

**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

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**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-2002**, as last amended by Laws of Utah 2013, Chapter 445
- 79            **63G-6a-2003**, as last amended by Laws of Utah 2013, Chapter 445
- 80            **63G-6a-2105**, as last amended by Laws of Utah 2014, Chapter 196
- 81            **63G-6a-2404**, as enacted by Laws of Utah 2014, Chapter 196
- 82            **63G-6a-2407**, as enacted by Laws of Utah 2014, Chapter 196
- 83            **63G-10-403**, as last amended by Laws of Utah 2015, Chapter 258
- 84            **72-6-107.5**, as last amended by Laws of Utah 2014, Chapter 425
- 85            **79-2-404**, as last amended by Laws of Utah 2014, Chapter 425
- 86            ENACTS:
- 87            **63G-6a-106.5**, Utah Code Annotated 1953

- 88 **63G-6a-113**, Utah Code Annotated 1953
- 89 **63G-6a-114**, Utah Code Annotated 1953
- 90 **63G-6a-115**, Utah Code Annotated 1953
- 91 **63G-6a-410**, Utah Code Annotated 1953
- 92 **63G-6a-507**, Utah Code Annotated 1953
- 93 **63G-6a-802.3**, Utah Code Annotated 1953
- 94 **63G-6a-802.7**, Utah Code Annotated 1953
- 95 **63G-6a-1206.3**, Utah Code Annotated 1953
- 96 **63G-6a-1601.5**, Utah Code Annotated 1953

97 REPEALS AND REENACTS:

- 98 **63G-6a-303**, as last amended by Laws of Utah 2015, Chapters 218, 258, and 283
- 99 **63G-6a-605**, as last amended by Laws of Utah 2013, Chapter 445
- 100 **63G-6a-706**, as enacted by Laws of Utah 2012, Chapter 347

101 RENUMBERS AND AMENDS:

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

112 REPEALS:

- 113 **63G-6a-104**, as last amended by Laws of Utah 2015, Chapter 218
- 114 **63G-6a-403**, as last amended by Laws of Utah 2015, Chapter 97
- 115 **63G-6a-404**, as last amended by Laws of Utah 2014, Chapter 196
- 116 **63G-6a-503**, as last amended by Laws of Utah 2013, Chapter 445
- 117 **63G-6a-504**, as enacted by Laws of Utah 2012, Chapter 347
- 118 **63G-6a-505**, as enacted by Laws of Utah 2013, Chapter 445

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

120 **63G-6a-103**, as last amended by Laws of Utah 2015, Chapters 218 and 464

121 **63G-6a-116**, Utah Code Annotated 1953



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

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

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

127 (1) For purposes of this section:

128 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section  
129 **34A-2-104** who:

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

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

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

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

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

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

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

141 (ii) A subcontractor is subject to this section if a subcontract is in the amount of  
142 \$750,000 or greater.

143 (3) This section does not apply if:

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

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

146 (c) the contract is an emergency procurement.

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

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

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

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

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

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

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

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

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

171 (a) in coordination with:

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

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

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

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

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

177 (b) which establish:

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

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

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

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

185 (I) the Utah Insurance Department;

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

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

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

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

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

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

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

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

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

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

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

211 (I) actuary; or

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

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

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

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

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

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

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

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

229 **19-1-206. Contracting powers of department -- Health insurance coverage.**

230 (1) For purposes of this section:

231 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section  
232 [34A-2-104](#) who:

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

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

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

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

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

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



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

245 (ii) A subcontractor is subject to this section if a subcontract is in the amount of  
246 \$750,000 or greater.

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

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

250 (b) the contract or agreement is between:

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

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

253 (B) the federal government;

254 (C) another state;

255 (D) an interstate agency;

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

257 (F) a political subdivision of another state;

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

261 (d) the contract is:

262 (i) a sole source contract; or

263 (ii) an emergency procurement.

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

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

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

273 (b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall

274 demonstrate to the executive director that the subcontractor has and will maintain an offer of  
275 qualified health insurance coverage for the subcontractor's employees and the employees'  
276 dependents during the duration of the contract.

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

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

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

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

287 (6) The department shall adopt administrative rules:

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

289 (b) in coordination with:

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

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

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

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

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

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

296 (c) which establish:

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

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

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

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

304 (I) the Utah Insurance Department;

305 (II) an actuary selected by the contractor or the contractor's insurer; or  
306 (III) an underwriter who is responsible for developing the employer group's premium  
307 rates;

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

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

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

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

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

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

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

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

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

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

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

335 (b) An employee has a private right of action only against the employee's employer to

336 enforce the provisions of this Subsection (7).

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

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

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

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

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

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

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

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

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

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

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

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

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

366 (i) school libraries;

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

368 (iii) required expenditures for instructional supplies.

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

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

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

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

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

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

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

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

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

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

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

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

387 (7) A charter school is exempt from Section [51-2a-201.5](#), requiring accounting reports  
388 of certain nonprofit corporations. A charter school is subject to the requirements of Section  
389 [53A-1a-507](#).

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

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

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

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

398           **63A-5-205. Contracting powers of director -- Retainage -- Health insurance**  
399 **coverage.**

400           (1) As used in this section:

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

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

403           (c) "Employee" means an "employee," "worker," or "operative" as defined in Section  
404 [34A-2-104](#) who:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

448 (f) The division shall adopt administrative rules:

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

450 (ii) in coordination with:

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

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

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

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

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

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

457 (iii) which establish:

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

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

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

465 (Aa) the Utah Insurance Department;

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

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

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

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

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

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

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

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

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

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

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



- 491 (I) an actuary; or
- 492 (II) an underwriter who is responsible for developing the employer group's premium
- 493 rates; or
- 494 (B) the department determines that compliance with this section is not required under
- 495 the provisions of Subsection (3)(b).
- 496 (iii) An employee has a private right of action only against the employee's employer to
- 497 enforce the provisions of this Subsection (3)(g).
- 498 (h) Any penalties imposed and collected under this section shall be deposited into the
- 499 Medicaid Restricted Account created by Section [26-18-402](#).
- 500 (i) The failure of a contractor or subcontractor to provide qualified health insurance
- 501 coverage as required by this section:
- 502 (i) may not be the basis for a protest or other action from a prospective bidder, offeror,
- 503 or contractor under Section [~~63G-6a-1603~~] [63G-6a-1602](#) or any other provision in Title 63G,
- 504 Chapter 6a, Utah Procurement Code; and
- 505 (ii) may not be used by the procurement entity or a prospective bidder, offeror, or
- 506 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
- 507 or construction.
- 508 (4) The judgment of the director as to the responsibility and qualifications of a bidder
- 509 is conclusive, except in case of fraud or bad faith.
- 510 (5) The division shall make all payments to the contractor for completed work in
- 511 accordance with the contract and pay the interest specified in the contract on any payments that
- 512 are late.
- 513 (6) If any payment on a contract with a private contractor to do work for the division or
- 514 the State Building Board is retained or withheld, it shall be retained or withheld and released as
- 515 provided in Section [13-8-5](#).
- 516 Section 5. Section **63C-9-403** is amended to read:
- 517 **63C-9-403. Contracting power of executive director -- Health insurance coverage.**
- 518 (1) For purposes of this section:
- 519 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
- 520 [34A-2-104](#) who:
- 521 (i) works at least 30 hours per calendar week; and

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

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

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

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

527 (2) (a) Except as provided in Subsection (3), this section applies to a design or  
528 construction contract entered into by the board or on behalf of the board on or after July 1,  
529 2009, and to a prime contractor or a subcontractor in accordance with Subsection (2)(b).

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

532 (ii) A subcontractor is subject to this section if a subcontract is in the amount of  
533 \$750,000 or greater.

534 (3) This section does not apply if:

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

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

537 (c) the contract is an emergency procurement.

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

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

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

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

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

553 adopted by the division under Subsection (6).

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

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

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

561 (6) The department shall adopt administrative rules:

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

563 (b) in coordination with:

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

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

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

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

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

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

570 (c) which establish:

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

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

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

578 (I) the Utah Insurance Department;

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

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

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

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

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

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

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

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

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

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

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

604 (I) an actuary; or

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

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

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

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

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

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

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

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

622 **63F-1-205. Approval of acquisitions of information technology.**

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

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

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

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

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

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

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

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

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

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

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

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

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

660 (i) the executive branch strategic plan;

661 (ii) the applicable agency information technology plan;

662 (iii) the budget for the executive branch agency or department as adopted by the  
663 Legislature;

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

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

666 and

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

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

671 (i) at the request of the chief information officer; and

672 (ii) related to the executive branch agency's acquisition of any item listed in Subsection  
673 (1).

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

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

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

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

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

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

696 **63G-6a-103. Definitions.**

697 As used in this chapter:

698 (1) "Applicable rulemaking authority" means:

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

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

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

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

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

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

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



739 rate of delivery, period of performance, price, quantity, or other provisions of a contract, upon  
740 mutual agreement of the parties to the contract.

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

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

745 (a) except:

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

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

748 (b) including:

749 (i) preparing any solicitation document;

750 (ii) appointing an evaluation committee;

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

752 [63G-6a-707](#)~~[(5)]~~(6)(b) relating to scores calculated for costs of proposals;

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

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

755 procurement unit's approval; and

756 (vi) ~~[administering a]~~ contract administration.

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

758 [17D-3-102](#).

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

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

763 (14) "Construction":

764 (a) means services, including work, and supplies for a project for the construction,

765 renovation, alteration, improvement, or repair of a public facility on real property; and

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

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

769 (a) means a contractor who enters into a contract;

770 (i) for the management of a construction project [~~when the contract~~]; and  
771 (ii) that allows the contractor to subcontract for additional labor and materials that are  
772 not included in the contractor's cost proposal submitted at the time of the procurement of the  
773 contractor's services[-]; and

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

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

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

- 783 (a) implementing the contract;
- 784 (b) ensuring compliance with the contract terms and conditions by the conducting  
785 procurement unit and the contractor;
- 786 (c) executing change orders;
- 787 (d) processing contract amendments;
- 788 (e) resolving, to the extent practicable, contract disputes;
- 789 (f) curing contract errors and deficiencies;
- 790 (g) terminating a contract;
- 791 (h) measuring or evaluating completed work and contractor performance;
- 792 (i) computing payments under the contract; and
- 793 (j) closing out a contract.

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

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

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

800 (20) "Cooperative purchasing organization" means an organization, association, or

801 alliance of purchasers established to combine purchasing power in order to obtain the best  
802 value for the purchasers by engaging in procurements in accordance with Section [63G-6a-2105](#).

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

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

809 ~~[(13)]~~ (23) "Days" means calendar days, unless expressly provided otherwise.

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

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

815 ~~[(16)]~~ (26) "Design professional" means:

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

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

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

823 ~~[(17)]~~ (28) "Design professional services" means:

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

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

827 (c) master planning and programming services.

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

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

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

832 [~~(19)~~] (29) "Director" means the director of the division.

833 (30) "Division" means the Division of Purchasing and General Services, created in

834 Section 63A-2-101.

835 (31) "Educational procurement unit" means:

836 (a) a school district;

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

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

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

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

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

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

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

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

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

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

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

855 (b) an adjustment is required by law.

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

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

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

862 [~~(23)~~] (36) "Grant" means an expenditure of public funds or other assistance, or an

863 agreement to expend public funds or other assistance, for a public purpose authorized by law,  
864 without acquiring a procurement item in exchange.

865 [~~(24)~~] (37) "Head of a procurement unit" means:

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

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

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

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

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

872 (i) the Judicial Council; or

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

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

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

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

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

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

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

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

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

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

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

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

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

894 the board of trustees.

895 (38) "Immaterial error":

896 (a) means an irregularity or abnormality that is:

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

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

900 (b) includes:

901 (i) a missing signature, missing acknowledgment of an addendum, or missing copy of a  
902 professional license, bond, or insurance certificate;

903 (ii) a typographical error;

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

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

907 ~~[(25)]~~ (39) "Indefinite quantity contract" means a fixed price contract that:

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

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

911 (ii) provides a maximum purchase limit.

912 ~~[(26)]~~ (40) "Independent procurement authority" means authority granted to a  
913 procurement unit under Subsection [63G-6a-106\(4\)\(a\)](#).

914 ~~[(27)]~~ (41) "Invitation for bids" [~~includes all documents, including documents that are~~  
915 ~~attached or incorporated by reference, used for soliciting]~~:

916 (a) means a document used to solicit:

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

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

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

921 ~~[(28)]~~ (42) "Issuing procurement unit" means a procurement unit that:

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

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

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

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

932 [~~29~~] (44) "Labor hour contract" is a contract ~~[where]~~ under which:  
933 (a) the supplies and materials are not provided by, or through, the contractor; and  
934 (b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and  
935 profit for a specified number of labor hours or days.

936 (45) "Legislative procurement unit" means:  
937 (a) the Legislature;  
938 (b) the Senate;  
939 (c) the House of Representatives;  
940 (d) a staff office of the Legislature, the Senate, or the House of Representatives; or  
941 (e) an office, committee, subcommittee, commission, or other organization within the  
942 state legislative branch.

943 (46) "Local building authority" means the same as that term is defined in Section  
944 [17D-2-102](#).

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

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

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

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

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

954 [~~30~~] (49) "Multiple award contracts" means the award of a contract for an indefinite  
955 quantity of a procurement item to more than one bidder or offeror.

956 ~~[(31)]~~ (50) "Multiyear contract" means a contract that extends beyond a one-year  
957 period, including a contract that permits renewal of the contract, without competition, beyond  
958 the first year of the contract.

959 ~~[(32)]~~ (51) "Municipality" means a city or a town.

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

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

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

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

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

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

972 ~~[(35)]~~ (56) "Procure" means to acquire a procurement item through a procurement.

973 ~~[(36)]~~ (57) "Procurement":

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

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

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

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

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

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

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

984 (i) preparing and issuing a solicitation; and

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

986 (B) conducting a procurement process that is an exception to a standard procurement



987 process under Part 8, Exceptions to Procurement Requirements; and

988 (c) does not include a grant.

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

990 (58) "Procurement item" means a supply, a service, or construction.

991 [~~(38)~~] (59) "Procurement officer" means:

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

993 (i) the head of the procurement unit;

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

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

996 (b) [~~as it relates to~~] for the division or a procurement unit without independent

997 procurement authority, the chief procurement officer.

