;
- 2141 (j) cost;
- 2142 (k) suitability for a particular purpose;
- 2143 (l) the contractor's work site safety program, including any requirement that the
- 2144 contractor imposes on subcontractors for a work site safety program; or
- 2145 (m) other objective criteria specified in the invitation for bids.
- 2146 (2) Criteria not described in the invitation for bids may not be used to evaluate a bid.
- 2147 (3) The conducting procurement unit shall:
- 2148 (a) award the contract as soon as practicable to:
- 2149 (i) the ~~[lowest responsive and]~~ responsible bidder who:
- 2150 (A) submits the lowest responsive bid; and
- 2151 (B) meets the objective criteria described in the invitation for bids; or
- 2152 (ii) if, in accordance with Subsection (4), the procurement officer or the head of the
- 2153 conducting procurement unit ~~[disqualifies the bidder]~~ rejects a bid described in Subsection
- 2154 (3)(a)(i), the ~~[next lowest responsive and]~~ responsible bidder who:
- 2155 (A) submits the next lowest responsive bid; and
- 2156 (B) meets the objective criteria described in the invitation for bids; or
- 2157 (b) cancel the invitation for bids without awarding a contract.
- 2158 (4) In accordance with Subsection (5), the procurement officer or the head of the
- 2159 conducting procurement unit may ~~[disqualify a bidder]~~ reject a bid for:
- 2160 (a) a violation of this chapter by the bidder who submitted the bid;
- 2161 (b) a violation of a requirement of the invitation for bids;
- 2162 (c) unlawful or unethical conduct by the bidder who submitted the bid; or
- 2163 (d) a change in a bidder's circumstance that, had the change been known at the time the
- 2164 bid was submitted, would have caused the ~~[bidder to not be the lowest responsive and~~

2165 responsible bidder who meets the objective criteria described in the invitation for bids] bid to
2166 be rejected.

2167 (5) A procurement officer or head of a conducting procurement unit who [~~disqualifies a~~
2168 ~~bidder~~] rejects a bid under Subsection (4) shall:

2169 (a) make a written finding, stating the reasons for [~~disqualification~~] the rejection; and

2170 (b) provide a copy of the written finding to the [~~disqualified~~] bidder who submitted the
2171 rejected bid.

2172 (6) If a conducting procurement unit cancels an invitation for bids without awarding a
2173 contract, the conducting procurement unit shall make available for public inspection a written
2174 justification for the cancellation.

2175 Section 31. Section **63G-6a-609** is amended to read:

2176 **63G-6a-609. Multiple stage bidding process.**

2177 (1) The invitation for bids for a multiple stage bidding process shall:

2178 (a) describe the requirements for, and purpose of, each stage of the process;

2179 (b) indicate whether the procurement unit intends to award:

2180 (i) a single contract; or

2181 (ii) multiple contracts for a series of upcoming procurements; and

2182 (c) state that:

2183 (i) the first stage is for prequalification only;

2184 (ii) a bidder may not submit any pricing information in the first stage of the process;

2185 and

2186 (iii) bids in the second stage will only be accepted from a person who prequalifies in
2187 the first stage.

2188 (2) During the first stage, the conducting procurement unit:

2189 (a) shall prequalify bidders to participate in subsequent stages, in accordance with

2190 Section [~~63G-6a-403~~] [63G-6a-410](#);

2191 (b) shall prohibit the submission of pricing information until the final stage; and

2192 (c) may, before beginning the second stage, request additional information to clarify
2193 the qualifications of the bidders who submit timely responses.

2194 (3) Contracts may only be awarded for a procurement item described in stage one of
2195 the invitation for bids.

2196 (4) The conducting procurement unit may use as many stages as it determines to be
2197 appropriate.

2198 (5) Except as otherwise expressly provided in this section, a procurement unit
2199 conducting a multiple stage bidding process under this section shall ensure compliance with
2200 this part.

2201 (6) The applicable rulemaking authority may make rules governing the use of a
2202 multiple stage process described in this section.

2203 Section 32. Section **63G-6a-611** is amended to read:

2204 **63G-6a-611. Invitation for bids for reverse auction -- Requirements -- Publication**
2205 **of invitation.**

2206 (1) The reverse auction bidding process begins when the issuing procurement unit
2207 issues an invitation for bids to prequalify bidders to participate in the reverse auction.

2208 (2) The invitation for bids shall:

2209 (a) state the period of time during which bids will be accepted;

2210 (b) state that the bid will be conducted by reverse auction;

2211 (c) describe the procurement items sought;

2212 (d) describe the minimum requirements to become prequalified;

2213 (e) state the required contractual terms and conditions; and

2214 (f) describe the procedure that the conducting procurement unit will follow in the
2215 reverse auction.

2216 (3) In order to participate in a reverse auction, a bidder shall agree to:

2217 (a) the specifications, and contractual terms and conditions, of the procurement; and

2218 (b) be trained in, and abide by, the procedure that the division or the procurement unit
2219 with independent procurement authority will follow in conducting the reverse auction.

2220 (4) The division or a procurement unit with independent procurement authority shall
2221 publish an invitation for bids for a reverse auction in accordance with the requirements of
2222 Section [~~63G-6a-406~~] [63G-6a-112](#).

2223 Section 33. Section **63G-6a-703** is amended to read:

2224 **63G-6a-703. Request for proposals -- Requirements -- Publication of request.**

2225 (1) The request for proposals standard procurement process begins when the division
2226 or a procurement unit with independent procurement authority issues a request for proposals.

- 2227 (2) A request for proposals shall:
- 2228 (a) state the period of time during which a proposal will be accepted;
- 2229 (b) describe the manner in which a proposal shall be submitted;
- 2230 (c) state the place where a proposal shall be submitted;
- 2231 (d) include, or incorporate by reference:
- 2232 (i) a description of the procurement items sought;
- 2233 (ii) a description of the subjective and objective criteria that will be used to evaluate
- 2234 the proposal; and
- 2235 (iii) the standard contractual terms and conditions required by the authorized
- 2236 purchasing entity;
- 2237 (e) state the relative weight that will be given to each score for the criteria described in
- 2238 Subsection (2)(d)(ii), including cost;
- 2239 (f) state the formula that will be used to determine the score awarded for the cost of
- 2240 each proposal;
- 2241 (g) if the request for proposals will be conducted in multiple stages, as described in
- 2242 Section [63G-6a-710](#), include a description of the stages and the criteria and scoring that will be
- 2243 used to screen offerors at each stage; and
- 2244 ~~[(h) state that discussions may be conducted with offerors who submit proposals~~
- 2245 ~~determined to be reasonably susceptible of being selected for award, followed by an~~
- 2246 ~~opportunity to make best and final offers, but that proposals may be accepted without~~
- 2247 ~~discussions.]~~
- 2248 (h) state that best and final offers may be allowed, as provided in Section
- 2249 [63G-6a-707.5](#), from responsible offerors who submit responsive proposals that meet minimum
- 2250 qualifications, evaluation criteria, or applicable score thresholds identified in the request for
- 2251 proposals.
- 2252 (3) The division or a procurement unit with independent procurement authority shall
- 2253 publish a request for proposals in accordance with the requirements of Section [[63G-6a-406](#)]
- 2254 [63G-6a-112](#).
- 2255 Section 34. Section [63G-6a-706](#) is repealed and reenacted to read:
- 2256 **63G-6a-706. Correction or clarification of proposal.**
- 2257 (1) The chief procurement officer or the head of a procurement unit with independent

2258 procurement authority may:

2259 (a) allow a vendor to correct an immaterial error in a proposal, as provided in Section
2260 63G-6a-114; and

2261 (b) request a vendor to clarify information contained in a proposal, as provided in
2262 Section 63G-6a-115.

2263 (2) (a) Notwithstanding Subsection (1) and except as provided in Section
2264 63G-6a-707.5, after the deadline for submitting a cost proposal and before a contract is
2265 awarded, a vendor may not change the total amount of a cost proposal.

2266 (b) Subsection (2)(a) does not apply to a change in the contract price during contract
2267 administration, as allowed under this chapter.

2268 Section 35. Section **63G-6a-707** is amended to read:

2269 **63G-6a-707. Evaluation of proposals -- Evaluation committee.**

2270 (1) To determine which proposal provides the best value to the procurement unit, the
2271 evaluation committee shall evaluate each responsive and responsible proposal that has not been
2272 disqualified from consideration under the provisions of this chapter, using the criteria described
2273 in the request for proposals, which may include:

2274 (a) experience;

2275 (b) performance ratings;

2276 (c) inspection;

2277 (d) testing;

2278 (e) quality;

2279 (f) workmanship;

2280 (g) time, manner, or schedule of delivery;

2281 (h) references;

2282 (i) financial solvency;

2283 (j) suitability for a particular purpose;

2284 (k) management plans;

2285 (l) the presence and quality of a work site safety program, including any requirement
2286 that the offeror imposes on subcontractors for a work site safety program;

2287 (m) cost; or

2288 (n) other subjective or objective criteria specified in the request for proposals.

- 2289 (2) Criteria not described in the request for proposals may not be used to evaluate a
2290 proposal.
- 2291 (3) The conducting procurement unit shall:
- 2292 (a) appoint an evaluation committee consisting of at least three individuals with at least
2293 a general familiarity with or basic understanding of:
- 2294 (i) the technical requirements relating to the type of procurement item that is the
2295 subject of the procurement; or
- 2296 (ii) the need that the procurement item is intended to address; and
- 2297 (b) ensure that the evaluation committee and each [~~member of the evaluation~~
2298 ~~committee~~] individual participating in the evaluation committee process:
- 2299 (i) does not have a conflict of interest with any of the offerors;
- 2300 (ii) can fairly evaluate each proposal;
- 2301 (iii) does not contact or communicate with an offeror concerning the procurement
2302 outside the official evaluation committee process; and
- 2303 (iv) conducts or participates in the evaluation in a manner that ensures a fair and
2304 competitive process and avoids the appearance of impropriety.
- 2305 (4) A conducting procurement unit may authorize an evaluation committee to receive
2306 assistance:
- 2307 (a) from an expert or consultant who:
- 2308 (i) is not a member of the evaluation committee; and
- 2309 (ii) does not participate in the evaluation scoring; and
- 2310 (b) to better understand a technical issue involved in the procurement.
- 2311 [~~4~~] (5) The evaluation committee may, with the approval of the head of the
2312 conducting procurement unit, enter into discussions or conduct interviews with, or attend
2313 presentations by, the offerors.
- 2314 [~~5~~] (6) (a) Except as provided in Subsections [~~(5)(b) and (8)~~] (6)(b) and (9), each
2315 member of the evaluation committee is prohibited from knowing, or having access to, any
2316 information relating to the cost, or the scoring of the cost, of a proposal until after the
2317 evaluation committee submits its final recommended scores on all other criteria to the issuing
2318 procurement unit.
- 2319 (b) The issuing procurement unit shall:

2320 (i) if applicable, assign an individual who is not a member of the evaluation committee
2321 to calculate scores for cost based on the applicable scoring formula, weighting, and other
2322 scoring procedures contained in the request for proposals;

2323 (ii) review the evaluation committee's scores and correct any errors, scoring
2324 inconsistencies, and reported noncompliance with this chapter;

2325 (iii) add the scores calculated for cost, if applicable, to the evaluation committee's final
2326 recommended scores on criteria other than cost to derive the total combined score for each
2327 responsive and responsible proposal; and

2328 (iv) provide to the evaluation committee the total combined score calculated for each
2329 responsive and responsible proposal, including any applicable cost formula, weighting, and
2330 scoring procedures used to calculate the total combined scores.

2331 (c) The evaluation committee may not:

2332 (i) change its final recommended scores described in Subsection [~~(5)~~] (6)(a) after the
2333 evaluation committee has submitted those scores to the issuing procurement unit; or

2334 (ii) change cost scores calculated by the issuing procurement unit.

2335 [~~(6)~~] (7) (a) As used in this Subsection [~~(6)~~] (7), "management fee" includes only the
2336 following fees of the construction manager/general contractor:

2337 (i) preconstruction phase services;

2338 (ii) monthly supervision fees for the construction phase; and

2339 (iii) overhead and profit for the construction phase.

2340 (b) When selecting a construction manager/general contractor for a construction
2341 project, the evaluation committee:

2342 (i) may score a construction manager/general contractor based upon criteria contained
2343 in the solicitation, including qualifications, performance ratings, references, management plan,
2344 certifications, and other project specific criteria described in the solicitation;

2345 (ii) may, as described in the solicitation, weight and score the management fee as a
2346 fixed rate or as a fixed percentage of the estimated contract value;

2347 (iii) may, at any time after the opening of the responses to the request for proposals,
2348 have access to, and consider, the management fee proposed by the offerors; and

2349 (iv) except as provided in Subsection [~~(8)~~] (9), may not know or have access to any
2350 other information relating to the cost of construction submitted by the offerors, until after the

2351 evaluation committee submits its final recommended scores on all other criteria to the issuing
2352 procurement unit.