998 (60) "Procurement unit":

999 (a) means:

1000 (i) a legislative procurement unit;

1001 (ii) an executive branch procurement unit;

1002 (iii) a judicial procurement unit;

1003 (iv) an educational procurement unit;

1004 (v) a local government procurement unit;

1005 (vi) a local district;

1006 (vii) a special service district;

1007 (viii) a local building authority;

1008 (ix) a conservation district;

1009 (x) a public corporation; or

1010 (xi) a public transit district; and

1011 (b) does not include a political subdivision created under Title 11, Chapter 13,

1012 Interlocal Cooperation Act.

1013 [~~(39) "Professional service" means a service that requires a high degree of specialized~~  
1014 ~~knowledge and discretion in the performance of the service, including:~~]

1015 [~~(a) legal services;~~]

1016 [~~(b) consultation services;~~]

1017 [~~(c) architectural services;~~]

- 1018 [~~(d)~~ engineering;]
- 1019 [~~(e)~~ design;]
- 1020 [~~(f)~~ underwriting;]
- 1021 [~~(g)~~ bond counsel;]
- 1022 [~~(h)~~ financial advice;]
- 1023 [~~(i)~~ construction management;]
- 1024 [~~(j)~~ medical services;]
- 1025 [~~(k)~~ psychiatric services; or]
- 1026 [~~(l)~~ counseling services.]
- 1027 (61) "Professional service" means labor, effort, or work that requires an elevated
- 1028 degree of specialized knowledge and discretion, including labor, effort, or work in the field of:
- 1029 (a) accounting;
- 1030 (b) architecture;
- 1031 (c) construction design and management;
- 1032 (d) engineering;
- 1033 (e) financial services;
- 1034 (f) information technology;
- 1035 (g) the law;
- 1036 (h) medicine;
- 1037 (i) psychiatry; or
- 1038 (j) underwriting.
- 1039 [~~(40)~~ (62) "Protest officer" means:
- 1040 (a) [~~as it relates to~~] for the division or a procurement unit with independent
- 1041 procurement authority:
- 1042 (i) the head of the procurement unit;
- 1043 (ii) a designee of the head of the procurement unit; or
- 1044 (iii) a person designated by rule made by the applicable rulemaking authority; or
- 1045 (b) [~~as it relates to~~] for a procurement unit without independent procurement authority,
- 1046 the chief procurement officer or the chief procurement officer's designee.
- 1047 (63) "Public corporation" means the same as that term is defined in Section [63E-1-102](#).
- 1048 (64) "Public entity" means any government entity of the state or political subdivision of

1049 the state, including:

1050 (a) a procurement unit;

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

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

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

1056 (66) "Public funds" means money, regardless of its source, including from the federal  
1057 government, that is owned, held, or administered by a public entity.

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

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

1061 (a) is responsible; and

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

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

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

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

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

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

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

1080 (a) ~~[where]~~ under which a contractor agrees to provide a procurement unit's entire  
1081 requirements for certain procurement items at prices specified in the contract during the  
1082 contract period; and

1083 (b) that:

1084 (i) does not require a minimum purchase amount; or

1085 (ii) provides a maximum purchase limit.

1086 ~~[(45)]~~ (75) "Responsible" means being capable, in all respects, of:

1087 (a) meeting all the requirements of a solicitation; and

1088 (b) fully performing all the requirements of the contract resulting from the solicitation,  
1089 including being financially solvent with sufficient financial resources to perform the contract.

1090 ~~[(46)]~~ (76) "Responsive" means conforming in all material respects to the ~~[invitation~~  
1091 ~~for bids or request for proposals]~~ requirements of a solicitation.

1092 ~~[(47)]~~ (77) "Sealed" means manually or electronically ~~[sealed and submitted bids or~~  
1093 ~~proposals]~~ secured to prevent disclosure.

1094 ~~[(48)(a)]~~ ~~"Services" means the furnishing of labor, time, or effort by a contractor, not~~  
1095 ~~involving the delivery of a specific end product other than a report that is incidental to the~~  
1096 ~~required performance.]~~

1097 ~~[(b)]~~ ~~"Services" does not include an employment agreement or a collective bargaining~~  
1098 ~~agreement.]~~

1099 (78) "Service":

1100 (a) means labor, effort, or work to produce a result that is beneficial to a procurement  
1101 unit;

1102 (b) includes a professional service; and

1103 (c) does not include labor, effort, or work provided under an employment agreement or  
1104 a collective bargaining agreement.

1105 (79) "Small purchase process" means the procurement process described in Section  
1106 [63G-6a-506](#).

1107 ~~[(49)]~~ (80) "Sole source contract" means a contract resulting from a sole source  
1108 procurement.

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

1111 source for the procurement item.

1112 ~~[(51)]~~ (82) "Solicitation" means an invitation for bids, request for proposals, ~~[notice of~~  
1113 ~~a sole source procurement,]~~ request for statement of qualifications, or request for information~~;~~  
1114 ~~or any document used to obtain bids, proposals, pricing, qualifications, or information for the~~  
1115 ~~purpose of entering into a procurement contract].~~

1116 (83) "Solicitation response" means:

1117 (a) a bid submitted in response to an invitation for bids;

1118 (b) a proposal submitted in response to a request for proposals; or

1119 (c) a statement of qualifications submitted in response to a request for statement of  
1120 qualifications.

1121 (84) "Special service district" means the same as that term is defined in Section  
1122 17D-1-102.

1123 ~~[(52)]~~ (85) "Specification" means any description of the physical or functional  
1124 characteristics~~;~~ or of the nature of a procurement item included in an invitation for bids or a  
1125 request for proposals, or otherwise specified or agreed to by a procurement unit, including a  
1126 description of:

1127 (a) a requirement for inspecting or testing a procurement item; or

1128 (b) preparing a procurement item for delivery.

1129 ~~[(53)]~~ (86) "Standard procurement process" means ~~[one of the following methods of~~  
1130 ~~obtaining a procurement item]:~~

1131 (a) the bidding~~[, as described in Part 6, Bidding]~~ process;

1132 (b) the request for proposals~~[, as described in Part 7, Request for Proposals]~~ process;

1133 ~~[or]~~

1134 ~~[(c) small purchases, in accordance with the requirements established under Section~~  
1135 ~~63G-6a-408.];~~

1136 (c) the approved vendor list process;

1137 (d) the small purchase process; or

1138 (e) the design professional procurement process.

1139 ~~[(54)]~~ (87) "State cooperative contract" means a contract awarded by the division for  
1140 and in behalf of all public entities.

1141 ~~[(55)]~~ (88) "Statement of qualifications" means a written statement submitted to a

1142 procurement unit in response to a request for statement of qualifications.

1143 ~~[(56)-(a)]~~ (89) "Subcontractor":

1144 (a) means a person under contract with a contractor or another subcontractor to provide  
1145 services or labor for design or construction[-];

1146 (b) [~~"Subcontractor"~~] includes a trade contractor or specialty contractor[-]; and

1147 (c) [~~"Subcontractor"~~] does not include a supplier who provides only materials,  
1148 equipment, or supplies to a contractor or subcontractor.

1149 ~~[(57) "Supplies" means all property, including equipment, materials, and printing.]~~

1150 (90) "Supply" means a good, material, technology, piece of equipment, or any other  
1151 item of personal property.

1152 ~~[(58)]~~ (91) "Tie bid" means that the lowest responsive [~~and~~] bids of responsible [~~bids~~]  
1153 bidders are identical in price.

1154 ~~[(59)]~~ (92) "Time and materials contract" means a contract [~~where~~] under which the  
1155 contractor is paid:

1156 (a) the actual cost of direct labor at specified hourly rates;

1157 (b) the actual cost of materials and equipment usage; and

1158 (c) an additional amount, expressly described in the contract, to cover overhead and  
1159 profit, that is not based on a percentage of the cost to the contractor.

1160 (93) "Transitional costs":

1161 (a) means the costs of changing:

1162 (i) from an existing provider of a procurement item to another provider of that  
1163 procurement item; or

1164 (ii) from an existing type of procurement item to another type;

1165 (b) includes:

1166 (i) training costs;

1167 (ii) conversion costs;

1168 (iii) compatibility costs;

1169 (iv) costs associated with system downtime;

1170 (v) disruption of service costs;

1171 (vi) staff time necessary to implement the change;

1172 (vii) installation costs; and

1173 (viii) ancillary software, hardware, equipment, or construction costs; and  
 1174 (c) does not include:  
 1175 (i) the costs of preparing for or engaging in a procurement process; or  
 1176 (ii) contract negotiation or drafting costs.  
 1177 (94) "Trial use contract" means a contract for a procurement item that the procurement  
 1178 unit acquires for a trial use or testing to determine whether the procurement item will benefit  
 1179 the procurement unit.

1180 (95) "Vendor":  
 1181 (a) means a person who is seeking to enter into a contract with a procurement unit to  
 1182 provide a procurement item; and  
 1183 (b) includes:  
 1184 (i) a bidder;  
 1185 (ii) an offeror;  
 1186 (iii) an approved vendor; and  
 1187 (iv) a design professional.

1188 Section 8. Section **63G-6a-105** is amended to read:

1189 **63G-6a-105. Application of chapter.**

1190 ~~[(1) The provisions of this chapter that are enacted on May 1, 2013, apply only to a~~  
 1191 ~~procurement advertised, or begun on or after May 1, 2013, unless the parties agree to have the~~  
 1192 ~~provisions apply with respect to a procurement that was advertised or begun before May 1,~~  
 1193 ~~2013, but is not completed before May 1, 2013.]~~

1194 ~~[(2)(a) (1) Except as provided in Section 63G-6a-107, this chapter [shall apply to~~  
 1195 ~~every expenditure of public funds irrespective of the source of the funds, including federal~~  
 1196 ~~assistance, by any procurement unit, under any contract] applies to every procurement.~~

1197 ~~[(b) The provisions of this chapter do]~~

1198 (2) This chapter does not apply to a public entity that is not a procurement unit.

1199 (3) The following procurement units shall adopt ordinances or resolutions relating to  
 1200 the procurement of design professional services not inconsistent with the provisions of Part 15,  
 1201 Design Professional Services:

1202 (a) an educational procurement unit;

1203 (b) a conservation district;

1204 (c) a local building authority;

1205 (d) a local district;

1206 (e) a public corporation; or

1207 (f) a special service district.

1208 (4) Any section of this chapter, or its implementing regulations, may be adopted by:

1209 (a) a county;

1210 (b) a municipality; or

1211 (c) the Utah Housing Corporation.

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

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

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

1218 (8) Notwithstanding any provision of this chapter, a procurement unit may administer a  
1219 [direct] procurement in accordance with the requirements imposed by the source of the funds  
1220 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]~~ does 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]~~ if 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) The State Building Board]~~

1408 (3) Building board rules governing procurement of construction, design professional  
1409 services, and leases apply to the procurement of construction, design professional services, and  
1410 leases of real property by the Division of Facilities Construction and 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]~~ building board shall make a report on or before July 1

1421 of each year to a legislative interim committee, designated by the Legislative Management  
1422 Committee created under Section [36-12-6](#), on the establishment, implementation, and  
1423 enforcement of the rules made by the [~~State Building Board~~] 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 under Section [63G-6a-802](#); and

- 1452 (g) for a notice of a [~~sole source~~] procurement under Section 63G-6a-802:
- 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 under Section
- 1469 63G-6a-802 for which notice is required to be published in accordance with this section, the
- 1470 issuing procurement unit 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 under Section 63G-6a-802  
1490 shall make a copy of information related to the [~~sole source~~] procurement available for public  
1491 inspection at the main office of the procurement unit or on the website described in Subsection  
1492 (3)(b) until the award 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 responsive solicitation  
1512 response as provided in this section; and

1513 (b) may not allow a vendor to:

1514 (i) correct a deficiency, inaccuracy, or mistake in a responsive solicitation response that  
1515 is not an 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 make a written request to a vendor to clarify  
1539 information contained in a responsive solicitation response.

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

1542 (a) in writing; or

1543 (b) by submitting a printed document.

1544 (3) (a) A procurement unit that requests a vendor to clarify information contained in a

1545 responsive solicitation response under this section shall establish a deadline by which the  
1546 vendor is required to submit the clarifying information.

1547 (b) A procurement unit may not allow a vendor to submit clarifying information after  
1548 the deadline established under Subsection (3)(a).

1549 (4) A vendor's response to a request under this section:

1550 (a) may only explain, illustrate, or interpret the contents of the vendor's original  
1551 solicitation response;

1552 (b) may not be used to address criteria or specifications not contained in the vendor's  
1553 original solicitation response; and

1554 (c) may not be used to:

1555 (i) correct a deficiency, inaccuracy, or mistake in a solicitation response that is not an  
1556 immaterial error;

1557 (ii) correct an incomplete submission of documents that the solicitation required to be  
1558 submitted with the solicitation response;

1559 (iii) correct a failure to submit a timely solicitation response;

1560 (iv) substitute or alter a required form or other document specified in the solicitation;

1561 (v) remedy a cause for a vendor being considered to be not responsible or a solicitation  
1562 response not responsive; or

1563 (vi) correct a defect or inadequacy resulting in a determination that a vendor does not  
1564 meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds  
1565 established in the solicitation.

1566 Section 19. Section **63G-6a-203** is amended to read:

1567 **63G-6a-203. Powers and duties of board.**

1568 (1) In addition to making rules in accordance with Section [~~63G-6a-402~~] [63G-6a-110](#)  
1569 and the other provisions of this chapter, the board shall consider and decide matters of policy  
1570 within the provisions of this chapter, including those referred to it by the chief procurement  
1571 officer.

1572 (2) (a) The board may:

1573 (i) audit and monitor the implementation of its rules and the requirements of this  
1574 chapter;

1575 (ii) upon the request of a procurement unit with an applicable rulemaking authority

1576 other than the board, review the procurement unit's proposed rules to ensure that they are not  
1577 inconsistent with the provisions of this chapter or rules made by the board; and

1578 (iii) approve the use of innovative procurement processes.

1579 (b) Except as provided in Section 63G-6a-1702, the board may not exercise authority  
1580 over:

1581 (i) the award or administration of any particular contract; or

1582 (ii) any dispute, claim, or litigation pertaining to any particular contract.

1583 (3) Except as otherwise expressly provided in this chapter, the board does not have  
1584 authority over a matter involving a procurement unit with independent procurement authority.

1585 Section 20. Section 63G-6a-303 is repealed and reenacted to read:

1586 **63G-6a-303. Duties and authority of chief procurement officer.**

1587 (1) The chief procurement officer:

1588 (a) is the director of the division;

1589 (b) serves as the central procurement officer of the state;

1590 (c) serves as a voting member of the board; and

1591 (d) serves as the protest officer for a protest relating to a procurement of an executive  
1592 branch procurement unit without independent procurement authority or a state cooperative  
1593 contract procurement, unless the chief procurement officer designates another to serve as  
1594 protest officer, as authorized in this chapter.

1595 (2) Except as otherwise provided in this chapter, the chief procurement officer shall:

1596 (a) develop procurement policies and procedures supporting ethical procurement  
1597 practices, fair and open competition among vendors, and transparency within the state's  
1598 procurement process;

1599 (b) administer the state's cooperative purchasing program, including state cooperative  
1600 contracts and associated administrative fees;

1601 (c) enter into an agreement with a public entity for services provided by the division, if  
1602 the agreement is in the best interest of the state;

1603 (d) ensure the division's compliance with any applicable law, rule, or policy, including  
1604 a law, rule, or policy applicable to the division's role as an issuing procurement unit or  
1605 conducting procurement unit, or as the state's central procurement organization;

1606 (e) manage the division's electronic procurement system;

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

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

1669 (6) Except as otherwise provided in this chapter, the chief procurement officer shall  
1670 review, monitor, and audit the procurement activities and delegated procurement authority of  
1671 an executive branch procurement unit without independent procurement authority to ensure  
1672 compliance with this chapter, rules made by the applicable rulemaking authority, and division  
1673 policies.

1674 Section 21. Section **63G-6a-401** is amended to read:

1675 **Part 4. Supplemental Procurement Procedures**

1676 **63G-6a-401. Title.**

1677 This part is known as [~~"General Procurement Provisions."~~] "Supplemental Procurement  
1678 Procedures."

1679 Section 22. Section **63G-6a-409**, which is renumbered from Section 63G-6a-502 is  
1680 renumbered and amended to read:

1681 [~~**63G-6a-502.**~~ **63G-6a-409. Request for information.**

1682 (1) The purpose of a request for information is to:

1683 (a) obtain information, comments, or suggestions from potential bidders or offerors  
1684 before issuing an invitation for bids or request for proposals;

1685 (b) determine whether to issue an invitation for bids or a request for proposals; and

1686 (c) generate interest in a potential invitation for bids or [a] request for proposals.

1687 (2) A request for information may be useful in order to:

1688 (a) prepare to issue an invitation for bids or request for proposals for an unfamiliar or  
1689 complex procurement;

1690 (b) determine the market availability of a procurement item; or

1691 (c) determine best practices, industry standards, performance standards, product  
1692 specifications, and innovations relating to a procurement item.

1693 (3) (a) A request for information is not a procurement process and may not be used to:

1694 (i) solicit cost, pricing, or rate information;

1695 (ii) negotiate fees;

1696 (iii) make a purchase; or

1697 (iv) enter into a contract.

1698 (b) To make a purchase or enter into a contract, a procurement unit is required to:

1699 (i) use a standard procurement process; or

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 Section  
1790 63G-6a-114.  
1791 (8) (a) A conducting procurement unit may reject a statement of qualifications if the  
1792 conducting procurement unit determines that:

- 1793 (i) the vendor who submitted the statement of qualifications:  
1794 (A) is not responsible;  
1795 (B) is in violation of a provision of this chapter;  
1796 (C) has engaged in unethical conduct; or  
1797 (D) receives a performance rating below the satisfactory performance threshold  
1798 specified in the request for statement of qualifications;  
1799 (ii) there has been a change in the vendor's circumstances after the vendor submits a  
1800 statement of qualifications that, if the change had been known at the time the statement of  
1801 qualifications was evaluated, would have caused the statement of qualifications not to have  
1802 received a qualifying score; or  
1803 (iii) the statement of qualifications:  
1804 (A) is not responsive; or  
1805 (B) does not meet the mandatory minimum requirements, evaluation criteria, or  
1806 applicable score thresholds stated in the request for statement of qualifications.  
1807 (b) A procurement unit that rejects a statement of qualifications under Subsection  
1808 (8)(a) shall:  
1809 (i) make a written finding, stating the reasons for the rejection; and  
1810 (ii) provide a copy of the written finding to the vendor that submitted the rejected  
1811 statement of qualifications.  
1812 (9) (a) (i) After the issuance of a request for statement of qualifications, the conducting  
1813 procurement unit shall appoint an evaluation committee consisting of at least three individuals  
1814 with at least a general familiarity with or basic understanding of:  
1815 (A) the technical requirements relating to the type of procurement item that is the  
1816 subject of the request for statement of qualifications; or  
1817 (B) the need that the procurement item is intended to address.  
1818 (ii) The conducting procurement unit shall ensure that each member of the evaluation  
1819 committee and each individual participating in the evaluation committee process:  
1820 (A) does not have a conflict of interest with any vendor that submits a statement of  
1821 qualifications;  
1822 (B) can fairly evaluate each statement of qualifications;  
1823 (C) does not contact or communicate with a vendor concerning the evaluation process

1824 or procurement outside the official evaluation committee process; and

1825 (D) conducts or participates in the evaluation in a manner that ensures a fair and  
1826 competitive process and avoids the appearance of impropriety.

1827 (b) A conducting procurement unit may authorize an evaluation committee to receive  
1828 assistance:

1829 (i) from an expert or consultant who:

1830 (A) is not a member of the evaluation committee; and

1831 (B) does not participate in the evaluation scoring; and

1832 (ii) to better understand a technical issue involved in the procurement.

1833 (c) An evaluation committee appointed under this Subsection (9):

1834 (i) shall evaluate and score statements of qualifications submitted in response to a  
1835 request for statement of qualifications using the minimum mandatory requirements, evaluation  
1836 criteria, and applicable score thresholds set forth in the request for statement of qualifications;

1837 (ii) may not evaluate or score a statement of qualifications using criteria not included in  
1838 the request for statement of qualifications; and

1839 (iii) may, with the approval of the head of the conducting procurement unit, enter into  
1840 discussions or conduct interviews with or attend presentations by vendors, for the purpose of  
1841 clarifying information contained in statements of qualifications.

1842 (d) In a discussion, interview, or presentation under Subsection (9)(c)(iii), a vendor:

1843 (i) may only explain, illustrate, or interpret the contents of the vendor's original  
1844 statement of qualifications; and

1845 (ii) may not:

1846 (A) address criteria or specifications not contained in the vendor's original statement of  
1847 qualifications;

1848 (B) correct a deficiency, inaccuracy, or mistake in a statement of qualifications that is  
1849 not an immaterial error;

1850 (C) correct an incomplete submission of documents that the request for statement of  
1851 qualifications required to be submitted with the statement of qualifications;

1852 (D) correct a failure to submit a timely statement of qualifications;

1853 (E) substitute or alter a required form or other document specified in the statement of  
1854 qualifications;

1855 (F) remedy a cause for an vendor being considered to be not responsible or a statement  
1856 of qualifications not responsive; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1908 (1) As used in this section:

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

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

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

1917 established by the applicable rulemaking authority under Subsection (2)[(a)(iii)](b), that a  
1918 procurement unit may expend to obtain multiple procurement items from one source at one  
1919 time under this section.

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

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

1924 (i) establishing expenditure thresholds, including:

1925 (A) an annual cumulative threshold;

1926 (B) an individual procurement threshold; and

1927 (C) a single procurement aggregate threshold;

1928 (ii) establishing procurement requirements relating to the thresholds described in

1929 Subsection (2)(b)(i); and

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

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

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

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

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

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

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

1944 (iii) another emergency condition; or

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

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

1948 an individual procurement item outside of the state contract, comparing:

1949 (A) the contract terms and conditions applicable to the procurement item under the  
1950 state contract with the contract terms and conditions applicable to the procurement item if the  
1951 procurement item is obtained outside of the state contract;

1952 (B) the maintenance and service applicable to the procurement item under the state  
1953 contract with the maintenance and service applicable to the procurement item if the  
1954 procurement item is obtained outside of the state contract;

1955 (C) the warranties applicable to the procurement item under the state contract with the  
1956 warranties applicable to the procurement item if the procurement item is obtained outside of  
1957 the state contract;

1958 (D) the quality of the procurement item under the state contract with the quality of the  
1959 procurement item if the procurement item is obtained outside of the state contract; and

1960 (E) the cost of the procurement item under the state contract with the cost of the  
1961 procurement item if the procurement item is obtained outside of the state contract;

1962 (ii) for a procurement item that, if defective in its manufacture, installation, or  
1963 performance, may result in serious physical injury, death, or substantial property damage,  
1964 determines in writing that the terms and conditions, relating to liability for injury, death, or  
1965 property damage, available from the source other than the contractor who holds the state  
1966 contract, are similar to, or better than, the terms and conditions available under the state  
1967 contract; and

1968 (iii) grants an exception, in writing, to the requirement described in Subsection (4).

1969 (6) Except as otherwise expressly provided in this section, a procurement unit:

1970 (a) may not use the small purchase standard procurement process described in this  
1971 section for ongoing, continuous, and regularly scheduled procurements that exceed the annual  
1972 cumulative threshold; and

1973 (b) shall make its ongoing, continuous, and regularly scheduled procurements that  
1974 exceed the annual cumulative threshold through a contract awarded through another standard  
1975 procurement process described in this chapter or an applicable exception to another standard  
1976 procurement process, described in Part 8, Exceptions to Standard Procurement [Requirements]  
1977 Process.

1978 (7) This section does not prohibit regularly scheduled payments for a procurement item



1979 obtained under another provision of this chapter.

1980 (8) (a) It is unlawful for a person to intentionally or knowingly divide a procurement  
1981 into [~~one or more~~] smaller procurements with the intent to make a procurement:

1982 (i) qualify as a small purchase, if, before dividing the procurement, it would not have  
1983 qualified as a small purchase; or

1984 (ii) meet a threshold established by rule made by the applicable rulemaking authority,  
1985 if, before dividing the procurement, it would not have met the threshold.

1986 (b) A person who engages in the conduct made unlawful under Subsection (8)(a) is  
1987 guilty of:

1988 (i) a second degree felony, if the value of the procurement before being divided is  
1989 \$1,000,000 or more;

1990 (ii) a third degree felony, if the value of the procurement before being divided is  
1991 \$250,000 or more but less than \$1,000,000;

1992 (iii) a class A misdemeanor, if the value of the procurement before being divided is  
1993 \$100,000 or more but less than \$250,000; or

1994 (iv) a class B misdemeanor, if the value of the procurement before being divided is less  
1995 than \$100,000.

1996 (9) A division of a procurement that is prohibited under Subsection (8) includes doing  
1997 any of the following with the intent or knowledge described in Subsection (8):

1998 (a) making two or more separate purchases;

1999 (b) dividing an invoice or purchase order into two or more invoices or purchase orders;  
2000 or

2001 (c) making smaller purchases over a period of time.

2002 [~~(10) A person who violates Subsection (8) is subject to the criminal penalties~~  
2003 ~~described in Section 63G-6a-2405.~~]

2004 [(+1)] (10) The Division of Finance within the Department of Administrative Services  
2005 may conduct an audit of an executive branch procurement unit to verify compliance with the  
2006 requirements of this section.

2007 [(+2)] (11) An executive branch procurement unit may not make a small purchase after  
2008 January 1, 2014, unless the chief procurement officer certifies that the person responsible for  
2009 procurements in the procurement unit has satisfactorily completed training on this section and

2010 the rules made under this section.

2011 Section 26. Section **63G-6a-507** is enacted to read:

2012 **63G-6a-507. Approved vendor list procurement process.**

2013 (1) As used in this section:

2014 (a) "Closed-ended approved vendor list" means an approved vendor list that is subject  
2015 to:

2016 (i) a short period of time, specified by the procurement unit, during which vendors may  
2017 be added to the list; and

2018 (ii) a specified period of time after which the list will expire.

2019 (b) "Open-ended approved vendor list" means an approved vendor list that is subject  
2020 to:

2021 (i) an indeterminate period of time during which vendors may be added to the list;

2022 (ii) the addition of vendors to the list throughout the term of the list; and

2023 (iii) a specified period of time after which a vendor on the list is required to submit the  
2024 vendor's qualifications for evaluation before the vendor may be renewed as an approved  
2025 vendor.

2026 (2) A procurement unit may not establish an approved vendor list unless the  
2027 procurement unit has first completed the statement of qualifications process described in  
2028 Section [63G-6a-410](#).

2029 (3) (a) A procurement unit may establish an approved vendor list for:

2030 (i) a specific, fully defined procurement item; or

2031 (ii) a future procurement item that is not specifically and fully defined, if the request  
2032 for statement of qualifications contains a general description of:

2033 (A) the procurement item; and

2034 (B) the type of vendor that the procurement unit seeks to provide the procurement item.

2035 (b) A procurement unit may not award a contract to a vendor on an approved vendor  
2036 list for a procurement item that is outside the scope of the general description of the  
2037 procurement item contained in the request for statement of qualifications.

2038 (4) After receiving the statements of qualifications and evaluation scores submitted by  
2039 the evaluation committee under Subsection [63G-6a-410\(9\)\(d\)](#), the head of the conducting  
2040 procurement unit using the request for statement of qualifications process under Section

2041 63G-6a-410 as part of an approved vendor list process shall:

2042 (a) include on an approved vendor list those vendors meeting the minimum mandatory  
2043 requirements, evaluation criteria, and applicable score thresholds; and

2044 (b) reject any vendor not meeting the minimum mandatory requirements, evaluation  
2045 criteria, and applicable score thresholds as ineligible for inclusion on the approved vendor list.

2046 (5) (a) A procurement unit shall include approved vendors on a closed-ended approved  
2047 vendor list or an open-ended approved vendor list.

2048 (b) (i) A closed-ended approved vendor list shall expire no later than 18 months after  
2049 the publication of the closed-ended approved vendor list.

2050 (ii) A procurement unit shall require a vendor on an open-ended approved vendor list,  
2051 in order to remain on the approved vendor list, to submit an updated statement of qualifications  
2052 for evaluation no later than 18 months after the vendor was added to the list as an approved  
2053 vendor.

2054 (6) A procurement unit may:

2055 (a) (i) using a bidding process, request for proposals process, small purchase process,  
2056 or design professional procurement process, award a contract to a vendor on an approved  
2057 vendor list for any procurement item or type of procurement item specified by the procurement  
2058 unit in the request for statement of qualifications, including procurement items that the  
2059 procurement unit intends to acquire in a series of future procurements described in the request  
2060 for statement of qualifications; and

2061 (ii) limit participation in a bidding process, request for proposals process, small  
2062 purchase process, or design professional procurement process to vendors on an approved  
2063 vendor list; or

2064 (b) award a contract to a vendor on an approved vendor list at a price established as  
2065 provided in Section 63G-6a-113.

2066 (7) After establishing an approved vendor list as provided in this section, the  
2067 conducting procurement unit shall, before using the approved vendor list, submit the approved  
2068 vendor list to the issuing procurement unit for publication by the issuing procurement unit.

2069 (8) A conducting procurement unit administering an open-ended approved vendor list  
2070 shall:

2071 (a) require a vendor seeking inclusion on the approved vendor list to submit a

2072 statement of qualifications that complies with all requirements applicable at the time of the  
2073 initial request for statement of qualifications;

2074 (b) if modifying the requirements for inclusion on the approved vendor list, apply any  
2075 new or additional requirement to all vendors equally, whether a vendor is seeking inclusion on  
2076 the approved vendor list for the first time or is already included on the approved vendor list;  
2077 and

2078 (c) keep the request for statement of qualifications posted on a website as required  
2079 under Subsection [63G-6a-112\(6\)](#).

2080 (9) The applicable rulemaking authority shall make rules pertaining to an approved  
2081 vendor list process, including:

2082 (a) procedures to ensure that all vendors on an approved vendor list have a fair and  
2083 equitable opportunity to compete for a contract for a procurement item; and

2084 (b) requirements for using an approved vendor list with the small purchase process.

2085 Section 27. Section **63G-6a-603** is amended to read:

2086 **63G-6a-603. Invitation for bids -- Requirements -- Publication.**

2087 (1) The bidding standard procurement process begins when the issuing procurement  
2088 unit issues an invitation for bids.

2089 (2) An invitation for bids shall:

2090 (a) state the period of time during which bids will be accepted;

2091 (b) describe the manner in which a bid shall be submitted;

2092 (c) state the place where a bid shall be submitted; and

2093 (d) include, or incorporate by reference:

2094 (i) a description of the procurement items sought;

2095 (ii) the objective criteria that will be used to evaluate the bids; and

2096 (iii) the required contractual terms and conditions.

2097 (3) An issuing procurement unit shall publish an invitation for bids in accordance with  
2098 the requirements of Section [~~63G-6a-406~~] [63G-6a-112](#).