2353 ~~[(7)]~~ (8) (a) The deliberations of an evaluation committee may be held in private.

2354 (b) If the evaluation committee is a public body, as defined in Section 52-4-103, the
2355 evaluation committee shall comply with Section 52-4-205 in closing a meeting for its
2356 deliberations.

2357 ~~[(8)]~~ (9) An issuing procurement unit is not required to comply with Subsection ~~[(5)]~~
2358 (6) if the head of the issuing procurement unit or a person designated by rule made by the
2359 applicable rulemaking authority:

2360 (a) signs a written statement:

2361 (i) indicating that, due to the nature of the proposal or other circumstances, it is in the
2362 best interest of the procurement unit to waive compliance with Subsection ~~[(5)]~~ (6); and

2363 (ii) describing the nature of the proposal and the other circumstances relied upon to
2364 waive compliance with Subsection ~~[(5)]~~ (6); and

2365 (b) makes the written statement available to the public, upon request.

2366 Section 36. Section 63G-6a-707.5 is amended to read:

2367 **63G-6a-707.5. Best and final offers.**

2368 (1) At any time during the evaluation process, the evaluation committee, with the
2369 approval of the director or the head of the issuing procurement unit, may:

2370 (a) request best and final offers from responsible ~~[and]~~ offerors who have submitted
2371 responsive [offerors] proposals that meet the minimum qualifications, evaluation criteria, or
2372 applicable score thresholds identified in the request for proposals, if:

2373 (i) no single proposal addresses all the specifications stated in the request for
2374 proposals;

2375 (ii) all or a significant number of the proposals are ambiguous on a material point and
2376 the evaluation committee requires further clarification in order to conduct a fair evaluation of
2377 proposals;

2378 (iii) the evaluation committee needs additional information from all offerors to
2379 complete the evaluation of proposals;

2380 (iv) the differences between proposals in one or more material aspects are too slight to
2381 allow the evaluation committee to distinguish between proposals;

2382 (v) all cost proposals are too high or over budget; or
2383 (vi) another reason exists supporting a request for best and final offers, as provided in
2384 rules established by the applicable rulemaking authority; and

2385 (b) evaluate those best and final offers.

2386 (2) In requesting and evaluating best and final offers under Subsection (1), the
2387 evaluation committee shall:

2388 (a) ensure that each offeror receives fair and equal treatment with respect to the other
2389 offerors;

2390 (b) establish a schedule and procedures for conducting discussions;

2391 (c) ensure that information in each proposal and information gathered during
2392 discussions is not shared with other offerors until the contract is awarded;

2393 (d) ensure that auction tactics are not used in the discussion process, including
2394 discussing and comparing the costs and features of other proposals; and

2395 (e) set a common date and time for the submission of best and final offers.

2396 (3) In a best and final offer, an offeror:

2397 (a) may address only the issues described in the request for best and final offers; and

2398 (b) may not correct a material error or deficiency in the offeror's proposal or address
2399 any other issue not described in the request for best and final offers.

2400 [~~3~~] (4) If an offeror chooses not to participate in a discussion or does not make a
2401 timely best and final offer, the offer submitted by the offeror before the conduct of discussions
2402 shall be treated as the offeror's best and final offer.

2403 (5) An applicable rulemaking authority shall make rules governing best and final offers
2404 under this section.

2405 Section 37. Section **63G-6a-708** is amended to read:

2406 **63G-6a-708. Justification statement -- Cost-benefit analysis.**

2407 (1) (a) In determining which proposal provides the best value to the procurement unit,
2408 the evaluation committee and the conducting procurement unit shall prepare a written
2409 justification statement that:

2410 (i) explains the score assigned to each evaluation category;

2411 (ii) explains how the proposal with the highest total combined score provides the best
2412 value to the procurement unit in comparison to the other proposals;

2413 (iii) if applicable, includes the cost-benefit analysis described in Subsection (2) and
2414 how the cost-benefit analysis relates to the best value to the procurement unit; and

2415 (iv) if applicable, includes the written determination described in Subsection (5).

2416 (b) An explanation under Subsection (1)(a)(i) need not address each criterion within
2417 each category.

2418 (2) If, in determining the best value to the procurement unit, the evaluation committee
2419 awards the highest score, including the score for cost, to a proposal other than the lowest cost
2420 proposal, and the difference between the cost of the highest scored proposal and the lowest cost
2421 proposal exceeds the greater of \$10,000 or 5% of the lowest cost proposal, the evaluation
2422 committee and the conducting procurement unit shall prepare an informal written cost-benefit
2423 analysis that:

2424 (a) explains, in general terms, the advantage to the procurement unit of awarding the
2425 contract to the higher cost offeror; and

2426 (b) except as provided in Subsection (5):

2427 (i) includes the estimated added financial value to the procurement unit of each
2428 criterion that justifies awarding the contract to the higher cost offeror; and

2429 (ii) demonstrates that the value of the advantage to the procurement unit of awarding
2430 the contract to the higher cost offeror exceeds the value of the difference between the cost of
2431 the higher cost proposal and the cost of the lower cost proposals.

2432 (3) If the informal cost-benefit analysis described in Subsection (2) does not justify
2433 awarding the contract to the offeror that received the highest score, the issuing procurement
2434 unit:

2435 (a) may not award the contract to the offeror that received the highest score; and

2436 (b) may award the contract to the offeror that received the next highest score, unless:

2437 (i) an informal cost-benefit analysis is required, because the difference between the
2438 cost proposed by the offeror that received the next highest score and the lowest cost proposal
2439 exceeds the greater of \$10,000 or 5% of the lowest cost proposal; and

2440 (ii) the informal cost-benefit analysis does not justify award of the contract to the
2441 offeror that received the next highest score.

2442 (4) If the informal cost-benefit analysis described in Subsection (2) does not justify
2443 award of the contract to the offeror, described in Subsection (3), that received the next highest

2444 score, the issuing procurement unit:

2445 (a) may not award the contract to the offeror that received the next highest score; and

2446 (b) shall continue with the process described in Subsection (3) for each offeror that
2447 received the next highest score, until the issuing procurement unit:

2448 (i) awards the contract in accordance with the provisions of this section; or

2449 (ii) cancels the request for proposals.

2450 (5) (a) The evaluation committee, with the issuing procurement unit's approval, may
2451 waive, in whole or in part, a requirement under Subsection (2)(b) if the evaluation committee
2452 determines in writing that assigning a financial value to a particular procurement item or
2453 evaluation criterion is not practicable.

2454 (b) A written determination under Subsection (5)(a):

2455 (i) shall explain:

2456 (A) why it is not practicable to assign a financial value to the procurement item or
2457 evaluation criterion; and

2458 (B) in nonfinancial terms, why awarding the contract to the higher cost offeror
2459 provides the best value to the procurement unit; and

2460 (ii) may be included as part of the justification statement.

2461 (6) (a) An issuing procurement unit is not required to make the cost-benefit analysis
2462 described in this section for a contract with a construction manager/general contractor if the
2463 contract is awarded based solely on the qualifications of the construction manager/general
2464 contractor and the management fee described in Subsection ~~63G-6a-707~~(7).

2465 (b) The applicable rulemaking authority shall make rules that establish procedures and
2466 criteria for awarding a contract described in Subsection (6)(a) to ensure that:

2467 (i) a competitive process is maintained; and

2468 (ii) the contract awarded is in the best interest of the procurement unit.

2469 Section 38. Section ~~63G-6a-709~~ is amended to read:

2470 **~~63G-6a-709. Award of contract -- Cancellation -- Disqualification.~~**

2471 (1) After the completion of the evaluation and scoring of proposals and the justification
2472 statement, including any required cost-benefit analysis, the evaluation committee shall submit
2473 the proposals, evaluation scores, and justification statement to the head of the procurement unit
2474 or designee for review and final determination of a contract award.

2475 (2) After reviewing the proposals, evaluation scores, and justification statement,
 2476 including any required cost-benefit analysis, the head of the issuing procurement unit [~~or~~
 2477 ~~designee~~] shall:

2478 (a) (i) award the contract as soon as practicable to~~[(i)]~~ the ~~[responsive and]~~
 2479 responsible offeror with the responsive proposal receiving the highest total score; or
 2480 ~~[(ii) if, in accordance with Subsection (3), the procurement officer or the head of the~~
 2481 ~~issuing procurement unit disqualifies the offeror described in Subsection (2)(a)(i), the~~
 2482 ~~responsive and responsible offeror with the next highest total score; or]~~

2483 (ii) (A) if the head of the issuing procurement unit disqualifies an offeror under
 2484 Subsection (3) who would otherwise have been awarded a contract, award the contract to the
 2485 responsible offeror with the responsive proposal receiving the next highest total score; and

2486 (B) if the head of the issuing procurement unit disqualifies an offeror under Subsection
 2487 (3) who would otherwise have been awarded a contract under Subsection (2)(a)(ii)(A), repeat
 2488 the process described in Subsection (2)(a)(ii)(A) as many times as necessary until a contract is
 2489 awarded to a responsible offeror who is not disqualified; or

2490 (b) cancel the request for proposals without awarding a contract.

2491 (3) [~~In accordance with Subsection (4), the procurement officer or the~~] The head of the
 2492 issuing procurement unit may disqualify an offeror for:

2493 (a) a violation of this chapter;
 2494 (b) not being responsive or responsible;
 2495 (c) a violation of a requirement of the request for proposals;
 2496 (d) unlawful or unethical conduct; [~~or~~]
 2497 (e) a failure to sign a contract within:

2498 (i) (A) the time specified in the solicitation; or
 2499 (B) 90 days after the contract award, if no time is specified in the solicitation; or
 2500 (ii) a time authorized in writing by the head of the issuing procurement unit; or

2501 ~~[(e)]~~ (f) a change in the offeror's circumstance that, had the change been known at the
 2502 time the proposal was submitted, would have caused the proposal to not have the highest score.

2503 (4) A [~~procurement officer or~~] head of an issuing procurement unit who disqualifies an
 2504 offeror under Subsection (3) shall:

2505 (a) make a written finding, stating the reasons for disqualification; and

2506 (b) provide a copy of the written finding to the disqualified offeror.

2507 (5) If an issuing procurement unit cancels a request for proposals without awarding a
2508 contract, the issuing procurement unit shall make available for public inspection a written
2509 justification for the cancellation.

2510 Section 39. Section 63G-6a-802 is amended to read:

2511 **Part 8. Exceptions to Standard Procurement Process**

2512 **63G-6a-802. Award of contract without engaging in a standard procurement**
2513 **process -- Notice -- Duty to negotiate contract terms in best interest of procurement unit.**

2514 [~~(1) As used in this section:~~]

2515 [~~(a) "Transitional costs" mean the costs of changing from an existing provider of, or~~
2516 ~~type of, a procurement item to another provider of, or type of, procurement item.]~~

2517 [~~(b) "Transitional costs" include:~~]

2518 [~~(i) training costs;~~]

2519 [~~(ii) conversion costs;~~]

2520 [~~(iii) compatibility costs;~~]

2521 [~~(iv) system downtime;~~]

2522 [~~(v) disruption of service;~~]

2523 [~~(vi) staff time necessary to put the transition into effect;~~]

2524 [~~(vii) installation costs; and~~]

2525 [~~(viii) ancillary software, hardware, equipment, or construction costs.]~~

2526 [~~(c) "Transitional costs" do not include:~~]

2527 [~~(i) the costs of preparing for or engaging in a procurement process; or]~~

2528 [~~(ii) contract negotiation or contract drafting costs.]~~

2529 [~~(d) "Trial use contract" means a contract between a procurement unit and a vendor for~~
2530 ~~a procurement item that the procurement unit acquires for trial use or testing to determine~~
2531 ~~whether the procurement item will benefit the procurement unit.]~~

2532 [~~(2) The division or~~ (1) (a) The chief procurement officer or the head of a
2533 procurement unit with independent procurement authority may award a contract for a
2534 procurement item without [competition] engaging in a standard procurement process if the
2535 chief procurement officer[;] or the head of the procurement unit[; ~~or a designee of either who is~~
2536 senior to the procurement officer or the head of the procurement unit,] with independent

2537 procurement authority determines in writing that:

2538 ~~[(a)]~~ (i) there is only one source for the procurement item;

2539 ~~[(b) the award to a specific supplier, service provider, or contractor is a condition of a~~
2540 ~~donation that will fund the full cost of the supply, service, or construction item; or]~~

2541 ~~[(c) the procurement item is needed for trial use or testing to determine whether the~~
2542 ~~procurement item will benefit the procurement unit.]~~

2543 ~~[(3) Circumstances under which there is only one source for a procurement item may~~
2544 ~~include:]~~

2545 ~~[(a) where the most important consideration in obtaining a procurement item is the~~
2546 ~~compatibility of equipment, technology, software, accessories, replacement parts, or service;]~~

2547 ~~[(b) where transitional costs are unreasonable or cost prohibitive; or]~~

2548 ~~[(c) procurement of public utility services.]~~

2549 (ii) (A) transitional costs are a significant consideration in selecting a procurement
2550 item; and

2551 (B) the results of a cost-benefit analysis demonstrate that transitional costs are
2552 unreasonable or cost-prohibitive, and that the award of a contract without competition is in the
2553 best interest of the procurement unit; or

2554 (iii) the award of a contract is under circumstances, described in rules adopted by the
2555 applicable rulemaking authority, that make awarding the contract with competition impractical
2556 and not in the best interest of the procurement unit.