2099 Section 28. Section **63G-6a-604** is amended to read:

2100 **63G-6a-604. Bid opening and acceptance.**

2101 (1) Bids shall be opened:

2102 (a) publicly, except as provided in Section [63G-6a-611](#);

2103 (b) in the presence of one or more witnesses, unless an electronic bid opening process  
2104 is used where bidders may see the opening of the bid electronically; and

2105 (c) at the time and place indicated in the invitation for bids.

2106 (2) Bids shall be accepted unconditionally, without alteration or correction, except as  
2107 otherwise authorized by this chapter.

2108 (3) (a) The procurement officer shall reject a bid ~~[that]~~ if the bid is not responsive or  
2109 the bid is submitted by a bidder who is not responsible.

2110 (b) A bid that is not responsive includes a bid that:

2111 (i) is conditional;

2112 (ii) attempts to modify the bid requirements;

2113 (iii) contains additional terms or conditions; or

2114 (iv) fails to conform with the requirements or specifications of the invitation for bids.

2115 (c) A bid that is submitted by a bidder who is not responsive includes a bid where the  
2116 procurement officer reasonably concludes that the bidder or an employee, agent, or  
2117 subcontractor of the bidder, at any tier, is unable to satisfactorily fulfill the bid requirements.

2118 (4) An issuing procurement unit may not accept a bid after the time for submission of a  
2119 bid has expired.

2120 (5) The procurement officer shall:

2121 (a) record the name of each bidder and the amount of each bid; and

2122 (b) after the bid is awarded, make the information described in Subsection (5)(a)  
2123 available for public disclosure.

2124 Section 29. Section **63G-6a-605** is repealed and reenacted to read:

2125 **63G-6a-605. Correction or clarification of bids.**

2126 (1) The chief procurement officer or the head of a procurement unit with independent  
2127 procurement authority may:

2128 (a) allow a vendor to correct an immaterial error in a bid, as provided in Section  
2129 63G-6a-114; and

2130 (b) request a vendor to clarify information contained in a bid, as provided in Section  
2131 63G-6a-115.

2132 (2) (a) Notwithstanding Subsection (1), a vendor may not change the total bid price  
2133 after the bid opening and before a contract is awarded.

2134 (b) Subsection (2)(a) does not apply to a change in the contract price during contract  
2135 administration, as allowed under this chapter.

2136 Section 30. Section **63G-6a-606** is amended to read:

2137 **63G-6a-606. Evaluation of bids -- Award -- Cancellation -- Rejecting a bid.**

2138 (1) A procurement unit that conducts a procurement using a bidding standard  
2139 procurement process shall evaluate each bid using the objective criteria described in the  
2140 invitation for bids, which may include:

2141 (a) experience;

2142 (b) performance ratings;

2143 (c) inspection;

2144 (d) testing;

2145 (e) quality;

2146 (f) workmanship;

2147 (g) time and manner of delivery;

2148 (h) references;

2149 (i) financial stability;

2150 (j) cost;

2151 (k) suitability for a particular purpose;

2152 (l) the contractor's work site safety program, including any requirement that the  
2153 contractor imposes on subcontractors for a work site safety program; or

2154 (m) other objective criteria specified in the invitation for bids.

2155 (2) Criteria not described in the invitation for bids may not be used to evaluate a bid.

2156 (3) The conducting procurement unit shall:

2157 (a) award the contract as soon as practicable to:

2158 (i) the ~~[lowest responsive and]~~ responsible bidder who submits the lowest responsive  
2159 bid that meets the objective criteria described in the invitation for bids; or

2160 (ii) if, in accordance with Subsection (4), the procurement officer or the head of the  
2161 conducting procurement unit ~~[disqualifies the bidder]~~ rejects a bid described in Subsection  
2162 (3)(a)(i), the ~~[next lowest responsive and]~~ responsible bidder who submits the next lowest  
2163 responsive bid that meets the objective criteria described in the invitation for bids; or

2164 (b) cancel the invitation for bids without awarding a contract.

2165 (4) In accordance with Subsection (5), the procurement officer or the head of the  
2166 conducting procurement unit may [~~disqualify a bidder~~] reject a bid for:  
2167 (a) a violation of this chapter by the bidder who submitted the bid;  
2168 (b) a violation of a requirement of the invitation for bids;  
2169 (c) unlawful or unethical conduct by the bidder who submitted the bid; or  
2170 (d) a change in a bidder's circumstance that, had the change been known at the time the  
2171 bid was submitted, would have caused the [~~bidder to not be the lowest responsive and~~  
2172 ~~responsible bidder who meets the objective criteria described in the invitation for bids~~] bid to  
2173 be rejected.

2174 (5) A procurement officer or head of a conducting procurement unit who [~~disqualifies a~~  
2175 ~~bidder~~] rejects a bid under Subsection (4) shall:

2176 (a) make a written finding, stating the reasons for [~~disqualification~~] the rejection; and  
2177 (b) provide a copy of the written finding to the [~~disqualified~~] bidder who submitted the  
2178 rejected bid.

2179 (6) If a conducting procurement unit cancels an invitation for bids without awarding a  
2180 contract, the conducting procurement unit shall make available for public inspection a written  
2181 justification for the cancellation.

2182 Section 31. Section **63G-6a-609** is amended to read:

2183 **63G-6a-609. Multiple stage bidding process.**

2184 (1) The invitation for bids for a multiple stage bidding process shall:

2185 (a) describe the requirements for, and purpose of, each stage of the process;

2186 (b) indicate whether the procurement unit intends to award:

2187 (i) a single contract; or

2188 (ii) multiple contracts for a series of upcoming procurements; and

2189 (c) state that:

2190 (i) the first stage is for prequalification only;

2191 (ii) a bidder may not submit any pricing information in the first stage of the process;

2192 and

2193 (iii) bids in the second stage will only be accepted from a person who prequalifies in  
2194 the first stage.

2195 (2) During the first stage, the conducting procurement unit:

2196 (a) shall prequalify bidders to participate in subsequent stages, in accordance with  
2197 Section [~~63G-6a-403~~] [63G-6a-410](#);

2198 (b) shall prohibit the submission of pricing information until the final stage; and

2199 (c) may, before beginning the second stage, request additional information to clarify  
2200 the qualifications of the bidders who submit timely responses.

2201 (3) Contracts may only be awarded for a procurement item described in stage one of  
2202 the invitation for bids.

2203 (4) The conducting procurement unit may use as many stages as it determines to be  
2204 appropriate.

2205 (5) Except as otherwise expressly provided in this section, a procurement unit  
2206 conducting a multiple stage bidding process under this section shall ensure compliance with  
2207 this part.

2208 (6) The applicable rulemaking authority may make rules governing the use of a  
2209 multiple stage process described in this section.

2210 Section 32. Section **63G-6a-611** is amended to read:

2211 **63G-6a-611. Invitation for bids for reverse auction -- Requirements -- Publication**  
2212 **of invitation.**

2213 (1) The reverse auction bidding process begins when the issuing procurement unit  
2214 issues an invitation for bids to prequalify bidders to participate in the reverse auction.

2215 (2) The invitation for bids shall:

2216 (a) state the period of time during which bids will be accepted;

2217 (b) state that the bid will be conducted by reverse auction;

2218 (c) describe the procurement items sought;

2219 (d) describe the minimum requirements to become prequalified;

2220 (e) state the required contractual terms and conditions; and

2221 (f) describe the procedure that the conducting procurement unit will follow in the  
2222 reverse auction.

2223 (3) In order to participate in a reverse auction, a bidder shall agree to:

2224 (a) the specifications, and contractual terms and conditions, of the procurement; and

2225 (b) be trained in, and abide by, the procedure that the division or the procurement unit  
2226 with independent procurement authority will follow in conducting the reverse auction.



2227 (4) The division or a procurement unit with independent procurement authority shall  
2228 publish an invitation for bids for a reverse auction in accordance with the requirements of  
2229 Section [~~63G-6a-406~~] [63G-6a-112](#).

2230 Section 33. Section **63G-6a-703** is amended to read:

2231 **63G-6a-703. Request for proposals -- Requirements -- Publication of request.**

2232 (1) The request for proposals standard procurement process begins when the division  
2233 or a procurement unit with independent procurement authority issues a request for proposals.

2234 (2) A request for proposals shall:

2235 (a) state the period of time during which a proposal will be accepted;

2236 (b) describe the manner in which a proposal shall be submitted;

2237 (c) state the place where a proposal shall be submitted;

2238 (d) include, or incorporate by reference:

2239 (i) a description of the procurement items sought;

2240 (ii) a description of the subjective and objective criteria that will be used to evaluate  
2241 the proposal; and

2242 (iii) the standard contractual terms and conditions required by the authorized  
2243 purchasing entity;

2244 (e) state the relative weight that will be given to each score for the criteria described in  
2245 Subsection (2)(d)(ii), including cost;

2246 (f) state the formula that will be used to determine the score awarded for the cost of  
2247 each proposal;

2248 (g) if the request for proposals will be conducted in multiple stages, as described in  
2249 Section [63G-6a-710](#), include a description of the stages and the criteria and scoring that will be  
2250 used to screen offerors at each stage; and

2251 [~~(h) state that discussions may be conducted with offerors who submit proposals  
2252 determined to be reasonably susceptible of being selected for award, followed by an  
2253 opportunity to make best and final offers, but that proposals may be accepted without  
2254 discussions.]~~

2255 (h) state that best and final offers may be allowed, as provided in Section  
2256 [63G-6a-707.5](#), from responsible offerors who submit responsive proposals that meet minimum  
2257 qualifications, evaluation criteria, or applicable score thresholds identified in the request for

2258 proposals.

2259 (3) The division or a procurement unit with independent procurement authority shall  
2260 publish a request for proposals in accordance with the requirements of Section [~~63G-6a-406~~]  
2261 63G-6a-112.

2262 Section 34. Section **63G-6a-706** is repealed and reenacted to read:

2263 **63G-6a-706. Correction or clarification of proposal.**

2264 (1) The chief procurement officer or the head of a procurement unit with independent  
2265 procurement authority may:

2266 (a) allow a vendor to correct an immaterial error in a proposal, as provided in Section  
2267 63G-6a-114; and

2268 (b) request a vendor to clarify information contained in a proposal, as provided in  
2269 Section 63G-6a-115.

2270 (2) (a) Notwithstanding Subsection (1) and except as provided in Section  
2271 63G-6a-707.5, after the deadline for submitting a cost proposal and before a contract is  
2272 awarded, a vendor may not change the total amount of a cost proposal.

2273 (b) Subsection (2)(a) does not apply to a change in the contract price during contract  
2274 administration, as allowed under this chapter.

2275 Section 35. Section **63G-6a-707** is amended to read:

2276 **63G-6a-707. Evaluation of proposals -- Evaluation committee.**

2277 (1) To determine which proposal provides the best value to the procurement unit, the  
2278 evaluation committee shall evaluate each responsive and responsible proposal that has not been  
2279 disqualified from consideration under the provisions of this chapter, using the criteria described  
2280 in the request for proposals, which may include:

2281 (a) experience;

2282 (b) performance ratings;

2283 (c) inspection;

2284 (d) testing;

2285 (e) quality;

2286 (f) workmanship;

2287 (g) time, manner, or schedule of delivery;

2288 (h) references;

- 2289 (i) financial solvency;
- 2290 (j) suitability for a particular purpose;
- 2291 (k) management plans;
- 2292 (l) the presence and quality of a work site safety program, including any requirement
- 2293 that the offeror imposes on subcontractors for a work site safety program;
- 2294 (m) cost; or
- 2295 (n) other subjective or objective criteria specified in the request for proposals.
- 2296 (2) Criteria not described in the request for proposals may not be used to evaluate a
- 2297 proposal.
- 2298 (3) The conducting procurement unit shall:
- 2299 (a) appoint an evaluation committee consisting of at least three individuals with at least
- 2300 a general familiarity with or basic understanding of:
- 2301 (i) the technical requirements relating to the type of procurement item that is the
- 2302 subject of the procurement; or
- 2303 (ii) the need that the procurement item is intended to address; and
- 2304 (b) ensure that the evaluation committee and each [~~member of the evaluation~~
- 2305 ~~committee~~] individual participating in the evaluation committee process:
- 2306 (i) does not have a conflict of interest with any of the offerors;
- 2307 (ii) can fairly evaluate each proposal;
- 2308 (iii) does not contact or communicate with an offeror concerning the procurement
- 2309 outside the official evaluation committee process; and
- 2310 (iv) conducts or participates in the evaluation in a manner that ensures a fair and
- 2311 competitive process and avoids the appearance of impropriety.
- 2312 (4) A conducting procurement unit may authorize an evaluation committee to receive
- 2313 assistance:
- 2314 (a) from an expert or consultant who:
- 2315 (i) is not a member of the evaluation committee; and
- 2316 (ii) does not participate in the evaluation scoring; and
- 2317 (b) to better understand a technical issue involved in the procurement.
- 2318 [~~4~~ The] (5) (a) An evaluation committee may, with the approval of the head of the
- 2319 conducting procurement unit, enter into discussions or conduct interviews with, or attend

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

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

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

2323 proposal; and

2324 (ii) may not:

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

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

2327 error;

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

2329 submitted with the proposal;

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

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

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

2333 not responsive; or

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

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

2336 established in the solicitation.

2337 [~~(5)~~] (6) (a) Except as provided in Subsections [~~(5)(b) and (8)~~] (6)(b) and (9), each

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

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

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

2341 procurement unit.

2342 (b) The issuing procurement unit shall:

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

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

2345 scoring procedures contained in the request for proposals;

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

2347 inconsistencies, and reported noncompliance with this chapter;

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

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

2350 responsive and responsible proposal; and

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

2354 (c) The evaluation committee may not:

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

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

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

2360 (i) preconstruction phase services;

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

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

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

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

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

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

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

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

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

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

2381 (6) if the head of the issuing procurement unit or a person designated by rule made by the

2382 applicable rulemaking authority:

2383 (a) signs a written statement:

2384 (i) indicating that, due to the nature of the proposal or other circumstances, it is in the  
2385 best interest of the procurement unit to waive compliance with Subsection [~~(5)~~] (6); and

2386 (ii) describing the nature of the proposal and the other circumstances relied upon to  
2387 waive compliance with Subsection [~~(5)~~] (6); and

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

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

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

2391 (1) At any time during the evaluation process, the evaluation committee, with the  
2392 approval of the director or the head of the issuing procurement unit, may:

2393 (a) request best and final offers from responsible [~~and~~] offerors who have submitted  
2394 responsive [~~offerors~~] proposals that meet the minimum qualifications, evaluation criteria, or  
2395 applicable score thresholds identified in the request for proposals, if:

2396 (i) no single proposal addresses all the specifications stated in the request for  
2397 proposals;

2398 (ii) all or a significant number of the proposals are ambiguous on a material point and  
2399 the evaluation committee requires further clarification in order to conduct a fair evaluation of  
2400 proposals;

2401 (iii) the evaluation committee needs additional information from all offerors to  
2402 complete the evaluation of proposals;

2403 (iv) the differences between proposals in one or more material aspects are too slight to  
2404 allow the evaluation committee to distinguish between proposals;

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

2406 (vi) another reason exists supporting a request for best and final offers, as provided in  
2407 rules established by the applicable rulemaking authority; and

2408 (b) evaluate those best and final offers.

2409 (2) In requesting and evaluating best and final offers under Subsection (1), the  
2410 evaluation committee shall:

2411 (a) ensure that each offeror receives fair and equal treatment with respect to the other  
2412 offerors;

- 2413 (b) establish a schedule and procedures for conducting discussions;
- 2414 (c) ensure that information in each proposal and information gathered during
- 2415 discussions is not shared with other offerors until the contract is awarded;
- 2416 (d) ensure that auction tactics are not used in the discussion process, including
- 2417 discussing and comparing the costs and features of other proposals; and
- 2418 (e) set a common date and time for the submission of best and final offers.
- 2419 (3) In a best and final offer, an offeror:
- 2420 (a) may address only the issues described in the request for best and final offers; and
- 2421 (b) may not correct a material error or deficiency in the offeror's proposal or address
- 2422 any other issue not described in the request for best and final offers.
- 2423 [~~3~~] (4) If an offeror chooses not to participate in a discussion or does not make a
- 2424 timely best and final offer, the offer submitted by the offeror before the conduct of discussions
- 2425 shall be treated as the offeror's best and final offer.
- 2426 (5) An applicable rulemaking authority shall make rules governing best and final offers
- 2427 under this section.
- 2428 Section 37. Section **63G-6a-708** is amended to read:
- 2429 **63G-6a-708. Justification statement -- Cost-benefit analysis.**
- 2430 (1) (a) In determining which proposal provides the best value to the procurement unit,
- 2431 the evaluation committee and the conducting procurement unit shall prepare a written
- 2432 justification statement that:
- 2433 (i) explains the score assigned to each evaluation category;
- 2434 (ii) explains how the proposal with the highest total combined score provides the best
- 2435 value to the procurement unit in comparison to the other proposals;
- 2436 (iii) if applicable, includes the cost-benefit analysis described in Subsection (2) and
- 2437 how the cost-benefit analysis relates to the best value to the procurement unit; and
- 2438 (iv) if applicable, includes the written determination described in Subsection (5).
- 2439 (b) An explanation under Subsection (1)(a)(i) need not address each criterion within
- 2440 each category.
- 2441 (2) If, in determining the best value to the procurement unit, the evaluation committee
- 2442 awards the highest score, including the score for cost, to a proposal other than the lowest cost
- 2443 proposal, and the difference between the cost of the highest scored proposal and the lowest cost

2444 proposal exceeds the greater of \$10,000 or 5% of the lowest cost proposal, the evaluation  
2445 committee and the conducting procurement unit shall prepare an informal written cost-benefit  
2446 analysis that:

2447 (a) explains, in general terms, the advantage to the procurement unit of awarding the  
2448 contract to the higher cost offeror; and

2449 (b) except as provided in Subsection (5):

2450 (i) includes the estimated added financial value to the procurement unit of each  
2451 criterion that justifies awarding the contract to the higher cost offeror; and

2452 (ii) demonstrates that the value of the advantage to the procurement unit of awarding  
2453 the contract to the higher cost offeror exceeds the value of the difference between the cost of  
2454 the higher cost proposal and the cost of the lower cost proposals.

2455 (3) If the informal cost-benefit analysis described in Subsection (2) does not justify  
2456 awarding the contract to the offeror that received the highest score, the issuing procurement  
2457 unit:

2458 (a) may not award the contract to the offeror that received the highest score; and

2459 (b) may award the contract to the offeror that received the next highest score, unless:

2460 (i) an informal cost-benefit analysis is required, because the difference between the  
2461 cost proposed by the offeror that received the next highest score and the lowest cost proposal  
2462 exceeds the greater of \$10,000 or 5% of the lowest cost proposal; and

2463 (ii) the informal cost-benefit analysis does not justify award of the contract to the  
2464 offeror that received the next highest score.

2465 (4) If the informal cost-benefit analysis described in Subsection (2) does not justify  
2466 award of the contract to the offeror, described in Subsection (3), that received the next highest  
2467 score, the issuing procurement unit:

2468 (a) may not award the contract to the offeror that received the next highest score; and

2469 (b) shall continue with the process described in Subsection (3) for each offeror that  
2470 received the next highest score, until the issuing procurement unit:

2471 (i) awards the contract in accordance with the provisions of this section; or

2472 (ii) cancels the request for proposals.

2473 (5) (a) The evaluation committee, with the issuing procurement unit's approval, may  
2474 waive, in whole or in part, a requirement under Subsection (2)(b) if the evaluation committee



2475 determines in writing that assigning a financial value to a particular procurement item or  
2476 evaluation criterion is not practicable.

2477 (b) A written determination under Subsection (5)(a):

2478 (i) shall explain:

2479 (A) why it is not practicable to assign a financial value to the procurement item or  
2480 evaluation criterion; and

2481 (B) in nonfinancial terms, why awarding the contract to the higher cost offeror  
2482 provides the best value to the procurement unit; and

2483 (ii) may be included as part of the justification statement.

2484 (6) (a) An issuing procurement unit is not required to make the cost-benefit analysis  
2485 described in this section for a contract with a construction manager/general contractor if the  
2486 contract is awarded based solely on the qualifications of the construction manager/general  
2487 contractor and the management fee described in Subsection ~~63G-6a-707~~(6)(7).

2488 (b) The applicable rulemaking authority shall make rules that establish procedures and  
2489 criteria for awarding a contract described in Subsection (6)(a) to ensure that:

2490 (i) a competitive process is maintained; and

2491 (ii) the contract awarded is in the best interest of the procurement unit.

2492 Section 38. Section ~~63G-6a-709~~ is amended to read:

2493 **~~63G-6a-709. Award of contract -- Cancellation -- Rejection of proposal.~~**

2494 (1) After the completion of the evaluation and scoring of proposals and the justification  
2495 statement, including any required cost-benefit analysis, the evaluation committee shall submit  
2496 the proposals, evaluation scores, and justification statement to the head of the procurement unit  
2497 or designee for review and final determination of a contract award.

2498 (2) After reviewing the proposals, evaluation scores, and justification statement,  
2499 including any required cost-benefit analysis, the head of the issuing procurement unit [~~or~~  
2500 ~~designee~~] shall:

2501 (a) (i) award the contract as soon as practicable to~~[(i)]~~ the [~~responsive and~~  
2502 ~~responsible offeror with the responsive proposal receiving the highest total score; or~~

2503 ~~[(ii) if, in accordance with Subsection (3), the procurement officer or the head of the~~  
2504 ~~issuing procurement unit disqualifies the offeror described in Subsection (2)(a)(i), the~~  
2505 ~~responsive and responsible offeror with the next highest total score; or]~~

2506 (ii) (A) if the head of the issuing procurement unit disqualifies an offeror under  
2507 Subsection (3) who would otherwise have been awarded a contract, award the contract to the  
2508 responsible offeror with the responsive proposal receiving the next highest total score; and  
2509 (B) if the head of the issuing procurement unit disqualifies an offeror under Subsection  
2510 (3) who would otherwise have been awarded a contract under Subsection (2)(a)(ii)(A), repeat  
2511 the process described in Subsection (2)(a)(ii)(A) as many times as necessary until a contract is  
2512 awarded to a responsible offeror who is not disqualified; or  
2513 (b) cancel the request for proposals without awarding a contract.  
2514 [~~(3) In accordance with Subsection (4), the procurement officer or the head of the~~  
2515 ~~issuing procurement unit may disqualify an offeror for:]~~  
2516 [~~(a) a violation of this chapter;~~]  
2517 [~~(b) not being responsive or responsible;~~]  
2518 [~~(c) a violation of a requirement of the request for proposals;~~]  
2519 [~~(d) unlawful or unethical conduct; or~~]  
2520 [~~(e) a change in circumstance that, had the change been known at the time the proposal~~  
2521 ~~was submitted, would have caused the proposal to not have the highest score.]~~  
2522 (3) The head of an issuing procurement unit may reject a proposal if:  
2523 (a) the offeror who submitted the proposal:  
2524 (i) is not responsible;  
2525 (ii) is in violation of a provision of this chapter;  
2526 (iii) has engaged in unethical conduct; or  
2527 (iv) fails to sign a contract within:  
2528 (A) 90 days after the contract award, if no time is specified in the solicitation; or  
2529 (B) a time authorized in writing by the head of the issuing procurement unit;  
2530 (b) there is a change in the offeror's circumstances that, if the change had been known  
2531 at the time the offeror's proposal was evaluated, would have caused the proposal not to have  
2532 received the highest score; or  
2533 (c) the proposal:  
2534 (i) is not responsive; or  
2535 (ii) does not meet the mandatory minimum requirements, evaluation criteria, or  
2536 applicable score thresholds stated in the solicitation.

2537 (4) A [~~procurement officer or~~] head of an issuing procurement unit who [~~disqualifies~~  
 2538 ~~an offeror~~] rejects a proposal under Subsection (3) shall:

2539 (a) make a written finding, stating the reasons for [~~disqualification~~] the rejection; and

2540 (b) provide a copy of the written finding to the [~~disqualified~~] offeror whose proposal is  
 2541 rejected.

2542 (5) If an issuing procurement unit cancels a request for proposals without awarding a  
 2543 contract, the issuing procurement unit shall make available for public inspection a written  
 2544 justification for the cancellation.

2545 Section 39. Section ~~63G-6a-802~~ is amended to read:

2546 **Part 8. Exceptions to Standard Procurement Process**

2547 **63G-6a-802. Award of contract without engaging in a standard procurement**  
 2548 **process -- Notice -- Duty to negotiate contract terms in best interest of procurement unit.**

2549 [~~(1) As used in this section:~~]

2550 [(a) "~~Transitional costs~~" mean the costs of changing from an existing provider of, or  
 2551 type of, a procurement item to another provider of, or type of, procurement item:]

2552 [(b) "~~Transitional costs~~" include:]

2553 [(i) ~~training costs;~~]

2554 [(ii) ~~conversion costs;~~]

2555 [(iii) ~~compatibility costs;~~]

2556 [(iv) ~~system downtime;~~]

2557 [(v) ~~disruption of service;~~]

2558 [(vi) ~~staff time necessary to put the transition into effect;~~]

2559 [(vii) ~~installation costs; and~~]

2560 [(viii) ~~ancillary software, hardware, equipment, or construction costs.~~]

2561 [(c) "~~Transitional costs~~" do not include:]

2562 [(i) ~~the costs of preparing for or engaging in a procurement process; or~~]

2563 [(ii) ~~contract negotiation or contract drafting costs.~~]

2564 [(d) "~~Trial use contract~~" means a contract between a procurement unit and a vendor for  
 2565 a procurement item that the procurement unit acquires for trial use or testing to determine  
 2566 whether the procurement item will benefit the procurement unit.]

2567 [~~(2) The division or~~] (1) The chief procurement officer or the head of a procurement

2568 unit with independent procurement authority may award a contract for a procurement item  
2569 without [~~competition~~] engaging in a standard procurement process if the chief procurement  
2570 officer[;] or the head of the procurement unit[~~, or a designee of either who is senior to the~~  
2571 ~~procurement officer or the head of the procurement unit,~~] with independent procurement  
2572 authority determines in writing that:

2573 (a) there is only one source for the procurement item;  
2574 [~~(b) the award to a specific supplier, service provider, or contractor is a condition of a~~  
2575 ~~donation that will fund the full cost of the supply, service, or construction item; or]~~

2576 [~~(c) the procurement item is needed for trial use or testing to determine whether the~~  
2577 ~~procurement item will benefit the procurement unit.~~]

2578 [~~(3) Circumstances under which there is only one source for a procurement item may~~  
2579 ~~include:~~]

2580 [~~(a) where the most important consideration in obtaining a procurement item is the~~  
2581 ~~compatibility of equipment, technology, software, accessories, replacement parts, or service;]~~

2582 [~~(b) where transitional costs are unreasonable or cost prohibitive; or]~~

2583 [~~(c) procurement of public utility services.~~]

2584 (b) (i) transitional costs are a significant consideration in selecting a procurement item;  
2585 and

2586 (ii) the results of a cost-benefit analysis demonstrate that transitional costs are  
2587 unreasonable or cost-prohibitive, and that the award of a contract without engaging in a  
2588 standard procurement process is in the best interest of the procurement unit; or

2589 (c) the award of a contract is under circumstances, described in rules adopted by the  
2590 applicable rulemaking authority, that make awarding the contract through a standard  
2591 procurement process impractical and not in the best interest of the procurement unit.

2592 (2) Transitional costs associated with a trial use or testing of a procurement item under  
2593 a trial use contract may not be included in a consideration of transitional costs under  
2594 Subsection (1)(b).

2595 [~~(4)~~] (3) (a) Subject to Subsection [~~(4)~~] (3)(b), the applicable rulemaking authority  
2596 shall make rules regarding the publication of notice for a [~~sole source~~] procurement under this  
2597 section that, at a minimum, require publication of notice of [~~a sole source~~] the procurement, in  
2598 accordance with Section [~~63G-6a-406~~] 63G-6a-112, if the cost of the procurement exceeds

2599 \$50,000.

2600 (b) Publication of notice under Section [~~63G-6a-406~~] [63G-6a-112](#) is not required for:

2601 (i) the procurement of public utility services pursuant to a sole source contract; or

2602 (ii) other [~~sole source procurements provided by rule~~] procurements under this section

2603 for which an applicable rule provides that notice is not required.

2604 [~~(5) The division or~~] (4) The chief procurement officer or the head of a procurement

2605 unit with independent procurement authority who awards a [~~sole source contract on behalf of~~

2606 another procurement unit] contract under this section shall negotiate with the contractor to

2607 ensure that the terms of the contract, including price and delivery, are in the best interest of the

2608 procurement unit.