2557 (b) Circumstances supporting a determination under Subsection (1)(a)(i) that there is
2558 only one source for a procurement item include:

2559 (i) a donor imposed condition, on a donation funding the full cost of a procurement
2560 item, that the procurement unit award the contract for the procurement item to a vendor
2561 specified by the donor; and

2562 (ii) the procurement of a public utility service.

2563 (2) Transitional costs associated with a trial use or testing of a procurement item under
2564 a trial use contract may not be included in a consideration of transitional costs under
2565 Subsection (1)(a)(ii).

2566 ~~[(4)]~~ (3) (a) Subject to Subsection [(4)] (3)(b), the applicable rulemaking authority
2567 shall make rules regarding the publication of notice for a [sole source] procurement under

2568 Subsection (1)(a)(i) that, at a minimum, require publication of notice of [~~a sole source~~] the
2569 procurement, in accordance with Section [~~63G-6a-406~~] 63G-6a-112, if the cost of the
2570 procurement exceeds \$50,000.

2571 (b) Publication of notice under Section [~~63G-6a-406~~] 63G-6a-112 is not required for:

2572 (i) the procurement of public utility services pursuant to a sole source contract; or

2573 (ii) other sole source procurements provided by rule.

2574 [~~(5) The division or~~] (4) The chief procurement officer or the head of a procurement
2575 unit with independent procurement authority who awards a [~~sole source contract on behalf of~~
2576 another procurement unit] contract without competition under this section shall negotiate with
2577 the contractor to ensure that the terms of the contract, including price and delivery, are in the
2578 best interest of the procurement unit.

2579 [~~(6) (a) The period of trial use or testing of a procurement item under a trial use~~
2580 ~~contract may not exceed 18 months, unless the procurement officer provides a written~~
2581 ~~exception documenting the reason for a longer period.]~~

2582 [~~(b) A trial use contract shall:]~~

2583 [~~(i) state that the purpose of the contract is strictly for the purpose of the trial use or~~
2584 ~~testing of a procurement item;]~~

2585 [~~(ii) state that the contract terminates upon completion of the trial use or testing~~
2586 ~~period;]~~

2587 [~~(iii) state that, after the trial use or testing period, the procurement unit is not obligated~~
2588 ~~to purchase or enter into a contract for the procurement item, regardless of the trial use or~~
2589 ~~testing result;]~~

2590 [~~(iv) state that any purchase of the procurement item beyond the terms of the trial use~~
2591 ~~contract will be made in accordance with this chapter; and]~~

2592 [~~(v) include, as applicable:]~~

2593 [~~(A) test schedules;]~~

2594 [~~(B) deadlines and a termination date;]~~

2595 [~~(C) measures that will be used to evaluate the performance of the procurement item;]~~

2596 [~~(D) any fees and associated expenses or an explanation of the circumstances~~
2597 ~~warranting a waiver of those fees and expenses;]~~

2598 [~~(E) the obligations of the procurement unit and vendor;]~~

2599 ~~[(F) provisions regarding the ownership of the procurement item during and after the~~
 2600 ~~trial use or testing period;]~~

2601 ~~[(G) an explanation of the grounds upon which the contract may be terminated;]~~

2602 ~~[(H) a limitation of liability;]~~

2603 ~~[(I) a consequential damage waiver provision;]~~

2604 ~~[(J) a statement regarding the confidentiality or nondisclosure of information;]~~

2605 ~~[(K) a provision relating to any required bond or security deposit; and]~~

2606 ~~[(L) other requirements unique to the procurement item for trial use or testing.]~~

2607 ~~[(c) Publication of notice under Section [63G-6a-406](#) is not required for a procurement~~
 2608 ~~pursuant to a trial use contract.]~~

2609 ~~[(7) The division or a procurement unit with independent procurement authority may~~
 2610 ~~extend a contract for a reasonable period of time without engaging in a standard procurement~~
 2611 ~~process, if:]~~

2612 ~~[(a) the award of a new contract for the procurement item is delayed due to a protest or~~
 2613 ~~appeal;]~~

2614 ~~[(b) the standard procurement process is delayed due to unintentional error;]~~

2615 ~~[(c) changes in industry standards require significant changes to specifications for the~~
 2616 ~~procurement item;]~~

2617 ~~[(d) the extension is necessary to prevent the loss of federal funds;]~~

2618 ~~[(e) the extension is necessary to address a circumstance where the appropriation of~~
 2619 ~~state or federal funds has been delayed;]~~

2620 ~~[(f) the extension covers the period of time during which contract negotiations with a~~
 2621 ~~new provider are being conducted; or]~~

2622 ~~[(g) the extension is necessary to avoid a lapse in critical governmental services that~~
 2623 ~~may negatively impact public health, safety, or welfare.]~~

2624 Section 40. Section [63G-6a-802.3](#) is enacted to read:

2625 **63G-6a-802.3. Trial use contracts.**

2626 (1) A procurement unit may award a trial use contract without engaging in a standard
 2627 procurement process if the contract is:

2628 (a) awarded for a procurement item that is not already available to the procurement unit
 2629 under an existing contract;

2630 (b) restricted to the procurement of a procurement item in the minimum quantity and
2631 for the minimum period of time necessary to test the procurement item;

2632 (c) the only trial use contract for that procurement unit for the same procurement item;
2633 and

2634 (d) not used to circumvent the purposes and policies of this chapter as set forth in
2635 Section [63G-6a-102](#).

2636 (2) The period of trial use or testing of a procurement item under a trial use contract
2637 may not exceed 18 months, unless the procurement officer provides a written exception
2638 documenting the reason for a longer period.

2639 (3) A trial use contract shall:

2640 (a) state that the contract is strictly for the trial use or testing of a procurement item;

2641 (b) state that the contract terminates upon completion of the trial use or testing period;

2642 (c) state that the procurement unit is not obligated to purchase or enter into a contract
2643 for the procurement item, regardless of the trial use or testing result;

2644 (d) state that any purchase of the procurement item that is the subject of the trial use
2645 contract will be made in accordance with this chapter; and

2646 (e) include, as applicable:

2647 (i) test schedules;

2648 (ii) deadlines and a termination date;

2649 (iii) measures that will be used to evaluate the performance of the procurement item;

2650 (iv) any fees and associated expenses or an explanation of the circumstances

2651 warranting a waiver of those fees and expenses;

2652 (v) the obligations of the procurement unit and vendor;

2653 (vi) provisions regarding the ownership of the procurement item during and after the
2654 trial use or testing period;

2655 (vii) an explanation of the grounds upon which the contract may be terminated;

2656 (viii) a provision relating to any required bond or security deposit; and

2657 (ix) other requirements unique to the procurement item for trial use or testing.

2658 (4) Publication of notice under Section [63G-6a-112](#) is not required for a trial use
2659 contract.

2660 (5) The applicable rulemaking authority may make rules pertaining to a trial use

2661 contract.

2662 Section 41. Section **63G-6a-802.7** is enacted to read:

2663 **63G-6a-802.7. Extension of a contract without engaging in a standard**
2664 **procurement process.**

2665 The chief procurement officer or the head of a procurement unit with independent
2666 procurement authority may extend an existing contract without engaging in a standard
2667 procurement process:

2668 (1) for a period of time not to exceed 120 days, if:

2669 (a) an extension of the contract is necessary to:

2670 (i) avoid a lapse in a critical government service; or

2671 (ii) to mitigate a circumstance that is likely to have a negative impact on public health,
2672 safety, welfare, or property; and

2673 (b) (i) (A) the procurement unit is engaged in a standard procurement process for a
2674 procurement item that is the subject of the contract being extended; and

2675 (B) the standard procurement process is delayed due to an unintentional error;

2676 (ii) a change in an industry standard requires one or more significant changes to
2677 specifications for the procurement item; or

2678 (iii) an extension is necessary:

2679 (A) to prevent the loss of federal funds;

2680 (B) to mitigate the effects of a delay of a state or federal appropriation;

2681 (C) to enable the procurement unit to continue to receive a procurement item during a
2682 delay in the implementation of a contract awarded pursuant to a procurement that has already
2683 been conducted; or

2684 (D) to enable the procurement unit to continue to receive a procurement item during a
2685 period of time during which negotiations with a vendor under a new contract for the
2686 procurement item are being conducted;

2687 (2) for the period of a protest, appeal, or court action, if the protest, appeal, or court
2688 action is the reason for delaying the award of a new contract; or

2689 (3) for a period of time exceeding 120 days, if the attorney general or the procurement
2690 unit's attorney determines in writing that the contract extension does not violate this chapter or
2691 state or federal antitrust laws.

2692 Section 42. Section **63G-6a-803** is amended to read:

2693 **63G-6a-803. Emergency procurement.**

2694 (1) Notwithstanding any other provision of this chapter, [~~a~~] the chief procurement
2695 officer or the [procurement officer's designee may authorize] head of a procurement unit with
2696 independent procurement authority may authorize a procurement unit to engage in an
2697 emergency procurement without using a standard procurement process [when an emergency
2698 condition exists] if the procurement is necessary to:

2699 (a) avoid a lapse in a critical government service;

2700 (b) mitigate a circumstance that is likely to have a negative impact on public health,
2701 safety, welfare, or property; or

2702 (c) protect the legal interests of a public entity.

2703 (2) A procurement [~~officer who authorizes~~] unit conducting an emergency procurement
2704 under Subsection (1) shall:

2705 [~~(a) make the authorization in writing, stating the emergency condition upon which the~~
2706 ~~emergency procurement is made; and]~~

2707 [~~(b)~~] (a) ensure that the procurement is made with as much competition as reasonably
2708 practicable while;

2709 (i) avoiding a lapse in a critical government service;

2710 (ii) avoiding harm, or a risk of harm, to the public health, safety, welfare, or
2711 property[-]; or

2712 (iii) protecting the legal interests of a public entity; and

2713 (b) after the emergency has abated, prepare a written document explaining the
2714 emergency condition that necessitated the emergency procurement under Subsection (1).

2715 Section 43. Section **63G-6a-806** is amended to read:

2716 **63G-6a-806. Exception for public transit district contracting with a county or**
2717 **municipality.**

2718 A public transit district, organized under Title 17B, Chapter 2a, Part 8, Public Transit
2719 District Act, may, without going through a standard procurement process or [~~an~~] another
2720 exception to a standard procurement process described in [Part 8, Exception to Procurement
2721 Requirements] this part:

2722 (1) contract with a county or municipality to receive money from the county or

2723 municipality; and

2724 (2) use the money described in Subsection (1) to fund a transportation project or a
2725 transit-related program in accordance with rules made by the applicable rulemaking authority.

2726 Section 44. Section **63G-6a-1206** is amended to read:

2727 **63G-6a-1206. Rules and regulations to determine allowable incurred costs --**
2728 **Required information.**

2729 (1) (a) The applicable rulemaking authority may, by rule, establish the cost principles
2730 to be included in a cost-reimbursement contract to determine incurred costs for the purpose of
2731 calculating a reimbursement.

2732 (b) The cost principles established by rule under Subsection (1)(a) may be modified, by
2733 contract, if the procurement officer or the head of the issuing procurement unit approves the
2734 modification.

2735 (2) Except as provided in Subsection (5), a person who seeks to be, or is, a party in a
2736 cost-based contract with a procurement unit shall:

2737 (a) submit cost or pricing data relating to determining the cost or pricing amount; and

2738 (b) certify that, to the best of the contractor's knowledge and belief, the cost or pricing
2739 data submitted is accurate and complete as of the date specified by the procurement unit.

2740 (3) The procurement officer shall ensure that the date specified under Subsection (2)(b)
2741 is before:

2742 (a) the pricing of any contract awarded by a standard procurement process or pursuant
2743 to a sole source procurement, if the total contract price is expected to exceed an amount
2744 established by rule made by the applicable rulemaking authority; or

2745 (b) the pricing of any change order that is expected to exceed an amount established by
2746 rule made by the applicable rulemaking authority.

2747 (4) A contract or change order that requires a certification described in Subsection (2)
2748 shall include a provision that the price to the procurement unit, including profit or fee, shall be
2749 adjusted to exclude any significant sums by which the procurement unit finds that the price was
2750 increased because the contractor provided cost or pricing data that was inaccurate, incomplete,
2751 or not current as of the date specified by the procurement officer.

2752 (5) A procurement unit is not required to comply with Subsection (2) if:

2753 (a) the contract price is based on adequate price competition;

- 2754 (b) the contract price is based on established catalogue prices or market prices;
- 2755 (c) the contract price is set by law or rule; or
- 2756 (d) the procurement states, in writing:
 - 2757 (i) that, in accordance with rules made by the applicable rulemaking authority, the
 - 2758 requirements of Subsection (2) may be waived; and
 - 2759 (ii) the reasons for the waiver.

2760 ~~[(6) The procurement officer or audit entity under contract with the procurement unit~~
2761 ~~may, at reasonable times and places, only to the extent that the books and records relate to the~~
2762 ~~applicable cost or pricing data, audit the books and records of:]~~

2763 ~~[(a) a person who has submitted cost or pricing data pursuant to this section; or]~~

2764 ~~[(b) a contractor or subcontractor under a contract or subcontract other than a firm~~
2765 ~~fixed price contract.]~~

2766 ~~[(7) Unless a shorter time is provided for by contract:]~~

2767 ~~[(a) a person described in Subsection (6)(a) shall maintain the books and records~~
2768 ~~described in Subsection (6) for three years after the day on which the fiscal year in which final~~
2769 ~~payment is made under the contract ends;]~~

2770 ~~[(b) a contractor shall maintain the books and records described in Subsection (6) for~~
2771 ~~three years after the day on which the fiscal year in which final payment under the prime~~
2772 ~~contract ends; and]~~

2773 ~~[(c) a subcontractor shall maintain the books and records described in Subsection (6)~~
2774 ~~for three years after the day on which the fiscal year in which final payment is made under the~~
2775 ~~subcontract ends.]~~

2776 Section 45. Section **63G-6a-1206.3** is enacted to read:

2777 **63G-6a-1206.3. Auditing of books.**

2778 (1) The procurement officer or audit entity under contract with the procurement unit
2779 may, at reasonable times and places, and only to the extent that the books and records relate to
2780 the applicable contract, audit the books and records of:

2781 (a) a person who has submitted cost or pricing data pursuant to Section [63G-6a-1206](#);

2782 or

2783 (b) a contractor or subcontractor under a contract or subcontract.

2784 (2) (a) A person described in Subsection (1)(a) shall maintain all records related to a

2785 contract described in Subsection (1) for six years after the day on which the fiscal year in which
2786 final payment is made under the contract ends, or until all audits initiated within the six-year
2787 period have been completed, whichever is later.

2788 (b) A contractor shall maintain all records related to a contract described in Subsection
2789 (1) for six years after the day on which the fiscal year in which final payment under the prime
2790 contract ends, or until all audits initiated within the six-year period have been completed,
2791 whichever is later.

2792 (c) A subcontractor shall maintain all records related to the contract described in
2793 Subsection (1) for six years after the day on which the fiscal year in which final payment is
2794 made under the subcontract ends, or until all audits initiated within the six-year period have
2795 been completed, whichever is later.

2796 Section 46. Section **63G-6a-1206.5** is amended to read:

2797 **63G-6a-1206.5. Change in contract price.**

2798 A contractor may:

- 2799 (1) increase the contract price only in accordance with the terms of the contract[-]; and
2800 (2) lower the contract price at any time during the time a contract is in effect.

2801 Section 47. Section **63G-6a-1502** is amended to read:

2802 **63G-6a-1502. Requirements regarding procurement of design professional**
2803 **services.**

2804 (1) A procurement unit seeking to procure design professional services shall:

2805 (a) publicly announce all requirements for those services through a request for
2806 statement of qualifications, as provided in this part; and

2807 (b) negotiate contracts for design professional services:

2808 (i) on the basis of demonstrated competence and qualification for the type of services
2809 required; and

2810 (ii) at fair and reasonable prices.

2811 (2) A procurement unit shall procure design professional services as provided in this
2812 part, except as otherwise provided in Sections [~~63G-6a-403, 63G-6a-404, 63G-6a-408,~~]

2813 63G-6a-506, 63G-6a-802, and 63G-6a-803.

2814 (3) This part does not affect the authority of, and does not apply to procedures
2815 undertaken by, a procurement unit to obtain the services of architects or engineers in the

2816 capacity of employees of the procurement unit.

2817 Section 48. Section **63G-6a-1503.5** is amended to read:

2818 **63G-6a-1503.5. Evaluation of statements of qualifications.**

2819 (1) An evaluation committee appointed under Section **63G-6a-1503** shall evaluate and
2820 score each responsive [~~and responsible~~] statement of qualifications that has not been
2821 [~~disqualified~~] eliminated from consideration under this chapter, using the criteria described in
2822 the request for statement of qualifications.

2823 (2) Criteria not described in the request for statement of qualifications may not be used
2824 to evaluate a statement of qualifications.

2825 (3) An evaluation committee may enter into discussions or conduct interviews with, or
2826 attend presentations by, the design professionals whose statements of qualifications are under
2827 consideration.

2828 (4) An evaluation committee shall rank the top three highest scoring design
2829 professionals, in order of their scores, for the purpose of entering into fee negotiations as
2830 provided in Section **63G-6a-1505**.

2831 (5) If fewer than three responsible design professionals submit statements of
2832 qualifications [~~or~~] that are determined to be responsive [~~and responsible~~], the chief
2833 procurement officer or head of a procurement unit with independent procurement authority
2834 shall issue a written determination explaining why it is in the best interest of the procurement
2835 unit to continue the fee negotiation and the contracting process with less than three design
2836 professionals.

2837 (6) (a) The deliberations of an evaluation committee may be held in private.

2838 (b) If the evaluation committee is a public body, as defined in Section **52-4-103**, the
2839 evaluation committee shall comply with Section **52-4-205** in closing a meeting for its
2840 deliberations.

2841 Section 49. Section **63G-6a-1601** is amended to read:

2842 **Part 16. Protests**

2843 **63G-6a-1601. Title.**

2844 This part is known as "[~~Controversies and~~] Protests."

2845 Section 50. Section **63G-6a-1601.5** is enacted to read:

2846 **63G-6a-1601.5. Definitions.**

2847 As used in this part:

2848 (1) "Constructive knowledge":

2849 (a) means knowledge or information that a protestor would have if the protestor had
2850 exercised reasonable care or diligence, regardless of whether the protestor actually has the
2851 knowledge or information; and

2852 (b) includes knowledge of:

2853 (i) applicable provisions of this chapter and other law and administrative rule;

2854 (ii) instructions, criteria, deadlines, and requirements contained in the solicitation or in
2855 other documents made available to persons interested in the solicitation or provided in a
2856 mandatory pre-solicitation meeting;

2857 (iii) relevant facts and evidence supporting the protest or leading the protestor to
2858 contend that the protestor has been aggrieved in connection with a procurement;

2859 (iv) communications or actions, pertaining to the procurement, of all persons within the
2860 protestor's organization or under the supervision of the protestor; and

2861 (v) any other applicable information discoverable by the exercise of reasonable care or
2862 diligence.

2863 (2) "Protestor" means a person who files a protest under this part.

2864 (3) "Standing" means to have suffered an injury or harm or to be about to suffer
2865 imminent injury or harm, if:

2866 (a) the cause of the injury or harm is:

2867 (i) an infringement of the protestor's own right and not the right of another person who
2868 is not a party to the procurement;

2869 (ii) reasonably connected to the procurement unit's conduct; and

2870 (iii) the sole reason the protestor is not considered, or is no longer considered, for an
2871 award of a contract under the procurement that is the subject of the protest;

2872 (b) a decision on the protest in favor of the protestor:

2873 (i) is likely to redress the injury or harm; and

2874 (ii) would give the protestor a reasonable likelihood of being awarded a contract; and

2875 (c) the protestor has the legal authority to file the protest on behalf of the actual or
2876 prospective bidder or offeror or prospective contractor involved in the procurement that is the
2877 subject of the protest.

2878 Section 51. Section **63G-6a-1602** is amended to read:

2879 **63G-6a-1602. Protest -- Time for filing -- Authority to resolve protest.**

2880 (1) ~~[(a)]~~ A protest may be filed with the protest officer by ~~[(i) an actual or prospective~~
2881 ~~bidder or offeror]~~ a person who:

2882 (a) has standing; and

2883 (b) is aggrieved in connection with a procurement[;] or an award of a contract.

2884 ~~[(ii) a prospective contractor who]~~

2885 ~~[is aggrieved in connection with an award of a contract.]~~

2886 ~~[(b) (i) A protest under Subsection (1)(a) relating to an invitation for bids or a request~~
2887 ~~for proposals shall be filed:]~~

2888 ~~[(A) before the opening of bids or the closing date for proposals; or]~~

2889 ~~[(B) if the person filing the protest did not know and should not have known of the~~
2890 ~~facts giving rise to the protest before the bid opening or the closing date for proposals, within~~
2891 ~~seven days after the day on which the person knows or should have known of the facts giving~~
2892 ~~rise to the protest.]~~

2893 ~~[(ii) A protest under Subsection (1)(a) relating to a form of procurement not described~~
2894 ~~in Subsection (1)(b)(i) but involving a deadline established for the submission of a price or~~
2895 ~~response shall be filed:]~~

2896 ~~[(A) before the deadline for the submission of a price or response; or]~~

2897 ~~[(B) if the person filing the protest did not know and reasonably should not have~~
2898 ~~known of the facts giving rise to the protest before the deadline for the submission of a price or~~
2899 ~~response, within seven days after the day on which the person knows or reasonably should have~~
2900 ~~known of the facts giving rise to the protest.]~~

2901 ~~[(iii) A protest under Subsection (1)(a) relating to a form of procurement not described~~
2902 ~~in Subsection (1)(b)(i) or (ii) shall be filed within seven days after the day on which the person~~
2903 ~~filing the protest knows or should have known of the facts giving rise to the protest.]~~

2904 ~~[(2) A person who files a protest under this section shall include in the filing~~
2905 ~~document:]~~

2906 (2) A protest may not be filed after:

2907 (a) (i) (A) the opening of bids, for a protest relating to a procurement under a bidding
2908 process; or

2909 (B) the deadline for submitting responses to the solicitation, for a protest relating to
2910 another standard procurement process; or

2911 (ii) the closing of the procurement stage that is the subject of the protest:
2912 (A) if the protest relates to a multiple-stage procurement; and
2913 (B) notwithstanding Subsections (2)(a)(i)(A) and (B); or
2914 (b) the day that is seven days after the day on which the person knows or first has
2915 constructive knowledge of the facts giving rise to the protest, if:
2916 (i) the protestor did not know and did not have constructive knowledge of the facts
2917 giving rise to the protest before:
2918 (A) the opening of bids, for a protest relating to a procurement under a bidding process;
2919 (B) the deadline for submitting responses to the solicitation, for a protest relating to
2920 another standard procurement process; or

2921 (C) the closing of the procurement stage that is the subject of the protest, if the protest
2922 relates to a multiple-stage procurement; or

2923 (ii) the protest relates to a procurement process not described in Subsection (2)(a).

2924 (3) (a) A protestor shall include in a protest:
2925 [~~(a)~~] (i) the [person's] protestor's mailing address [~~of record~~] and email address [~~of~~
2926 record]; and

2927 [~~(b)~~] (ii) a concise statement of the [~~grounds upon which the protest is made.~~] facts and
2928 evidence:

2929 (A) leading the protestor to claim that the protestor has been aggrieved in connection
2930 with a procurement and providing the grounds for the protestor's protest; and

2931 (B) supporting the protestor's claim of standing.