2609 [~~(6) (a) The period of trial use or testing of a procurement item under a trial use~~

2610 ~~contract may not exceed 18 months, unless the procurement officer provides a written~~

2611 ~~exception documenting the reason for a longer period.]~~

2612 [~~(b) A trial use contract shall:~~

2613 [~~(i) state that the purpose of the contract is strictly for the purpose of the trial use or~~

2614 ~~testing of a procurement item;]~~

2615 [~~(ii) state that the contract terminates upon completion of the trial use or testing~~

2616 ~~period;]~~

2617 [~~(iii) state that, after the trial use or testing period, the procurement unit is not obligated~~

2618 ~~to purchase or enter into a contract for the procurement item, regardless of the trial use or~~

2619 ~~testing result;]~~

2620 [~~(iv) state that any purchase of the procurement item beyond the terms of the trial use~~

2621 ~~contract will be made in accordance with this chapter; and]~~

2622 [~~(v) include, as applicable:~~

2623 [~~(A) test schedules;]~~

2624 [~~(B) deadlines and a termination date;]~~

2625 [~~(C) measures that will be used to evaluate the performance of the procurement item;]~~

2626 [~~(D) any fees and associated expenses or an explanation of the circumstances~~

2627 ~~warranting a waiver of those fees and expenses;]~~

2628 [~~(E) the obligations of the procurement unit and vendor;]~~

2629 [~~(F) provisions regarding the ownership of the procurement item during and after the~~

2630 trial use or testing period;]

2631 [~~(G) an explanation of the grounds upon which the contract may be terminated;~~]

2632 [~~(H) a limitation of liability;~~]

2633 [~~(I) a consequential damage waiver provision;~~]

2634 [~~(J) a statement regarding the confidentiality or nondisclosure of information;~~]

2635 [~~(K) a provision relating to any required bond or security deposit; and]~~

2636 [~~(L) other requirements unique to the procurement item for trial use or testing.~~]

2637 [~~(c) Publication of notice under Section ~~63G-6a-406~~ is not required for a procurement~~

2638 ~~pursuant to a trial use contract.~~]

2639 [~~(7) The division or a procurement unit with independent procurement authority may~~

2640 ~~extend a contract for a reasonable period of time without engaging in a standard procurement~~

2641 ~~process, if:~~]

2642 [~~(a) the award of a new contract for the procurement item is delayed due to a protest or~~

2643 ~~appeal;~~]

2644 [~~(b) the standard procurement process is delayed due to unintentional error;~~]

2645 [~~(c) changes in industry standards require significant changes to specifications for the~~

2646 ~~procurement item;~~]

2647 [~~(d) the extension is necessary to prevent the loss of federal funds;~~]

2648 [~~(e) the extension is necessary to address a circumstance where the appropriation of~~

2649 ~~state or federal funds has been delayed;~~]

2650 [~~(f) the extension covers the period of time during which contract negotiations with a~~

2651 ~~new provider are being conducted; or]~~

2652 [~~(g) the extension is necessary to avoid a lapse in critical governmental services that~~

2653 ~~may negatively impact public health, safety, or welfare.~~]

2654 Section 40. Section ~~63G-6a-802.3~~ is enacted to read:

2655 **63G-6a-802.3. Trial use contracts.**

2656 **(1) A procurement unit may award a trial use contract without engaging in a standard**

2657 **procurement process if the contract is:**

2658 **(a) awarded for a procurement item that is not already available to the procurement unit**

2659 **under an existing contract;**

2660 **(b) restricted to the procurement of a procurement item in the minimum quantity and**

2661 for the minimum period of time necessary to test the procurement item;  
2662 (c) the only trial use contract for that procurement unit for the same procurement item;  
2663 and  
2664 (d) not used to circumvent the purposes and policies of this chapter as set forth in  
2665 Section [63G-6a-102](#).  
2666 (2) The period of trial use or testing of a procurement item under a trial use contract  
2667 may not exceed 18 months, unless the procurement officer provides a written exception  
2668 documenting the reason for a longer period.  
2669 (3) A trial use contract shall:  
2670 (a) state that the contract is strictly for the trial use or testing of a procurement item;  
2671 (b) state that the contract terminates upon completion of the trial use or testing period;  
2672 (c) state that the procurement unit is not obligated to purchase or enter into a contract  
2673 for the procurement item, regardless of the trial use or testing result;  
2674 (d) state that any purchase of the procurement item that is the subject of the trial use  
2675 contract will be made in accordance with this chapter; and  
2676 (e) include, as applicable:  
2677 (i) test schedules;  
2678 (ii) deadlines and a termination date;  
2679 (iii) measures that will be used to evaluate the performance of the procurement item;  
2680 (iv) any fees and associated expenses or an explanation of the circumstances  
2681 warranting a waiver of those fees and expenses;  
2682 (v) the obligations of the procurement unit and vendor;  
2683 (vi) provisions regarding the ownership of the procurement item during and after the  
2684 trial use or testing period;  
2685 (vii) an explanation of the grounds upon which the contract may be terminated;  
2686 (viii) a provision relating to any required bond or security deposit; and  
2687 (ix) other requirements unique to the procurement item for trial use or testing.  
2688 (4) Publication of notice under Section [63G-6a-112](#) is not required for a trial use  
2689 contract.  
2690 (5) The applicable rulemaking authority may make rules pertaining to a trial use  
2691 contract.

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

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

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

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

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

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

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

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

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

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

2708 (iii) an extension is necessary:

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

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

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

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

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

2719 (3) for a period of time exceeding 120 days, if the attorney general or the procurement  
2720 unit's attorney determines in writing that the contract extension does not violate this chapter or  
2721 state or federal antitrust laws.

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



2723 **63G-6a-803. Emergency procurement.**

2724 (1) Notwithstanding any other provision of this chapter, [~~a~~] the chief procurement  
 2725 officer or the [~~procurement officer's designee may authorize~~] head of a procurement unit with  
 2726 independent procurement authority may authorize a procurement unit to engage in an  
 2727 emergency procurement without using a standard procurement process [~~when an emergency~~  
 2728 condition exists] if the procurement is necessary to:

2729 (a) avoid a lapse in a critical government service;

2730 (b) mitigate a circumstance that is likely to have a negative impact on public health,  
 2731 safety, welfare, or property; or

2732 (c) protect the legal interests of a public entity.

2733 (2) A procurement [~~officer who authorizes~~] unit conducting an emergency procurement  
 2734 under Subsection (1) shall:

2735 [~~(a) make the authorization in writing, stating the emergency condition upon which the~~  
 2736 emergency procurement is made; and]

2737 [~~(b)~~] (a) ensure that the procurement is made with as much competition as reasonably  
 2738 practicable while;

2739 (i) avoiding a lapse in a critical government service;

2740 (ii) avoiding harm, or a risk of harm, to the public health, safety, welfare, or  
 2741 property[-]; or

2742 (iii) protecting the legal interests of a public entity; and

2743 (b) after the emergency has abated, prepare a written document explaining the  
 2744 emergency condition that necessitated the emergency procurement under Subsection (1).

2745 Section 43. Section **63G-6a-806** is amended to read:

2746 **63G-6a-806. Exception for public transit district contracting with a county or**  
 2747 **municipality.**

2748 A public transit district, organized under Title 17B, Chapter 2a, Part 8, Public Transit  
 2749 District Act, may, without going through a standard procurement process or [~~an~~] another  
 2750 exception to a standard procurement process described in [~~Part 8, Exception to Procurement~~  
 2751 Requirements] this part:

2752 (1) contract with a county or municipality to receive money from the county or  
 2753 municipality; and

2754 (2) use the money described in Subsection (1) to fund a transportation project or a  
2755 transit-related program in accordance with rules made by the applicable rulemaking authority.

2756 Section 44. Section **63G-6a-1206** is amended to read:

2757 **63G-6a-1206. Rules and regulations to determine allowable incurred costs --**  
2758 **Required information.**

2759 (1) (a) The applicable rulemaking authority may, by rule, establish the cost principles  
2760 to be included in a cost-reimbursement contract to determine incurred costs for the purpose of  
2761 calculating a reimbursement.

2762 (b) The cost principles established by rule under Subsection (1)(a) may be modified, by  
2763 contract, if the procurement officer or the head of the issuing procurement unit approves the  
2764 modification.

2765 (2) Except as provided in Subsection (5), a person who seeks to be, or is, a party in a  
2766 cost-based contract with a procurement unit shall:

2767 (a) submit cost or pricing data relating to determining the cost or pricing amount; and

2768 (b) certify that, to the best of the contractor's knowledge and belief, the cost or pricing  
2769 data submitted is accurate and complete as of the date specified by the procurement unit.

2770 (3) The procurement officer shall ensure that the date specified under Subsection (2)(b)  
2771 is before:

2772 (a) the pricing of any contract awarded by a standard procurement process or pursuant  
2773 to a sole source procurement, if the total contract price is expected to exceed an amount  
2774 established by rule made by the applicable rulemaking authority; or

2775 (b) the pricing of any change order that is expected to exceed an amount established by  
2776 rule made by the applicable rulemaking authority.

2777 (4) A contract or change order that requires a certification described in Subsection (2)  
2778 shall include a provision that the price to the procurement unit, including profit or fee, shall be  
2779 adjusted to exclude any significant sums by which the procurement unit finds that the price was  
2780 increased because the contractor provided cost or pricing data that was inaccurate, incomplete,  
2781 or not current as of the date specified by the procurement officer.

2782 (5) A procurement unit is not required to comply with Subsection (2) if:

2783 (a) the contract price is based on adequate price competition;

2784 (b) the contract price is based on established catalogue prices or market prices;

2785 (c) the contract price is set by law or rule; or

2786 (d) the procurement states, in writing:

2787 (i) that, in accordance with rules made by the applicable rulemaking authority, the  
2788 requirements of Subsection (2) may be waived; and

2789 (ii) the reasons for the waiver.

2790 ~~[(6) The procurement officer or audit entity under contract with the procurement unit  
2791 may, at reasonable times and places, only to the extent that the books and records relate to the  
2792 applicable cost or pricing data, audit the books and records of:]~~

2793 ~~[(a) a person who has submitted cost or pricing data pursuant to this section; or]~~

2794 ~~[(b) a contractor or subcontractor under a contract or subcontract other than a firm  
2795 fixed price contract.]~~

2796 ~~[(7) Unless a shorter time is provided for by contract:]~~

2797 ~~[(a) a person described in Subsection (6)(a) shall maintain the books and records  
2798 described in Subsection (6) for three years after the day on which the fiscal year in which final  
2799 payment is made under the contract ends;]~~

2800 ~~[(b) a contractor shall maintain the books and records described in Subsection (6) for  
2801 three years after the day on which the fiscal year in which final payment under the prime  
2802 contract ends; and]~~

2803 ~~[(c) a subcontractor shall maintain the books and records described in Subsection (6)  
2804 for three years after the day on which the fiscal year in which final payment is made under the  
2805 subcontract ends;]~~

2806 Section 45. Section **63G-6a-1206.3** is enacted to read:

2807 **63G-6a-1206.3. Auditing of books.**

2808 (1) A procurement officer or an audit entity under contract with the procurement unit  
2809 may audit the books and records of a contractor or subcontractor.

2810 (2) An audit under Subsection (1):

2811 (a) is limited to the books and records that relate to the applicable contract or  
2812 subcontract; and

2813 (b) may occur only at a reasonable time and place.

2814 (3) A contractor shall maintain all books and records relating to a contract for six years  
2815 after the day on which the contractor receives the final payment under the contract, or until all

2816 audits initiated under this section within the six-year period have been completed, whichever is  
2817 later.

2818 (4) A subcontractor shall maintain all books and records relating to a subcontract for  
2819 six years after the day on which the subcontractor receives the final payment under the  
2820 subcontract, or until all audits initiated under this section within the six-year period have been  
2821 completed, whichever is later.

2822 Section 46. Section **63G-6a-1206.5** is amended to read:

2823 **63G-6a-1206.5. Change in contract price.**

2824 A contractor may:

2825 (1) increase the contract price only in accordance with the terms of the contract[-]; and

2826 (2) lower the contract price at any time during the time a contract is in effect.

2827 Section 47. Section **63G-6a-1502** is amended to read:

2828 **63G-6a-1502. Requirements regarding procurement of design professional**  
2829 **services.**

2830 (1) A procurement unit seeking to procure design professional services shall:

2831 (a) publicly announce all requirements for those services through a request for  
2832 statement of qualifications, as provided in this part; and

2833 (b) negotiate contracts for design professional services:

2834 (i) on the basis of demonstrated competence and qualification for the type of services  
2835 required; and

2836 (ii) at fair and reasonable prices.

2837 (2) A procurement unit shall procure design professional services as provided in this

2838 part, except as otherwise provided in Sections [~~63G-6a-403, 63G-6a-404, 63G-6a-408;~~]

2839 [63G-6a-506](#), [63G-6a-802](#), and [63G-6a-803](#).

2840 (3) This part does not affect the authority of, and does not apply to procedures  
2841 undertaken by, a procurement unit to obtain the services of architects or engineers in the  
2842 capacity of employees of the procurement unit.

2843 Section 48. Section **63G-6a-1503.5** is amended to read:

2844 **63G-6a-1503.5. Evaluation of statements of qualifications.**

2845 (1) An evaluation committee appointed under Section [63G-6a-1503](#) shall evaluate and  
2846 score each responsive [~~and responsible~~] statement of qualifications that has not been

2847 [~~disqualified~~] eliminated from consideration under this chapter, using the criteria described in  
2848 the request for statement of qualifications.

2849 (2) Criteria not described in the request for statement of qualifications may not be used  
2850 to evaluate a statement of qualifications.

2851 (3) An evaluation committee may enter into discussions or conduct interviews with, or  
2852 attend presentations by, the design professionals whose statements of qualifications are under  
2853 consideration.

2854 (4) An evaluation committee shall rank the top three highest scoring design  
2855 professionals, in order of their scores, for the purpose of entering into fee negotiations as  
2856 provided in Section [63G-6a-1505](#).

2857 (5) If fewer than three responsible design professionals submit statements of  
2858 qualifications [~~or~~] that are determined to be responsive [~~and responsible~~], the chief  
2859 procurement officer or head of a procurement unit with independent procurement authority  
2860 shall issue a written determination explaining why it is in the best interest of the procurement  
2861 unit to continue the fee negotiation and the contracting process with less than three design  
2862 professionals.

2863 (6) (a) The deliberations of an evaluation committee may be held in private.

2864 (b) If the evaluation committee is a public body, as defined in Section [52-4-103](#), the  
2865 evaluation committee shall comply with Section [52-4-205](#) in closing a meeting for its  
2866 deliberations.