2932 (b) A protest may not be considered unless it contains facts and evidence that, if true,
2933 would establish:

2934 (i) a violation of this chapter or other applicable law or rule;
2935 (ii) the procurement unit's failure to follow a provision of a solicitation;
2936 (iii) an error made by an evaluation committee or conducting procurement unit;
2937 (iv) a bias exercised by an evaluation committee or an individual committee member,
2938 excluding a bias that is a preference arising during the evaluation process because of how well
2939 a solicitation response meets criteria in the solicitation; or

- 2940 (v) a failure to correctly apply or calculate a scoring criterion.
- 2941 (4) A protest may not be based on a vague or unsubstantiated allegation.
- 2942 (5) A protest may not include a request for:
- 2943 (a) an explanation of the rationale or scoring of evaluation committee members;
- 2944 (b) the disclosure of a protected record or protected information in addition to the
- 2945 information provided under the disclosure provisions of this chapter; or
- 2946 (c) other information, documents, or explanations not explicitly provided for in this
- 2947 chapter.
- 2948 ~~[(3)]~~ (6) A person ~~[described in Subsection (1)]~~ who fails to file a protest ~~[within the~~
- 2949 ~~time prescribed in Subsection (1)(b)]~~ by the protest deadline may not:
- 2950 (a) protest to the protest officer a solicitation or award of a contract; or
- 2951 (b) file an action or appeal challenging a solicitation or award of a contract before an
- 2952 appeals panel, a court, or any other forum.
- 2953 ~~[(4)]~~ (7) Subject to the applicable requirements of Section [63G-10-403](#), a protest
- 2954 officer or the head of a procurement unit may enter into a settlement agreement to resolve a
- 2955 protest.
- 2956 Section 52. Section [63G-6a-1603](#) is amended to read:
- 2957 **63G-6a-1603. Protest officer responsibilities and authority -- Proceedings on**
- 2958 **protest -- Effect of decision.**
- 2959 (1) After a protest is filed, the protest officer shall determine whether the protest is
- 2960 timely filed and complies fully with the requirements of Section [63G-6a-1602](#).
- 2961 (2) If the protest officer determines that the protest is not timely filed or that the protest
- 2962 does not fully comply with Section [63G-6a-1602](#), the protest officer shall dismiss the protest.
- 2963 (3) If the protest officer determines that the protest is timely filed and complies fully
- 2964 with Section [63G-6a-1602](#), the protest officer shall:
- 2965 (a) dismiss the protest if the protest officer determines that the protest alleges facts that,
- 2966 if true, do not provide an adequate basis for the protest;
- 2967 (b) uphold the protest without holding a hearing if the protest officer determines that
- 2968 the undisputed facts of the protest indicate that the protest should be upheld; or
- 2969 (c) hold a hearing on the protest if there is a genuine issue of material fact that needs to
- 2970 be resolved in order to determine whether the protest should be upheld.

- 2971 (4) (a) If a hearing is held on a protest, the protest officer may:
- 2972 (i) subpoena witnesses and compel their attendance at the protest hearing;
- 2973 (ii) subpoena documents for production at the protest hearing;
- 2974 (iii) obtain additional factual information; and
- 2975 (iv) obtain testimony from experts, the person filing the protest, representatives of the
- 2976 procurement unit, or others to assist the protest officer to make a decision on the protest.
- 2977 (b) The Rules of Evidence do not apply to a protest hearing.
- 2978 (c) The applicable rulemaking authority shall make rules relating to intervention in a
- 2979 protest, including designating:
- 2980 (i) who may intervene; and
- 2981 (ii) the time and manner of intervention.
- 2982 (d) A protest officer shall:
- 2983 (i) record each hearing held on a protest under this section;
- 2984 (ii) regardless of whether a hearing on a protest is held under this section, preserve all
- 2985 records and other evidence relied upon in reaching the protest officer's written decision until
- 2986 the decision, and any appeal of the decision, becomes final; and
- 2987 (iii) submit to the procurement policy board chair a copy of the protest officer's written
- 2988 decision and all records and other evidence relied upon in reaching the decision, within seven
- 2989 days after receiving:
- 2990 (A) notice that an appeal of the protest officer's decision has been filed under Section
- 2991 [63G-6a-1702](#); or
- 2992 (B) a request from the chair of the procurement policy board.
- 2993 (e) A protest officer's holding a hearing, considering a protest, or issuing a written
- 2994 decision under this section does not affect a person's right to later question or challenge the
- 2995 protest officer's jurisdiction to hold the hearing, consider the protest, or issue the decision.
- 2996 (5) (a) The deliberations of a protest officer may be held in private.
- 2997 (b) If the protest officer is a public body, as defined in Section [52-4-103](#), the protest
- 2998 officer shall comply with Section [52-4-205](#) in closing a meeting for its deliberations.
- 2999 (6) (a) A protest officer, or the protest officer's designee, shall promptly issue a written
- 3000 decision regarding any protest, unless the protest is settled by mutual agreement.
- 3001 (b) The decision shall:

- 3002 (i) state the reasons for the action taken;
- 3003 (ii) inform the protestor of the right to judicial or administrative review as provided in
3004 this chapter; and
- 3005 (iii) indicate the amount of the security deposit or bond required under Section
3006 [63G-6a-1703](#).
- 3007 (c) A person who issues a decision under Subsection (6)(a) shall mail, email, or
3008 otherwise immediately furnish a copy of the decision to the protestor.
- 3009 (7) A decision described in this section is effective until stayed or reversed on appeal,
3010 except to the extent provided in Section [63G-6a-1903](#).
- 3011 (8) (a) A decision described in Subsection (6)(a) that is issued in relation to a
3012 procurement unit other than a legislative procurement unit, a judicial procurement unit, a
3013 nonadopting local government procurement unit, or a public transit district is final and
3014 conclusive unless the protestor files an appeal under Section [63G-6a-1702](#).
- 3015 (b) A decision described in Subsection (6)(a) that is issued in relation to a legislative
3016 procurement unit, a judicial procurement unit, a nonadopting local government procurement
3017 unit, or a public transit district is final and conclusive unless the protestor files an appeal under
3018 Section [63G-6a-1802](#).
- 3019 (9) If the protest officer does not issue the written decision regarding a protest [~~or a~~
3020 ~~contract controversy~~] within 30 calendar days after the day on which [~~a written request for a~~
3021 ~~final decision is~~] the protest was filed with the protest officer, or within a longer period as may
3022 be agreed upon by the parties, the protestor [~~, prospective contractor, or contractor~~] may proceed
3023 as if an adverse decision had been received.
- 3024 (10) A determination under this section by the protest officer regarding an issue of fact
3025 may not be overturned on appeal unless the decision is arbitrary and capricious or clearly
3026 erroneous.
- 3027 Section 53. Section [63G-6a-1702](#) is amended to read:
- 3028 **[63G-6a-1702. Appeal to Utah State Procurement Policy Board -- Appointment of](#)**
3029 **[procurement appeals panel -- Proceedings.](#)**
- 3030 (1) This part applies to all procurement units other than:
- 3031 (a) a legislative procurement unit;
- 3032 (b) a judicial procurement unit;

3033 (c) a nonadopting local government procurement unit; or
3034 (d) a public transit district.

3035 (2) (a) Subject to Section 63G-6a-1703, a party to a protest involving a procurement
3036 unit other than a procurement unit listed in Subsection (1)(a), (b), (c), or (d) may appeal the
3037 protest decision to the board by filing a written notice of appeal with the chair of the board
3038 within seven days after:

3039 (i) the day on which the written decision described in Section 63G-6a-1603 is:
3040 (A) personally served on the party or the party's representative; or
3041 (B) emailed or mailed to the address or email address [~~of record~~] provided by the party
3042 under Subsection 63G-6a-1602[~~(2)~~](3); or
3043 (ii) the day on which the 30-day period described in Subsection 63G-6a-1603(9) ends,
3044 if a written decision is not issued before the end of the 30-day period.

3045 (b) A person appealing a debarment or suspension of a procurement unit other than a
3046 procurement unit listed in Subsection (1)(a), (b), (c), or (d) shall file a written notice of appeal
3047 with the chair of the board no later than seven days after the debarment or suspension.

3048 (c) A notice of appeal under Subsection (2)(a) or (b) shall:
3049 (i) include the address of record and email address of record of the party filing the
3050 notice of appeal; and
3051 (ii) be accompanied by a copy of any written protest decision or debarment or
3052 suspension order.

3053 (3) A person may not base an appeal of a protest under this section on a ground not
3054 specified in the person's protest under Section 63G-6a-1602.

3055 (4) A person may not appeal from a protest described in Section 63G-6a-1602, unless:
3056 (a) a decision on the protest has been issued; or
3057 (b) a decision is not issued and the 30-day period described in Subsection
3058 63G-6a-1603(9), or a longer period agreed to by the parties, has passed.

3059 (5) The chair of the board or a designee of the chair who is not employed by the
3060 procurement unit responsible for the solicitation, contract award, or other action complained of:
3061 (a) shall, within seven days after the day on which the chair receives a timely written
3062 notice of appeal under Subsection (2), and if all the requirements of Subsection (2) and Section
3063 63G-6a-1703 have been met, appoint:

3064 (i) a procurement appeals panel to hear and decide the appeal, consisting of at least
3065 three individuals, each of whom is:
3066 (A) a member of the board; or
3067 (B) a designee of a member appointed under Subsection (5)(a)(i)(A), if the designee is
3068 approved by the chair; and
3069 (ii) one of the members of the procurement appeals panel to be the chair of the panel;
3070 (b) may:
3071 (i) appoint the same procurement appeals panel to hear more than one appeal; or
3072 (ii) appoint a separate procurement appeals panel for each appeal;
3073 (c) may not appoint a person to a procurement appeals panel if the person is employed
3074 by the procurement unit responsible for the solicitation, contract award, or other action
3075 complained of; and
3076 (d) shall, at the time the procurement appeals panel is appointed, provide appeals panel
3077 members with a copy of the protest officer's written decision and all other records and other
3078 evidence that the protest officer relied on in reaching the decision.
3079 (6) A procurement appeals panel described in Subsection (5) shall:
3080 (a) consist of an odd number of members;
3081 (b) conduct an informal proceeding on the appeal within 60 days after the day on which
3082 the procurement appeals panel is appointed:
3083 (i) unless all parties stipulate to a later date; and
3084 (ii) subject to Subsection (8);
3085 (c) at least seven days before the proceeding, mail, email, or hand-deliver a written
3086 notice of the proceeding to the parties to the appeal; and
3087 (d) within seven days after the day on which the proceeding ends:
3088 (i) issue a written decision on the appeal; and
3089 (ii) mail, email, or hand-deliver the written decision on the appeal to the parties to the
3090 appeal and to the protest officer.
3091 (7) (a) The deliberations of a procurement appeals panel may be held in private.
3092 (b) If the procurement appeals panel is a public body, as defined in Section [52-4-103](#),
3093 the procurement appeals panel shall comply with Section [52-4-205](#) in closing a meeting for its
3094 deliberations.

3095 (8) A procurement appeals panel may continue a procurement appeals proceeding
3096 beyond the 60-day period described in Subsection (6)(b) if the procurement appeals panel
3097 determines that the continuance is in the interests of justice.

3098 (9) A procurement appeals panel:

3099 (a) shall, subject to Subsection (9)(c), consider the appeal based solely on:

3100 (i) the protest decision;

3101 (ii) the record considered by the person who issued the protest decision; and

3102 (iii) if a protest hearing was held, the record of the protest hearing;

3103 (b) may not take additional evidence;

3104 (c) notwithstanding Subsection (9)(b), may, during an informal hearing, ask questions
3105 and receive responses regarding the appeal, the protest decision, or the record in order to assist
3106 the panel to understand the appeal, the protest decision, and the record; and

3107 (d) shall uphold the decision of the protest officer, unless the decision is arbitrary and
3108 capricious or clearly erroneous.

3109 (10) If a procurement appeals panel determines that the decision of the protest officer is
3110 arbitrary and capricious or clearly erroneous, the procurement appeals panel:

3111 (a) shall remand the matter to the protest officer, to cure the problem or render a new
3112 decision;

3113 (b) may recommend action that the protest officer should take; and

3114 (c) may not order that:

3115 (i) a contract be awarded to a certain person;

3116 (ii) a contract or solicitation be cancelled; or

3117 (iii) any other action be taken other than the action described in Subsection (10)(a).

3118 (11) The board shall make rules relating to the conduct of an appeals proceeding,
3119 including rules that provide for:

3120 (a) expedited proceedings; and

3121 (b) electronic participation in the proceedings by panel members and participants.

3122 (12) The Rules of Evidence do not apply to an appeals proceeding.

3123 Section 54. Section **63G-6a-1703** is amended to read:

3124 **63G-6a-1703. Requirement to pay a security deposit or post a bond -- Exceptions**
3125 **-- Amount -- Forfeiture of security deposit or bond.**

3126 (1) [~~Except as provided by rule made under Subsection (2)(a), a~~] A person who files a
3127 notice of appeal under Section 63G-6a-1702 shall, before the expiration of the time provided
3128 under Subsection 63G-6a-1702(2) for filing a notice of appeal, pay a security deposit or post a
3129 bond with the office of the protest officer.

3130 (2) The amount of a security deposit or bond required under Subsection (1) is:

3131 (a) for an appeal relating to an invitation for bids or request for proposals and except as
3132 provided in Subsection (2)(b)(ii):

3133 (i) \$20,000, if the total contract value is under \$500,000;

3134 (ii) \$25,000, if the total contract value is \$500,000 or more but less than \$1,000,000;

3135 (iii) \$50,000, if the total contract value is \$1,000,000 or more but less than \$2,000,000;

3136 (iv) \$95,000, if the total contract value is \$2,000,000 or more but less than \$4,000,000;

3137 (v) \$180,000, if the total contract value is \$4,000,000 or more but less than \$8,000,000;

3138 (vi) \$320,000, if the total contract value is \$8,000,000 or more but less than
3139 \$16,000,000;

3140 (vii) \$600,000, if the total contract value is \$16,000,000 or more but less than
3141 \$32,000,000;

3142 (viii) \$1,100,000, if the total contract value is \$32,000,000 or more but less than
3143 \$64,000,000;

3144 (ix) \$1,900,000, if the total contract value is \$64,000,000 or more but less than
3145 \$128,000,000;

3146 (x) \$3,500,000, if the total contract value is \$128,000,000 or more but less than
3147 \$256,000,000;

3148 (xi) \$6,400,000, if the total contract value is \$256,000,000 or more but less than
3149 \$512,000,000; and

3150 (xii) \$10,200,000, if the total contract value is \$512,000,000 or more; or

3151 (b) \$20,000, for an appeal:

3152 (i) relating to any type of procurement process other than an invitation for bids or
3153 request for proposals;

3154 (ii) relating to an invitation for bids or request for proposals, if the estimated total
3155 contract value cannot be determined; or

3156 (iii) of a debarment or suspension.

3157 (3) (a) For an appeal relating to an invitation for bids, the estimated total contract value
3158 shall be based on:

3159 (i) the lowest responsible and responsive bid amount for the entire term of the contract,
3160 excluding any renewal period, if the bid opening has occurred;

3161 (ii) the total budget for the procurement item for the entire term of the contract,
3162 excluding any renewal period, if bids are based on unit or rate pricing; or

3163 (iii) if the contract is being rebid, the historical usage and amount spent on the contract
3164 over the life of the contract.

3165 (b) For an appeal relating to a request for proposals, the estimated total contract value
3166 shall be based on:

3167 (i) the lowest cost proposed in a response to a request for proposals, considering the
3168 entire term of the contract, excluding any renewal period, if the opening of proposals has
3169 occurred;

3170 (ii) the total budget for the procurement item over the entire term of the contract,
3171 excluding any renewal period, if opened cost proposals are based on unit or rate pricing; or

3172 (iii) if the contract is being reissued, the historical usage and amount spent on the
3173 contract over the life of the contract that is being reissued.

3174 (4) The protest officer shall:

3175 (a) retain the security deposit or bond until the protest and any appeal of the protest
3176 decision is final;

3177 (b) as it relates to a security deposit:

3178 (i) deposit the security deposit into an interest-bearing account; and

3179 (ii) after any appeal of the protest decision becomes final, return the security deposit
3180 and the interest it accrues to the person who paid the security deposit, unless the security
3181 deposit is forfeited to the general fund of the procurement unit under Subsection (5); and

3182 (c) as it relates to a bond:

3183 (i) retain the bond until the protest and any appeal of the protest decision becomes
3184 final; and

3185 (ii) after the protest and any appeal of the protest decision becomes final, return the
3186 bond to the person who posted the bond, unless the bond is forfeited to the general fund of the
3187 procurement unit under Subsection (5).

3188 (5) A security deposit that is paid, or a bond that is posted, under this section shall
3189 forfeit to the general fund of the procurement unit if:

3190 (a) the person who paid the security deposit or posted the bond fails to ultimately
3191 prevail on appeal; and

3192 (b) the procurement appeals panel finds that the protest or appeal is frivolous or that its
3193 primary purpose is to harass or cause a delay.

3194 Section 55. Section **63G-6a-1903** is amended to read:

3195 **63G-6a-1903. Effect of timely protest or appeal.**

3196 A procurement unit, other than a legislative procurement unit, a judicial procurement
3197 unit, a nonadopting local government procurement unit, or a public transit district, may not
3198 proceed further with a solicitation or with the award of a contract:

3199 (1) during the pendency of a timely:

3200 (a) protest under [~~Subsection~~] Section [63G-6a-1602](#)~~[(+)]~~;

3201 (b) appeal of a protest under [Section 63G-6a-1702](#); or

3202 (c) appeal of a procurement appeals panel decision under [Section 63G-6a-1802](#); and

3203 (2) until:

3204 (a) all administrative and judicial remedies are exhausted;

3205 (b) for a protest under [Section 63G-6a-1602](#) or an appeal under [Section 63G-6a-1702](#):

3206 (i) the chief procurement officer, after consultation with the attorney general's office
3207 and the head of the using agency, makes a written determination that award of the contract
3208 without delay is in the best interest of the procurement unit or the state;

3209 (ii) the head of a procurement unit with independent procurement authority, after
3210 consultation with the procurement unit's attorney, makes a written determination that award of
3211 the contract without delay is in the best interest of the procurement unit or the state; or

3212 (iii) for a procurement unit that is not represented by the attorney general's office, the
3213 procurement unit, after consulting with the attorney for the procurement unit, makes a written
3214 determination that award of the contract without delay is in the best interest of the procurement
3215 unit or the state; or

3216 (c) for an appeal under [Section 63G-6a-1802](#), or an appeal to a higher court than
3217 district court:

3218 (i) the chief procurement officer, after consultation with the attorney general's office

3219 and the head of the using agency, makes a written determination that award of the contract
3220 without delay is in the best interest of the procurement unit or the state;

3221 (ii) the head of a procurement unit with independent procurement authority, after
3222 consultation with the procurement unit's attorney, makes a written determination that award of
3223 the contract without delay is in the best interest of the procurement unit or the state; or

3224 (iii) for a procurement unit that is not represented by the attorney general's office, the
3225 procurement unit, after consulting with the attorney for the procurement unit, makes a written
3226 determination that award of the contract without delay is necessary to protect the best interest
3227 of the procurement unit or the state.

3228 Section 56. Section **63G-6a-2003** is amended to read:

3229 **63G-6a-2003. Records of contracts made -- Audits -- Contract requirements.**

3230 The chief procurement officer, the procurement officer, or the head of a procurement
3231 unit with independent procurement authority shall maintain a record of all contracts made
3232 under Section [~~63G-6a-408~~] [63G-6a-506](#), [63G-6a-802](#), or [63G-6a-803](#), in accordance with
3233 Title 63G, Chapter 2, Government Records Access and Management Act. The record shall
3234 contain each contractor's name, the amount and type of each contract, and a listing of the
3235 procurement items to which the contract relates.

3236 Section 57. Section **63G-6a-2105** is amended to read:

3237 **63G-6a-2105. Cooperative procurements -- Contracts with federal government --**
3238 **Regional solicitations.**

3239 (1) The chief procurement officer may, in accordance with the requirements of this
3240 chapter, enter into a cooperative procurement, and a contract that is awarded as a result of a
3241 cooperative procurement, with:

- 3242 (a) another state;
3243 (b) a cooperative purchasing organization; or
3244 (c) a public entity inside or outside the state.

3245 (2) A public entity, nonprofit organization, or, as permitted under federal law, an
3246 agency of the federal government, may obtain a procurement item from a state cooperative
3247 contract or a contract awarded by the chief procurement officer under Subsection (1), without
3248 signing a participating addendum if the solicitation issued by the chief procurement officer to
3249 obtain the contract includes a statement indicating that the resulting contract will be issued for

3250 the benefit of public entities and, as applicable, nonprofit organizations and agencies of the
3251 federal government.

3252 (3) Except as provided in Section [~~63G-6a-408~~] [63G-6a-506](#), or as otherwise provided
3253 in this chapter, an executive branch procurement unit may not obtain a procurement item from
3254 a source other than a state cooperative contract or a contract awarded by the chief procurement
3255 officer under Subsection (1), if the procurement item is available under a state cooperative
3256 contract or a contract awarded by the chief procurement officer under Subsection (1).

3257 (4) A Utah procurement unit may:

3258 (a) contract with the federal government without going through a standard procurement
3259 process or an exception to a standard procurement process, described in Part 8, Exceptions to
3260 Procurement Requirements, if the procurement item obtained under the contract is provided:

3261 (i) directly by the federal government and not by a person contracting with the federal
3262 government; or

3263 (ii) by a person under contract with the federal government that obtained the contract in
3264 a manner that substantially complies with the provisions of this chapter;

3265 (b) participate in, sponsor, conduct, or administer a cooperative procurement with
3266 another Utah procurement unit or another public entity in Utah, if:

3267 (i) each party unit involved in the cooperative procurement enters into an agreement
3268 describing the rights and duties of each party;

3269 (ii) the procurement is conducted, and the contract awarded, in accordance with the
3270 requirements of this chapter;

3271 (iii) the solicitation:

3272 (A) clearly indicates that the procurement is a cooperative procurement; and

3273 (B) identifies each party that may purchase under the resulting contract; and

3274 (iv) each party involved in the cooperative procurement signs a participating addendum
3275 describing its rights and obligations in relation to the resulting contract; or

3276 (c) purchase under, or otherwise participate in, an agreement or contract of a
3277 cooperative purchasing organization, if:

3278 (i) each party involved in the cooperative procurement enters into an agreement
3279 describing the rights and duties of each party;

3280 (ii) the procurement was conducted in accordance with the requirements of this

3281 chapter;

3282 (iii) the solicitation:

3283 (A) clearly indicates that the procurement is a cooperative procurement; and

3284 (B) identifies each party that may purchase under the resulting contract; and

3285 (iv) each party involved in the cooperative procurement signs a participating addendum
3286 describing its rights and obligations in relation to the resulting contract.

3287 (5) A procurement unit may not obtain a procurement item under a contract that results
3288 from a cooperative procurement described in Subsection (4), [if] unless the procurement unit:

3289 (a) is [~~not~~] identified under Subsection (4)(b)(iii)(B) or (4)(c)(iii)(B); [~~or~~] and

3290 (b) [~~does not sign~~] signs a participating addendum to the contract as required by this
3291 section.

3292 (6) A procurement unit, other than a legislative procurement unit or a judicial
3293 procurement unit, may not obtain a procurement item under a contract held by the United
3294 States General Services Administration, unless, based upon documentation provided by the
3295 procurement unit, the Director of the State Division of Purchasing and General Services
3296 determines in writing that the United States General Services Administration procured the
3297 contract in a manner that substantially complies with the provisions of this chapter.

3298 (7) (a) As used in this Subsection (7), "regional solicitation" means a solicitation issued
3299 by the chief procurement officer for the procurement of a procurement item within a specified
3300 geographical region of the state.

3301 (b) In addition to any other duty or authority under this section, the chief procurement
3302 officer shall:

3303 (i) after considering board recommendations, develop a plan for issuing regional
3304 solicitations;

3305 (ii) present the plan to the Government Operations Interim Committee by September 1,
3306 2014; and

3307 (iii) after developing a plan, issue regional solicitations for procurement items in
3308 accordance with the plan and this chapter.

3309 (c) A plan under Subsection (7)(b) shall:

3310 (i) define the proposed regional boundaries for regional solicitations;

3311 (ii) specify the types of procurement items for which a regional solicitation may be

3312 issued; and

3313 (iii) identify the regional solicitations that the chief procurement officer plans to issue.

3314 (d) A regional solicitation shall require that a person responding to the solicitation offer
3315 similar warranties and submit to similar obligations as are standard under other state
3316 cooperative contracts.

3317 (e) [~~A~~] Except as authorized by the chief procurement officer, a procurement item that
3318 is available under a state cooperative contract may not be provided under a contract pursuant to
3319 a regional solicitation until after the expiration of the state cooperative contract.

3320 Section 58. Section **63G-6a-2404** is amended to read:

3321 **63G-6a-2404. Unlawful conduct -- Exceptions -- Classification of offenses.**

3322 (1) (a) It is unlawful for a person who has or is seeking a contract with or a grant from
3323 a public entity knowingly to give, or offer, promise, or pledge to give, a gratuity or kickback to:

3324 (i) the public entity;

3325 (ii) a procurement professional or contract administration professional; or

3326 (iii) an individual who the person knows is a family member of an individual described
3327 in Subsection (1)(a)(ii).