2867 Section 49. Section [63G-6a-1601](#) is amended to read:

#### 2868 **Part 16. Protests**

2869 **[63G-6a-1601](#). Title.**

2870 This part is known as "~~[Controversies and]~~ Protests."

2871 Section 50. Section [63G-6a-1601.5](#) is enacted to read:

2872 **[63G-6a-1601.5](#). Definitions.**

2873 As used in this part:

2874 (1) "Constructive knowledge":

2875 (a) means knowledge or information that a protestor would have if the protestor had  
2876 exercised reasonable care or diligence, regardless of whether the protestor actually has the  
2877 knowledge or information; and

2878 (b) includes knowledge of:  
2879 (i) applicable provisions of this chapter and other law and administrative rule;  
2880 (ii) instructions, criteria, deadlines, and requirements contained in the solicitation or in  
2881 other documents made available to persons interested in the solicitation or provided in a  
2882 mandatory pre-solicitation meeting;  
2883 (iii) relevant facts and evidence supporting the protest or leading the protestor to  
2884 contend that the protestor has been aggrieved in connection with a procurement;  
2885 (iv) communications or actions, pertaining to the procurement, of all persons within the  
2886 protestor's organization or under the supervision of the protestor; and  
2887 (v) any other applicable information discoverable by the exercise of reasonable care or  
2888 diligence.  
2889 (2) "Protestor" means a person who files a protest under this part.  
2890 (3) "Standing" means to have suffered an injury or harm or to be about to suffer  
2891 imminent injury or harm, if:  
2892 (a) the cause of the injury or harm is:  
2893 (i) an infringement of the protestor's own right and not the right of another person who  
2894 is not a party to the procurement;  
2895 (ii) reasonably connected to the procurement unit's conduct; and  
2896 (iii) the sole reason the protestor is not considered, or is no longer considered, for an  
2897 award of a contract under the procurement that is the subject of the protest;  
2898 (b) a decision on the protest in favor of the protestor:  
2899 (i) is likely to redress the injury or harm; and  
2900 (ii) would give the protestor a reasonable likelihood of being awarded a contract; and  
2901 (c) the protestor has the legal authority to file the protest on behalf of the actual or  
2902 prospective bidder or offeror or prospective contractor involved in the procurement that is the  
2903 subject of the protest.  
2904 Section 51. Section **63G-6a-1602** is amended to read:  
2905 **63G-6a-1602. Protest -- Time for filing -- Authority to resolve protest.**  
2906 (1) ~~[(a)]~~ A protest may be filed with the protest officer by ~~[(i) an actual or prospective~~  
2907 ~~bidder or offeror]~~ a person who:  
2908 (a) has standing; and

2909 (b) is aggrieved in connection with a procurement[;] or an award of a contract.  
2910 [~~(ii) a prospective contractor who~~]  
2911 [~~is aggrieved in connection with an award of a contract.~~]  
2912 [~~(b) (i) A protest under Subsection (1)(a) relating to an invitation for bids or a request~~  
2913 ~~for proposals shall be filed:~~]  
2914 [~~(A) before the opening of bids or the closing date for proposals; or~~]  
2915 [~~(B) if the person filing the protest did not know and should not have known of the~~  
2916 ~~facts giving rise to the protest before the bid opening or the closing date for proposals, within~~  
2917 ~~seven days after the day on which the person knows or should have known of the facts giving~~  
2918 ~~rise to the protest.~~]  
2919 [~~(ii) A protest under Subsection (1)(a) relating to a form of procurement not described~~  
2920 ~~in Subsection (1)(b)(i) but involving a deadline established for the submission of a price or~~  
2921 ~~response shall be filed:~~]  
2922 [~~(A) before the deadline for the submission of a price or response; or~~]  
2923 [~~(B) if the person filing the protest did not know and reasonably should not have~~  
2924 ~~known of the facts giving rise to the protest before the deadline for the submission of a price or~~  
2925 ~~response, within seven days after the day on which the person knows or reasonably should have~~  
2926 ~~known of the facts giving rise to the protest.~~]  
2927 [~~(iii) A protest under Subsection (1)(a) relating to a form of procurement not described~~  
2928 ~~in Subsection (1)(b)(i) or (ii) shall be filed within seven days after the day on which the person~~  
2929 ~~filing the protest knows or should have known of the facts giving rise to the protest.~~]  
2930 [~~(2) A person who files a protest under this section shall include in the filing~~  
2931 ~~document:~~]  
2932 (2) A protest may not be filed after:  
2933 (a) (i) (A) the opening of bids, for a protest relating to a procurement under a bidding  
2934 process; or  
2935 (B) the deadline for submitting responses to the solicitation, for a protest relating to  
2936 another standard procurement process; or  
2937 (ii) the closing of the procurement stage that is the subject of the protest:  
2938 (A) if the protest relates to a multiple-stage procurement; and  
2939 (B) notwithstanding Subsections (2)(a)(i)(A) and (B); or

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



2971 (b) the disclosure of a protected record or protected information in addition to the  
 2972 information provided under the disclosure provisions of this chapter; or

2973 (c) other information, documents, or explanations not explicitly provided for in this  
 2974 chapter.

2975 ~~[(3)]~~ (6) A person ~~[described in Subsection (1)]~~ who fails to file a protest within the  
 2976 time prescribed in Subsection ~~[(1)(b)]~~ (2) may not:

2977 (a) protest to the protest officer a solicitation or award of a contract; or

2978 (b) file an action or appeal challenging a solicitation or award of a contract before an  
 2979 appeals panel, a court, or any other forum.

2980 ~~[(4)]~~ (7) Subject to the applicable requirements of Section 63G-10-403, a protest  
 2981 officer or the head of a procurement unit may enter into a settlement agreement to resolve a  
 2982 protest.

2983 Section 52. Section 63G-6a-1603 is amended to read:

2984 **63G-6a-1603. Protest officer responsibilities and authority -- Proceedings on**  
 2985 **protest -- Effect of decision.**

2986 (1) After a protest is filed, the protest officer shall determine whether the protest is  
 2987 timely filed and complies fully with the requirements of Section 63G-6a-1602.

2988 (2) If the protest officer determines that the protest is not timely filed or that the protest  
 2989 does not fully comply with Section 63G-6a-1602, the protest officer shall dismiss the protest.

2990 (3) If the protest officer determines that the protest is timely filed and complies fully  
 2991 with Section 63G-6a-1602, the protest officer shall:

2992 (a) dismiss the protest if the protest officer determines that the protest alleges facts that,  
 2993 if true, do not provide an adequate basis for the protest;

2994 (b) uphold the protest without holding a hearing if the protest officer determines that  
 2995 the undisputed facts of the protest indicate that the protest should be upheld; or

2996 (c) hold a hearing on the protest if there is a genuine issue of material fact that needs to  
 2997 be resolved in order to determine whether the protest should be upheld.

2998 (4) (a) If a hearing is held on a protest, the protest officer may:

2999 (i) subpoena witnesses and compel their attendance at the protest hearing;

3000 (ii) subpoena documents for production at the protest hearing;

3001 (iii) obtain additional factual information; and

3002 (iv) obtain testimony from experts, the person filing the protest, representatives of the  
3003 procurement unit, or others to assist the protest officer to make a decision on the protest.

3004 (b) The Rules of Evidence do not apply to a protest hearing.

3005 (c) The applicable rulemaking authority shall make rules relating to intervention in a  
3006 protest, including designating:

3007 (i) who may intervene; and

3008 (ii) the time and manner of intervention.

3009 (d) A protest officer shall:

3010 (i) record each hearing held on a protest under this section;

3011 (ii) regardless of whether a hearing on a protest is held under this section, preserve all  
3012 records and other evidence relied upon in reaching the protest officer's written decision until  
3013 the decision, and any appeal of the decision, becomes final; and

3014 (iii) submit to the procurement policy board chair a copy of the protest officer's written  
3015 decision and all records and other evidence relied upon in reaching the decision, within seven  
3016 days after receiving:

3017 (A) notice that an appeal of the protest officer's decision has been filed under Section  
3018 [63G-6a-1702](#); or

3019 (B) a request from the chair of the procurement policy board.

3020 (e) A protest officer's holding a hearing, considering a protest, or issuing a written  
3021 decision under this section does not affect a person's right to later question or challenge the  
3022 protest officer's jurisdiction to hold the hearing, consider the protest, or issue the decision.

3023 (5) (a) The deliberations of a protest officer may be held in private.

3024 (b) If the protest officer is a public body, as defined in Section [52-4-103](#), the protest  
3025 officer shall comply with Section [52-4-205](#) in closing a meeting for its deliberations.

3026 (6) (a) A protest officer, or the protest officer's designee, shall promptly issue a written  
3027 decision regarding any protest, unless the protest is settled by mutual agreement.

3028 (b) The decision shall:

3029 (i) state the reasons for the action taken;

3030 (ii) inform the protestor of the right to judicial or administrative review as provided in  
3031 this chapter; and

3032 (iii) indicate the amount of the security deposit or bond required under Section

3033 63G-6a-1703.

3034 (c) A person who issues a decision under Subsection (6)(a) shall mail, email, or  
3035 otherwise immediately furnish a copy of the decision to the protestor.

3036 (7) A decision described in this section is effective until stayed or reversed on appeal,  
3037 except to the extent provided in Section 63G-6a-1903.

3038 (8) (a) A decision described in Subsection (6)(a) that is issued in relation to a  
3039 procurement unit other than a legislative procurement unit, a judicial procurement unit, a  
3040 nonadopting local government procurement unit, or a public transit district is final and  
3041 conclusive unless the protestor files an appeal under Section 63G-6a-1702.

3042 (b) A decision described in Subsection (6)(a) that is issued in relation to a legislative  
3043 procurement unit, a judicial procurement unit, a nonadopting local government procurement  
3044 unit, or a public transit district is final and conclusive unless the protestor files an appeal under  
3045 Section 63G-6a-1802.

3046 (9) If the protest officer does not issue the written decision regarding a protest [~~or a~~  
3047 ~~contract controversy~~] within 30 calendar days after the day on which [~~a written request for a~~  
3048 ~~final decision is~~] the protest was filed with the protest officer, or within a longer period as may  
3049 be agreed upon by the parties, the protestor[, ~~prospective contractor, or contractor~~] may proceed  
3050 as if an adverse decision had been received.

3051 (10) A determination under this section by the protest officer regarding an issue of fact  
3052 may not be overturned on appeal unless the decision is arbitrary and capricious or clearly  
3053 erroneous.

3054 Section 53. Section 63G-6a-1702 is amended to read:

3055 **63G-6a-1702. Appeal to Utah State Procurement Policy Board -- Appointment of**  
3056 **procurement appeals panel -- Proceedings.**

3057 (1) This part applies to all procurement units other than:

3058 (a) a legislative procurement unit;

3059 (b) a judicial procurement unit;

3060 (c) a nonadopting local government procurement unit; or

3061 (d) a public transit district.

3062 (2) (a) Subject to Section 63G-6a-1703, a party to a protest involving a procurement  
3063 unit other than a procurement unit listed in Subsection (1)(a), (b), (c), or (d) may appeal the

3064 protest decision to the board by filing a written notice of appeal with the chair of the board  
3065 within seven days after:

3066 (i) the day on which the written decision described in Section 63G-6a-1603 is:

3067 (A) personally served on the party or the party's representative; or

3068 (B) emailed or mailed to the address or email address [~~of record~~] provided by the party  
3069 under Subsection 63G-6a-1602[(2)](3); or

3070 (ii) the day on which the 30-day period described in Subsection 63G-6a-1603(9) ends,  
3071 if a written decision is not issued before the end of the 30-day period.

3072 (b) A person appealing a debarment or suspension of a procurement unit other than a  
3073 procurement unit listed in Subsection (1)(a), (b), (c), or (d) shall file a written notice of appeal  
3074 with the chair of the board no later than seven days after the debarment or suspension.

3075 (c) A notice of appeal under Subsection (2)(a) or (b) shall:

3076 (i) include the address of record and email address of record of the party filing the  
3077 notice of appeal; and

3078 (ii) be accompanied by a copy of any written protest decision or debarment or  
3079 suspension order.

3080 (3) A person may not base an appeal of a protest under this section on a ground not  
3081 specified in the person's protest under Section 63G-6a-1602.

3082 (4) A person may not appeal from a protest described in Section 63G-6a-1602, unless:

3083 (a) a decision on the protest has been issued; or

3084 (b) a decision is not issued and the 30-day period described in Subsection  
3085 63G-6a-1603(9), or a longer period agreed to by the parties, has passed.

3086 (5) The chair of the board or a designee of the chair who is not employed by the  
3087 procurement unit responsible for the solicitation, contract award, or other action complained of:

3088 (a) shall, within seven days after the day on which the chair receives a timely written  
3089 notice of appeal under Subsection (2), and if all the requirements of Subsection (2) and Section  
3090 63G-6a-1703 have been met, appoint:

3091 (i) a procurement appeals panel to hear and decide the appeal, consisting of at least  
3092 three individuals, each of whom is:

3093 (A) a member of the board; or

3094 (B) a designee of a member appointed under Subsection (5)(a)(i)(A), if the designee is

- 3095 approved by the chair; and
- 3096 (ii) one of the members of the procurement appeals panel to be the chair of the panel;
- 3097 (b) may:
- 3098 (i) appoint the same procurement appeals panel to hear more than one appeal; or
- 3099 (ii) appoint a separate procurement appeals panel for each appeal;
- 3100 (c) may not appoint a person to a procurement appeals panel if the person is employed
- 3101 by the procurement unit responsible for the solicitation, contract award, or other action
- 3102 complained of; and
- 3103 (d) shall, at the time the procurement appeals panel is appointed, provide appeals panel
- 3104 members with a copy of the protest officer's written decision and all other records and other
- 3105 evidence that the protest officer relied on in reaching the decision.
- 3106 (6) A procurement appeals panel described in Subsection (5) shall:
- 3107 (a) consist of an odd number of members;
- 3108 (b) conduct an informal proceeding on the appeal within 60 days after the day on which
- 3109 the procurement appeals panel is appointed:
- 3110 (i) unless all parties stipulate to a later date; and
- 3111 (ii) subject to Subsection (8);
- 3112 (c) at least seven days before the proceeding, mail, email, or hand-deliver a written
- 3113 notice of the proceeding to the parties to the appeal; and
- 3114 (d) within seven days after the day on which the proceeding ends:
- 3115 (i) issue a written decision on the appeal; and
- 3116 (ii) mail, email, or hand-deliver the written decision on the appeal to the parties to the
- 3117 appeal and to the protest officer.
- 3118 (7) (a) The deliberations of a procurement appeals panel may be held in private.
- 3119 (b) If the procurement appeals panel is a public body, as defined in Section [52-4-103](#),
- 3120 the procurement appeals panel shall comply with Section [52-4-205](#) in closing a meeting for its
- 3121 deliberations.
- 3122 (8) A procurement appeals panel may continue a procurement appeals proceeding
- 3123 beyond the 60-day period described in Subsection (6)(b) if the procurement appeals panel
- 3124 determines that the continuance is in the interests of justice.
- 3125 (9) A procurement appeals panel:

3126 (a) shall, subject to Subsection (9)(c), consider the appeal based solely on:  
3127 (i) the protest decision;  
3128 (ii) the record considered by the person who issued the protest decision; and  
3129 (iii) if a protest hearing was held, the record of the protest hearing;  
3130 (b) may not take additional evidence;  
3131 (c) notwithstanding Subsection (9)(b), may, during an informal hearing, ask questions  
3132 and receive responses regarding the appeal, the protest decision, or the record in order to assist  
3133 the panel to understand the appeal, the protest decision, and the record; and  
3134 (d) shall uphold the decision of the protest officer, unless the decision is arbitrary and  
3135 capricious or clearly erroneous.

3136 (10) If a procurement appeals panel determines that the decision of the protest officer is  
3137 arbitrary and capricious or clearly erroneous, the procurement appeals panel:

3138 (a) shall remand the matter to the protest officer, to cure the problem or render a new  
3139 decision;  
3140 (b) may recommend action that the protest officer should take; and  
3141 (c) may not order that:  
3142 (i) a contract be awarded to a certain person;  
3143 (ii) a contract or solicitation be cancelled; or  
3144 (iii) any other action be taken other than the action described in Subsection (10)(a).

3145 (11) The board shall make rules relating to the conduct of an appeals proceeding,  
3146 including rules that provide for:  
3147 (a) expedited proceedings; and  
3148 (b) electronic participation in the proceedings by panel members and participants.

3149 (12) The Rules of Evidence do not apply to an appeals proceeding.

3150 Section 54. Section **63G-6a-1703** is amended to read:

3151 **63G-6a-1703. Requirement to pay a security deposit or post a bond -- Exceptions**  
3152 **-- Amount -- Forfeiture of security deposit or bond.**

3153 (1) [~~Except as provided by rule made under Subsection (2)(a), a~~] A person who files a  
3154 notice of appeal under Section **63G-6a-1702** shall, before the expiration of the time provided  
3155 under Subsection **63G-6a-1702**(2) for filing a notice of appeal, pay a security deposit or post a  
3156 bond with the office of the protest officer.