3328 (b) It is not unlawful for a public agency to give, offer, promise, or pledge to give a
3329 contribution to another public agency.

3330 (c) A person is not guilty of unlawful conduct under Subsection (1)(a) for:

3331 (i) giving or offering, promising, or pledging to give a contribution to a public entity,
3332 unless done with the intent to induce the public entity, in exchange, to:

3333 (A) award a contract or grant;

3334 (B) make a procurement decision; or

3335 (C) take an action relating to the administration of a contract or grant; or

3336 (ii) giving or offering, promising, or pledging to give something of value to an
3337 organization to which a procurement professional or contract administration professional
3338 belongs, unless done with the intent to induce a public entity, in exchange, to:

3339 (A) award a contract or grant;

3340 (B) make a procurement decision; or

3341 (C) take an action relating to the administration of a contract or grant.

3342 (2) (a) It is unlawful for a procurement professional or contract administration

3343 professional, or a family member of either, knowingly to receive or accept, offer or agree to
3344 receive or accept, or ask for a promise or pledge of, a gratuity or kickback from a person who
3345 has or is seeking a contract with or a grant from a public entity.

3346 (b) An individual is not guilty of unlawful conduct under Subsection (2)(a) for
3347 receiving or accepting, offering or agreeing to receive or accept, or asking for a promise or
3348 pledge of a contribution on behalf of a public entity, unless done with the intent that the public
3349 entity, in exchange:

3350 (i) award a contract or grant;

3351 (ii) make a procurement decision; or

3352 (iii) take an action relating to the administration of a contract or grant.

3353 (3) Notwithstanding Subsections (1) and (2), it is not unlawful for a person to give or
3354 receive, offer to give or receive, or promise or pledge to give or ask for a promise or pledge of,
3355 a hospitality gift, if:

3356 (a) the total value of the hospitality gift is less than \$10; and

3357 (b) the aggregate value of all hospitality gifts from the person to the recipient in a
3358 calendar year is less than \$50.

3359 (4) A person who engages in the conduct made unlawful under Subsection (1) or (2) is
3360 guilty of:

3361 (a) a second degree felony, if the total value of the gratuity or kickback is \$1,000 or
3362 more;

3363 (b) a third degree felony, if the total value of the gratuity or kickback is \$250 or more
3364 but less than \$1,000;

3365 (c) a class A misdemeanor, if the total value of the gratuity or kickback is \$100 or more
3366 but less than \$250; and

3367 (d) a class B misdemeanor, if the total value of the gratuity or kickback is less than
3368 \$100.

3369 (5) The criminal sanctions described in Subsection (4) do not preclude the imposition
3370 of other penalties for conduct made unlawful under this part, in accordance with other
3371 applicable law, including:

3372 (a) dismissal from employment or other disciplinary action;

3373 (b) for an elected officer listed in Section [77-6-1](#), removal from office as provided in

3374 Title 77, Chapter 6, Removal by Judicial Proceedings;

3375 (c) requiring the public officer or employee to return the value of the unlawful gratuity
3376 or kickback; and

3377 (d) any other civil penalty provided by law.

3378 Section 59. Section **63G-6a-2407** is amended to read:

3379 **63G-6a-2407. Duty to report unlawful conduct.**

3380 [~~(1)~~ A procurement professional shall notify the attorney general or other appropriate
3381 prosecuting attorney if the procurement professional has actual knowledge that a person has
3382 engaged in:]

3383 (1) As used in this section, "unlawful conduct" means:

3384 (a) conduct made unlawful under this part; or

3385 (b) conduct, including bid rigging, improperly steering a contract to a favored vendor,
3386 exercising undue influence on an individual involved in the procurement process, or
3387 participating in collusion or other anticompetitive practices, made unlawful under other
3388 applicable law.

3389 (2) (a) A procurement professional with actual knowledge that a person has engaged in
3390 unlawful conduct shall report the person's unlawful conduct to:

3391 (i) the state auditor; or

3392 (ii) the attorney general or other appropriate prosecuting attorney.

3393 (b) An individual not subject to the requirement of Subsection (2)(a) who has actual
3394 knowledge that a person has engaged in unlawful conduct may report the person's unlawful
3395 conduct to:

3396 (i) the state auditor; or

3397 (ii) the attorney general or other appropriate prosecuting attorney.

3398 [~~(2)~~] (3) A procurement professional who fails to comply with the requirement of
3399 Subsection [~~(1)~~] (2)(a) is subject to any applicable disciplinary action or civil penalty identified
3400 in Subsection **63G-6a-2404(5)**.

3401 Section 60. Section **63G-10-403** is amended to read:

3402 **63G-10-403. Department of Transportation bid or request for proposals protest
3403 settlement agreement approval and review.**

3404 (1) As used in this section:

3405 (a) "Department" means the Department of Transportation created in Section [72-1-201](#).

3406 (b) "Settlement agreement" includes stipulations, consent decrees, settlement
3407 agreements, or other legally binding documents or representations resolving a dispute between
3408 the department and another party when the department is required to pay money or required to
3409 take legally binding action.

3410 (2) The department shall obtain the approval of the Transportation Commission or the
3411 governor or review by the Legislative Management Committee of a settlement agreement that
3412 involves a bid or request for proposal protest in accordance with this section.

3413 (3) A settlement agreement that is being settled by the department as part of a bid or
3414 request for proposal protest, in accordance with Subsection [63G-6a-1602](#)~~(4)~~(7), that might
3415 cost government entities more than \$100,000 to implement shall be presented to the
3416 Transportation Commission for approval or rejection.

3417 (4) A settlement agreement that is being settled by the department as part of a bid or
3418 request for proposal protest, in accordance with Subsection [63G-6a-1602](#)~~(4)~~(7), that might
3419 cost government entities more than \$500,000 to implement shall be presented:

3420 (a) to the Transportation Commission for approval or rejection; and

3421 (b) to the governor for approval or rejection.

3422 (5) (a) A settlement agreement that is being settled by the department as part of a bid or
3423 request for proposal protest, in accordance with Subsection [63G-6a-1602](#)~~(4)~~(7), that might
3424 cost government entities more than \$1,000,000 to implement shall be presented:

3425 (i) to the Transportation Commission for approval or rejection;

3426 (ii) to the governor for approval or rejection; and

3427 (iii) if the settlement agreement is approved by the Transportation Commission and the
3428 governor, to the Legislative Management Committee.

3429 (b) The Legislative Management Committee may recommend approval or rejection of
3430 the settlement agreement.

3431 (6) (a) The department may not enter into a settlement agreement that resolves a bid or
3432 request for proposal protest, in accordance with Subsection [63G-6a-1602](#)~~(4)~~(7), that might
3433 cost government entities more than \$100,000 to implement until the Transportation
3434 Commission has approved the agreement.

3435 (b) The department may not enter into a settlement agreement that resolves a bid or

3436 request for proposal protest, in accordance with Subsection [63G-6a-1602\[\(4\)\]\(7\)](#), that might
3437 cost government entities more than \$500,000 to implement until the Transportation
3438 Commission and the governor have approved the agreement.

3439 (c) The department may not enter into a settlement agreement that resolves a bid or
3440 request for proposal protest, in accordance with Subsection [63G-6a-1602\[\(4\)\]\(7\)](#), that might
3441 cost government entities more than \$1,000,000 to implement until:

- 3442 (i) the Transportation Commission has approved the agreement;
- 3443 (ii) the governor has approved the agreement; and
- 3444 (iii) the Legislative Management Committee has reviewed the agreement.

3445 Section 61. Section **72-6-107.5** is amended to read:

3446 **72-6-107.5. Construction of improvements of highway -- Contracts -- Health**
3447 **insurance coverage.**

3448 (1) For purposes of this section:

3449 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
3450 [34A-2-104](#) who:

- 3451 (i) works at least 30 hours per calendar week; and
- 3452 (ii) meets employer eligibility waiting requirements for health care insurance which
3453 may not exceed the first day of the calendar month following 60 days from the date of hire.

3454 (b) "Health benefit plan" has the same meaning as provided in Section [31A-1-301](#).

3455 (c) "Qualified health insurance coverage" is as defined in Section [26-40-115](#).

3456 (d) "Subcontractor" has the same meaning provided for in Section [63A-5-208](#).

3457 (2) (a) Except as provided in Subsection (3), this section applies to contracts entered
3458 into by the department on or after July 1, 2009, for construction or design of highways and to a
3459 prime contractor or to a subcontractor in accordance with Subsection (2)(b).

3460 (b) (i) A prime contractor is subject to this section if the prime contract is in the
3461 amount of \$1,500,000 or greater.

3462 (ii) A subcontractor is subject to this section if a subcontract is in the amount of
3463 \$750,000 or greater.

3464 (3) This section does not apply if:

3465 (a) the application of this section jeopardizes the receipt of federal funds;

3466 (b) the contract is a sole source contract; or

3467 (c) the contract is an emergency procurement.

3468 (4) (a) This section does not apply to a change order as defined in Section [63G-6a-103](#),
3469 or a modification to a contract, when the contract does not meet the initial threshold required
3470 by Subsection (2).

3471 (b) A person who intentionally uses change orders or contract modifications to
3472 circumvent the requirements of Subsection (2) is guilty of an infraction.

3473 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the department that
3474 the contractor has and will maintain an offer of qualified health insurance coverage for the
3475 contractor's employees and the employees' dependents during the duration of the contract.

3476 (b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall
3477 demonstrate to the department that the subcontractor has and will maintain an offer of qualified
3478 health insurance coverage for the subcontractor's employees and the employees' dependents
3479 during the duration of the contract.

3480 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
3481 the duration of the contract is subject to penalties in accordance with administrative rules
3482 adopted by the department under Subsection (6).

3483 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
3484 requirements of Subsection (5)(b).

3485 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
3486 the duration of the contract is subject to penalties in accordance with administrative rules
3487 adopted by the department under Subsection (6).

3488 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
3489 requirements of Subsection (5)(a).

3490 (6) The department shall adopt administrative rules:

3491 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

3492 (b) in coordination with:

3493 (i) the Department of Environmental Quality in accordance with Section [19-1-206](#);

3494 (ii) the Department of Natural Resources in accordance with Section [79-2-404](#);

3495 (iii) the State Building Board in accordance with Section [63A-5-205](#);

3496 (iv) the State Capitol Preservation Board in accordance with Section [63C-9-403](#);

3497 (v) a public transit district in accordance with Section [17B-2a-818.5](#); and

3498 (vi) the Legislature's Administrative Rules Review Committee; and
3499 (c) which establish:
3500 (i) the requirements and procedures a contractor must follow to demonstrate to the
3501 department compliance with this section which shall include:
3502 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or
3503 (b) more than twice in any 12-month period; and
3504 (B) that the actuarially equivalent determination required for qualified health insurance
3505 coverage in Subsection (1) is met by the contractor if the contractor provides the department or
3506 division with a written statement of actuarial equivalency from either:
3507 (I) the Utah Insurance Department;
3508 (II) an actuary selected by the contractor or the contractor's insurer; or
3509 (III) an underwriter who is responsible for developing the employer group's premium
3510 rates;
3511 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
3512 violates the provisions of this section, which may include:
3513 (A) a three-month suspension of the contractor or subcontractor from entering into
3514 future contracts with the state upon the first violation;
3515 (B) a six-month suspension of the contractor or subcontractor from entering into future
3516 contracts with the state upon the second violation;
3517 (C) an action for debarment of the contractor or subcontractor in accordance with
3518 Section [63G-6a-904](#) upon the third or subsequent violation; and
3519 (D) monetary penalties which may not exceed 50% of the amount necessary to
3520 purchase qualified health insurance coverage for an employee and a dependent of the employee
3521 of the contractor or subcontractor who was not offered qualified health insurance coverage
3522 during the duration of the contract; and
3523 (iii) a website on which the department shall post the benchmark for the qualified
3524 health insurance coverage identified in Subsection (1)(c).
3525 (7) (a) (i) In addition to the penalties imposed under Subsection (6), a contractor or
3526 subcontractor who intentionally violates the provisions of this section shall be liable to the
3527 employee for health care costs that would have been covered by qualified health insurance
3528 coverage.

3529 (ii) An employer has an affirmative defense to a cause of action under Subsection
3530 (7)(a)(i) if:

3531 (A) the employer relied in good faith on a written statement of actuarial equivalency
3532 provided by:

3533 (I) an actuary; or

3534 (II) an underwriter who is responsible for developing the employer group's premium
3535 rates; or

3536 (B) the department determines that compliance with this section is not required under
3537 the provisions of Subsection (3) or (4).

3538 (b) An employee has a private right of action only against the employee's employer to
3539 enforce the provisions of this Subsection (7).

3540 (8) Any penalties imposed and collected under this section shall be deposited into the
3541 Medicaid Restricted Account created in Section [26-18-402](#).

3542 (9) The failure of a contractor or subcontractor to provide qualified health insurance
3543 coverage as required by this section:

3544 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
3545 or contractor under Section [~~63G-6a-1603~~] [63G-6a-1602](#) or any other provision in Title 63G,
3546 Chapter 6a, Utah Procurement Code; and

3547 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
3548 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
3549 or construction.

3550 Section 62. Section **79-2-404** is amended to read:

3551 **79-2-404. Contracting powers of department -- Health insurance coverage.**

3552 (1) For purposes of this section:

3553 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
3554 [34A-2-104](#) who:

3555 (i) works at least 30 hours per calendar week; and

3556 (ii) meets employer eligibility waiting requirements for health care insurance which
3557 may not exceed the first day of the calendar month following 60 days from the date of hire.

3558 (b) "Health benefit plan" has the same meaning as provided in Section [31A-1-301](#).

3559 (c) "Qualified health insurance coverage" is as defined in Section [26-40-115](#).

3560 (d) "Subcontractor" has the same meaning provided for in Section [63A-5-208](#).
3561 (2) (a) Except as provided in Subsection (3), this section applies a design or
3562 construction contract entered into by, or delegated to, the department or a division, board, or
3563 council of the department on or after July 1, 2009, and to a prime contractor or to a
3564 subcontractor in accordance with Subsection (2)(b).
3565 (b) (i) A prime contractor is subject to this section if the prime contract is in the
3566 amount of \$1,500,000 or greater.
3567 (ii) A subcontractor is subject to this section if a subcontract is in the amount of
3568 \$750,000 or greater.
3569 (3) This section does not apply to contracts entered into by the department or a
3570 division, board, or council of the department if:
3571 (a) the application of this section jeopardizes the receipt of federal funds;
3572 (b) the contract or agreement is between:
3573 (i) the department or a division, board, or council of the department; and
3574 (ii) (A) another agency of the state;
3575 (B) the federal government;
3576 (C) another state;
3577 (D) an interstate agency;
3578 (E) a political subdivision of this state; or
3579 (F) a political subdivision of another state; or
3580 (c) the contract or agreement is:
3581 (i) for the purpose of disbursing grants or loans authorized by statute;
3582 (ii) a sole source contract; or
3583 (iii) an emergency procurement.
3584 (4) (a) This section does not apply to a change order as defined in Section [63G-6a-103](#),
3585 or a modification to a contract, when the contract does not meet the initial threshold required
3586 by Subsection (2).
3587 (b) A person who intentionally uses change orders or contract modifications to
3588 circumvent the requirements of Subsection (2) is guilty of an infraction.
3589 (5) (a) A contractor subject to Subsection (2)(b)(i) shall demonstrate to the department
3590 that the contractor has and will maintain an offer of qualified health insurance coverage for the

3591 contractor's employees and the employees' dependents during the duration of the contract.

3592 (b) If a subcontractor of the contractor is subject to Subsection (2)(b)(ii), the contractor
3593 shall demonstrate to the department that the subcontractor has and will maintain an offer of
3594 qualified health insurance coverage for the subcontractor's employees and the employees'
3595 dependents during the duration of the contract.

3596 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
3597 the duration of the contract is subject to penalties in accordance with administrative rules
3598 adopted by the department under Subsection (6).

3599 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
3600 requirements of Subsection (5)(b).

3601 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
3602 the duration of the contract is subject to penalties in accordance with administrative rules
3603 adopted by the department under Subsection (6).

3604 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
3605 requirements of Subsection (5)(a).

3606 (6) The department shall adopt administrative rules:

3607 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

3608 (b) in coordination with:

3609 (i) the Department of Environmental Quality in accordance with Section [19-1-206](#);

3610 (ii) a public transit district in accordance with Section [17B-2a-818.5](#);

3611 (iii) the State Building Board in accordance with Section [63A-5-205](#);

3612 (iv) the State Capitol Preservation Board in accordance with Section [63C-9-403](#);

3613 (v) the Department of Transportation in accordance with Section [72-6-107.5](#); and

3614 (vi) the Legislature's Administrative Rules Review Committee; and

3615 (c) which establish:

3616 (i) the requirements and procedures a contractor must follow to demonstrate

3617 compliance with this section to the department which shall include:

3618 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or

3619 (b) more than twice in any 12-month period; and

3620 (B) that the actuarially equivalent determination required for qualified health insurance
3621 coverage in Subsection (1) is met by the contractor if the contractor provides the department or

3622 division with a written statement of actuarial equivalency from either:

3623 (I) the Utah Insurance Department;

3624 (II) an actuary selected by the contractor or the contractor's insurer; or

3625 (III) an underwriter who is responsible for developing the employer group's premium
3626 rates;

3627 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
3628 violates the provisions of this section, which may include:

3629 (A) a three-month suspension of the contractor or subcontractor from entering into
3630 future contracts with the state upon the first violation;

3631 (B) a six-month suspension of the contractor or subcontractor from entering into future
3632 contracts with the state upon the second violation;

3633 (C) an action for debarment of the contractor or subcontractor in accordance with
3634 Section [63G-6a-904](#) upon the third or subsequent violation; and

3635 (D) monetary penalties which may not exceed 50% of the amount necessary to
3636 purchase qualified health insurance coverage for an employee and a dependent of an employee
3637 of the contractor or subcontractor who was not offered qualified health insurance coverage
3638 during the duration of the contract; and

3639 (iii) a website on which the department shall post the benchmark for the qualified
3640 health insurance coverage identified in Subsection (1)(c).

3641 (7) (a) (i) In addition to the penalties imposed under Subsection (6), a contractor or
3642 subcontractor who intentionally violates the provisions of this section shall be liable to the
3643 employee for health care costs that would have been covered by qualified health insurance
3644 coverage.

3645 (ii) An employer has an affirmative defense to a cause of action under Subsection
3646 (7)(a)(i) if:

3647 (A) the employer relied in good faith on a written statement of actuarial equivalency
3648 provided by:

3649 (I) an actuary; or

3650 (II) an underwriter who is responsible for developing the employer group's premium
3651 rates; or

3652 (B) the department determines that compliance with this section is not required under

3653 the provisions of Subsection (3) or (4).

3654 (b) An employee has a private right of action only against the employee's employer to
3655 enforce the provisions of this Subsection (7).

3656 (8) Any penalties imposed and collected under this section shall be deposited into the
3657 Medicaid Restricted Account created in Section [26-18-402](#).

3658 (9) The failure of a contractor or subcontractor to provide qualified health insurance
3659 coverage as required by this section:

3660 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
3661 or contractor under Section [~~63G-6a-1603~~] [63G-6a-1602](#) or any other provision in Title 63G,
3662 Chapter 6a, Utah Procurement Code; and

3663 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
3664 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
3665 or construction.

3666 Section 63. **Repealer.**

3667 This bill repeals:

3668 Section [63G-6a-104](#), **Definitions relating to governmental bodies.**

3669 Section [63G-6a-403](#), **Prequalification of potential vendors.**

3670 Section [63G-6a-404](#), **Approved vendor list.**

3671 Section [63G-6a-503](#), **Request for information and response nonbinding.**

3672 Section [63G-6a-504](#), **Contents of request for information.**

3673 Section [63G-6a-505](#), **Protected information.**

3674 Section 64. **Effective date.**

3675 If approved by two-thirds of all the members elected to each house, this bill takes effect
3676 upon approval by the governor, or the day following the constitutional time limit of Utah
3677 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
3678 the date of veto override.

3679 Section 65. **Coordinating S.B. 184 with S.B. 135 -- Merging technical and**
3680 **substantive amendments.**

3681 If this S.B. 184 and S.B. 135, Administrative Law Judge Amendments, both pass and
3682 become law, it is the intent of the Legislature that the Office of Legislative Research and
3683 General Counsel shall prepare the Utah Code database for publication by:

- 3684 (1) modifying Subsection 63G-6a-103(2), as enacted in S.B. 135, to read:
3685 "(2) "Administrative law judge service" means service provided by an administrative
3686 law judge.";
3687 (2) modifying Subsection 63G-6a-103(41)(m), as enacted in S.B. 135, to read:
3688 "(m) administrative law judge service.";
3689 (3) inserting a newly enacted Section 63G-6a-116 to read:
3690 **"63G-6a-116. Procurement of administrative law judge service.**
3691 (1) A procurement unit shall use a standard procurement process under this chapter for
3692 the procurement of administrative law judge service.
3693 (2) Within 30 days after the day on which a conducting procurement unit awards a
3694 contract for administrative law judge service, the conducting procurement unit shall give
3695 written notice to the Department of Human Resource Management that states:
3696 (a) that the conducting procurement unit awarded a contract for administrative law
3697 judge service;
3698 (b) the name of the conducting procurement unit; and
3699 (c) the expected term of the contract.";
3700 (4) modifying language in Subsection 63G-6a-408(2)(c), as enacted in S.B. 135, by
3701 replacing the word "services" in the two places it appears with the word "service" and replacing
3702 "Section 63G-6a-409" with "Subsection 63G-6a-707(3)(a)";
3703 (5) not enacting Section 63G-6a-409 from S.B. 135;
3704 (6) modifying Subsection 63G-6a-410(9)(a), as enacted in this bill, to read:
3705 "(9) (a) (i) After the issuance of a request for statement of qualifications, the
3706 conducting procurement unit shall appoint an evaluation committee consisting of membership
3707 as provided in Subsections (9)(a)(ii) or (iii), as applicable.
3708 (ii) An evaluation committee for a procurement of administrative law judge service
3709 shall consist of:
3710 (A) the head of the conducting procurement unit, or the head's designee;
3711 (B) the head of an executive branch procurement unit other than the conducting
3712 procurement unit, appointed by the executive director of the Department of Human Resource
3713 Management, or the head's designee; and
3714 (C) the executive director of the Department of Human Resource Management, or the

3715 executive director's designee.

3716 (iii) An evaluation committee for each other procurement shall consist of at least three
3717 individuals with at least a general familiarity with or basic understanding of:

3718 (A) the technical requirements relating to the type of procurement item that is the
3719 subject of the request for statement of qualifications; or

3720 (B) the need that the procurement item is intended to address.

3721 (iv) The conducting procurement unit shall ensure that each member of the evaluation
3722 committee under Subsection (9)(a)(iii) and each individual participating in the evaluation
3723 committee process:

3724 (A) does not have a conflict of interest with any vendor that submits a statement of
3725 qualifications;

3726 (B) can fairly evaluate each statement of qualifications;

3727 (C) does not contact or communicate with a vendor concerning the evaluation process
3728 or procurement outside the official evaluation committee process; and

3729 (D) conducts or participates in the evaluation in a manner that ensures a fair and
3730 competitive process and avoids the appearance of impropriety."; and

3731 (7) modifying Subsection [63G-6a-707\(3\)](#) to read:

3732 "(3) [The] (a) For a procurement of administrative law judge service, an evaluation
3733 committee shall consist of:

3734 (i) the head of the conducting procurement unit, or the head's designee;

3735 (ii) the head of an executive branch procurement unit other than the conducting
3736 procurement unit, appointed by the executive director of the Department of Human Resource
3737 Management, or the head's designee; and

3738 (iii) the executive director of the Department of Human Resource Management, or the
3739 executive director's designee.

3740 (b) For every other procurement requiring an evaluation by an evaluation committee,
3741 the conducting procurement unit shall:

3742 [~~(a)~~] (i) appoint an evaluation committee consisting of at least three individuals with at
3743 least a general familiarity with or basic understanding of:

3744 (A) the technical requirements relating to the type of procurement item that is the
3745 subject of the procurement; or

3746 (B) the need that the procurement item is intended to address; and
3747 [~~(b)~~] (ii) ensure that the evaluation committee and each [member of the evaluation
3748 ~~committee] individual participating in the evaluation committee process:
3749 [~~(i)~~] (A) does not have a conflict of interest with any of the offerors;
3750 [~~(ii)~~] (B) can fairly evaluate each proposal;
3751 [~~(iii)~~] (C) does not contact or communicate with an offeror concerning the procurement
3752 outside the official evaluation committee process; and
3753 [~~(iv)~~] (D) conducts or participates in the evaluation in a manner that ensures a fair and
3754 competitive process and avoids the appearance of impropriety."~~