- 3157 (2) The amount of a security deposit or bond required under Subsection (1) is:  
3158 (a) for an appeal relating to an invitation for bids or request for proposals and except as  
3159 provided in Subsection (2)(b)(ii):  
3160 (i) \$20,000, if the total contract value is under \$500,000;  
3161 (ii) \$25,000, if the total contract value is \$500,000 or more but less than \$1,000,000;  
3162 (iii) \$50,000, if the total contract value is \$1,000,000 or more but less than \$2,000,000;  
3163 (iv) \$95,000, if the total contract value is \$2,000,000 or more but less than \$4,000,000;  
3164 (v) \$180,000, if the total contract value is \$4,000,000 or more but less than \$8,000,000;  
3165 (vi) \$320,000, if the total contract value is \$8,000,000 or more but less than  
3166 \$16,000,000;  
3167 (vii) \$600,000, if the total contract value is \$16,000,000 or more but less than  
3168 \$32,000,000;  
3169 (viii) \$1,100,000, if the total contract value is \$32,000,000 or more but less than  
3170 \$64,000,000;  
3171 (ix) \$1,900,000, if the total contract value is \$64,000,000 or more but less than  
3172 \$128,000,000;  
3173 (x) \$3,500,000, if the total contract value is \$128,000,000 or more but less than  
3174 \$256,000,000;  
3175 (xi) \$6,400,000, if the total contract value is \$256,000,000 or more but less than  
3176 \$512,000,000; and  
3177 (xii) \$10,200,000, if the total contract value is \$512,000,000 or more; or  
3178 (b) \$20,000, for an appeal:  
3179 (i) relating to any type of procurement process other than an invitation for bids or  
3180 request for proposals;  
3181 (ii) relating to an invitation for bids or request for proposals, if the estimated total  
3182 contract value cannot be determined; or  
3183 (iii) of a debarment or suspension.  
3184 (3) (a) For an appeal relating to an invitation for bids, the estimated total contract value  
3185 shall be based on:  
3186 (i) the lowest responsible and responsive bid amount for the entire term of the contract,  
3187 excluding any renewal period, if the bid opening has occurred;

3188 (ii) the total budget for the procurement item for the entire term of the contract,  
3189 excluding any renewal period, if bids are based on unit or rate pricing; or

3190 (iii) if the contract is being rebid, the historical usage and amount spent on the contract  
3191 over the life of the contract.

3192 (b) For an appeal relating to a request for proposals, the estimated total contract value  
3193 shall be based on:

3194 (i) the lowest cost proposed in a response to a request for proposals, considering the  
3195 entire term of the contract, excluding any renewal period, if the opening of proposals has  
3196 occurred;

3197 (ii) the total budget for the procurement item over the entire term of the contract,  
3198 excluding any renewal period, if opened cost proposals are based on unit or rate pricing; or

3199 (iii) if the contract is being reissued, the historical usage and amount spent on the  
3200 contract over the life of the contract that is being reissued.

3201 (4) The protest officer shall:

3202 (a) retain the security deposit or bond until the protest and any appeal of the protest  
3203 decision is final;

3204 (b) as it relates to a security deposit:

3205 (i) deposit the security deposit into an interest-bearing account; and

3206 (ii) after any appeal of the protest decision becomes final, return the security deposit  
3207 and the interest it accrues to the person who paid the security deposit, unless the security  
3208 deposit is forfeited to the general fund of the procurement unit under Subsection (5); and

3209 (c) as it relates to a bond:

3210 (i) retain the bond until the protest and any appeal of the protest decision becomes  
3211 final; and

3212 (ii) after the protest and any appeal of the protest decision becomes final, return the  
3213 bond to the person who posted the bond, unless the bond is forfeited to the general fund of the  
3214 procurement unit under Subsection (5).

3215 (5) A security deposit that is paid, or a bond that is posted, under this section shall  
3216 forfeit to the general fund of the procurement unit if:

3217 (a) the person who paid the security deposit or posted the bond fails to ultimately  
3218 prevail on appeal; and



3219 (b) the procurement appeals panel finds that the protest or appeal is frivolous or that its  
3220 primary purpose is to harass or cause a delay.

3221 Section 55. Section **63G-6a-1903** is amended to read:

3222 **63G-6a-1903. Effect of timely protest or appeal.**

3223 A procurement unit, other than a legislative procurement unit, a judicial procurement  
3224 unit, a nonadopting local government procurement unit, or a public transit district, may not  
3225 proceed further with a solicitation or with the award of a contract:

3226 (1) during the pendency of a timely:

3227 (a) protest under [~~Subsection~~] Section [63G-6a-1602](#)~~(+)~~;

3228 (b) appeal of a protest under Section [63G-6a-1702](#); or

3229 (c) appeal of a procurement appeals panel decision under Section [63G-6a-1802](#); and

3230 (2) until:

3231 (a) all administrative and judicial remedies are exhausted;

3232 (b) for a protest under Section [63G-6a-1602](#) or an appeal under Section [63G-6a-1702](#):

3233 (i) the chief procurement officer, after consultation with the attorney general's office  
3234 and the head of the using agency, makes a written determination that award of the contract  
3235 without delay is in the best interest of the procurement unit or the state;

3236 (ii) the head of a procurement unit with independent procurement authority, after  
3237 consultation with the procurement unit's attorney, makes a written determination that award of  
3238 the contract without delay is in the best interest of the procurement unit or the state; or

3239 (iii) for a procurement unit that is not represented by the attorney general's office, the  
3240 procurement unit, after consulting with the attorney for the procurement unit, makes a written  
3241 determination that award of the contract without delay is in the best interest of the procurement  
3242 unit or the state; or

3243 (c) for an appeal under Section [63G-6a-1802](#), or an appeal to a higher court than  
3244 district court:

3245 (i) the chief procurement officer, after consultation with the attorney general's office  
3246 and the head of the using agency, makes a written determination that award of the contract  
3247 without delay is in the best interest of the procurement unit or the state;

3248 (ii) the head of a procurement unit with independent procurement authority, after  
3249 consultation with the procurement unit's attorney, makes a written determination that award of

3250 the contract without delay is in the best interest of the procurement unit or the state; or

3251 (iii) for a procurement unit that is not represented by the attorney general's office, the  
3252 procurement unit, after consulting with the attorney for the procurement unit, makes a written  
3253 determination that award of the contract without delay is necessary to protect the best interest  
3254 of the procurement unit or the state.

3255 Section 56. Section **63G-6a-2002** is amended to read:

3256 **63G-6a-2002. Records -- Retention.**

3257 (1) All procurement records shall be retained and disposed of in accordance with Title  
3258 63G, Chapter 2, Government Records Access and Management Act.

3259 (2) Written determinations required by this chapter shall be retained in the appropriate  
3260 official contract file of:

3261 (a) the division;

3262 (b) the procurement unit with independent procurement authority; or

3263 (c) for a legislative procurement unit or a judicial procurement unit, the person  
3264 designated by rule made by the applicable rulemaking authority.

3265 (3) A procurement unit shall keep, and make available to the public, upon request,  
3266 written records of procurements for which an expenditure of \$50 or more is made, for the  
3267 longer of:

3268 (a) [~~four~~] six years;

3269 (b) the time otherwise required by law; or

3270 (c) the time period provided by rule made by the applicable rulemaking authority.

3271 (4) The written record described in Subsection (3) shall include:

3272 (a) the name of the provider from whom the procurement was made;

3273 (b) a description of the procurement item;

3274 (c) the date of the procurement; and

3275 (d) the expenditure made for the procurement.

3276 Section 57. Section **63G-6a-2003** is amended to read:

3277 **63G-6a-2003. Records of contracts made -- Audits -- Contract requirements.**

3278 The chief procurement officer, the procurement officer, or the head of a procurement  
3279 unit with independent procurement authority shall maintain a record of all contracts made  
3280 under Section [~~63G-6a-408~~] [63G-6a-506](#), [63G-6a-802](#), or [63G-6a-803](#), in accordance with

3281 Title 63G, Chapter 2, Government Records Access and Management Act. The record shall  
3282 contain each contractor's name, the amount and type of each contract, and a listing of the  
3283 procurement items to which the contract relates.

3284 Section 58. Section **63G-6a-2105** is amended to read:

3285 **63G-6a-2105. Cooperative procurements -- Contracts with federal government --**  
3286 **Regional solicitations.**

3287 (1) The chief procurement officer may, in accordance with the requirements of this  
3288 chapter, enter into a cooperative procurement, and a contract that is awarded as a result of a  
3289 cooperative procurement, with:

- 3290 (a) another state;  
3291 (b) a cooperative purchasing organization; or  
3292 (c) a public entity inside or outside the state.

3293 (2) A public entity, nonprofit organization, or, as permitted under federal law, an  
3294 agency of the federal government, may obtain a procurement item from a state cooperative  
3295 contract or a contract awarded by the chief procurement officer under Subsection (1), without  
3296 signing a participating addendum if the solicitation issued by the chief procurement officer to  
3297 obtain the contract includes a statement indicating that the resulting contract will be issued for  
3298 the benefit of public entities and, as applicable, nonprofit organizations and agencies of the  
3299 federal government.

3300 (3) Except as provided in Section [~~63G-6a-408~~] 63G-6a-506, or as otherwise provided  
3301 in this chapter, an executive branch procurement unit may not obtain a procurement item from  
3302 a source other than a state cooperative contract or a contract awarded by the chief procurement  
3303 officer under Subsection (1), if the procurement item is available under a state cooperative  
3304 contract or a contract awarded by the chief procurement officer under Subsection (1).

3305 (4) A Utah procurement unit may:

3306 (a) contract with the federal government without going through a standard procurement  
3307 process or an exception to a standard procurement process, described in Part 8, Exceptions to  
3308 Procurement Requirements, if the procurement item obtained under the contract is provided:

3309 (i) directly by the federal government and not by a person contracting with the federal  
3310 government; or

3311 (ii) by a person under contract with the federal government that obtained the contract in

3312 a manner that substantially complies with the provisions of this chapter;

3313 (b) participate in, sponsor, conduct, or administer a cooperative procurement with  
3314 another Utah procurement unit or another public entity in Utah, if:

3315 (i) each party unit involved in the cooperative procurement enters into an agreement  
3316 describing the rights and duties of each party;

3317 (ii) the procurement is conducted, and the contract awarded, in accordance with the  
3318 requirements of this chapter;

3319 (iii) the solicitation:

3320 (A) clearly indicates that the procurement is a cooperative procurement; and

3321 (B) identifies each party that may purchase under the resulting contract; and

3322 (iv) each party involved in the cooperative procurement signs a participating addendum  
3323 describing its rights and obligations in relation to the resulting contract; or

3324 (c) purchase under, or otherwise participate in, an agreement or contract of a  
3325 cooperative purchasing organization, if:

3326 (i) each party involved in the cooperative procurement enters into an agreement  
3327 describing the rights and duties of each party;

3328 (ii) the procurement was conducted in accordance with the requirements of this  
3329 chapter;

3330 (iii) the solicitation:

3331 (A) clearly indicates that the procurement is a cooperative procurement; and

3332 (B) identifies each party that may purchase under the resulting contract; and

3333 (iv) each party involved in the cooperative procurement signs a participating addendum  
3334 describing its rights and obligations in relation to the resulting contract.

3335 (5) A procurement unit may not obtain a procurement item under a contract that results  
3336 from a cooperative procurement described in Subsection (4), [if] unless the procurement unit:

3337 (a) is [~~not~~] identified under Subsection (4)(b)(iii)(B) or (4)(c)(iii)(B); [~~or~~] and

3338 (b) [~~does not sign~~] signs a participating addendum to the contract as required by this  
3339 section.

3340 (6) A procurement unit, other than a legislative procurement unit or a judicial  
3341 procurement unit, may not obtain a procurement item under a contract held by the United  
3342 States General Services Administration, unless, based upon documentation provided by the

3343 procurement unit, the Director of the State Division of Purchasing and General Services  
3344 determines in writing that the United States General Services Administration procured the  
3345 contract in a manner that substantially complies with the provisions of this chapter.

3346 (7) (a) As used in this Subsection (7), "regional solicitation" means a solicitation issued  
3347 by the chief procurement officer for the procurement of a procurement item within a specified  
3348 geographical region of the state.

3349 (b) In addition to any other duty or authority under this section, the chief procurement  
3350 officer shall:

3351 (i) after considering board recommendations, develop a plan for issuing regional  
3352 solicitations;

3353 (ii) present the plan to the Government Operations Interim Committee by September 1,  
3354 2014; and

3355 (iii) after developing a plan, issue regional solicitations for procurement items in  
3356 accordance with the plan and this chapter.

3357 (c) A plan under Subsection (7)(b) shall:

3358 (i) define the proposed regional boundaries for regional solicitations;

3359 (ii) specify the types of procurement items for which a regional solicitation may be  
3360 issued; and

3361 (iii) identify the regional solicitations that the chief procurement officer plans to issue.

3362 (d) A regional solicitation shall require that a person responding to the solicitation offer  
3363 similar warranties and submit to similar obligations as are standard under other state  
3364 cooperative contracts.

3365 (e) ~~[A]~~ Except as authorized by the chief procurement officer, a procurement item that  
3366 is available under a state cooperative contract may not be provided under a contract pursuant to  
3367 a regional solicitation until after the expiration of the state cooperative contract.

3368 Section 59. Section **63G-6a-2404** is amended to read:

3369 **63G-6a-2404. Unlawful conduct -- Exceptions -- Classification of offenses.**

3370 (1) (a) It is unlawful for a person who has or is seeking a contract with or a grant from  
3371 a public entity knowingly to give, or offer, promise, or pledge to give, a gratuity or kickback to:

3372 (i) the public entity;

3373 (ii) a procurement professional or contract administration professional; or

3374 (iii) an individual who the person knows is a family member of an individual described  
3375 in Subsection (1)(a)(ii).

3376 (b) It is not unlawful for a public agency to give, offer, promise, or pledge to give a  
3377 contribution to another public agency.

3378 (c) A person is not guilty of unlawful conduct under Subsection (1)(a) for:

3379 (i) giving or offering, promising, or pledging to give a contribution to a public entity,  
3380 unless done with the intent to induce the public entity, in exchange, to:

3381 (A) award a contract or grant;

3382 (B) make a procurement decision; or

3383 (C) take an action relating to the administration of a contract or grant; or

3384 (ii) giving or offering, promising, or pledging to give something of value to an  
3385 organization to which a procurement professional or contract administration professional

3386 belongs, unless done with the intent to induce a public entity, in exchange, to:

3387 (A) award a contract or grant;

3388 (B) make a procurement decision; or

3389 (C) take an action relating to the administration of a contract or grant.

3390 (2) (a) It is unlawful for a procurement professional or contract administration  
3391 professional, or a family member of either, knowingly to receive or accept, offer or agree to  
3392 receive or accept, or ask for a promise or pledge of, a gratuity or kickback from a person who  
3393 has or is seeking a contract with or a grant from a public entity.

3394 (b) An individual is not guilty of unlawful conduct under Subsection (2)(a) for  
3395 receiving or accepting, offering or agreeing to receive or accept, or asking for a promise or  
3396 pledge of a contribution on behalf of a public entity, unless done with the intent that the public  
3397 entity, in exchange:

3398 (i) award a contract or grant;

3399 (ii) make a procurement decision; or

3400 (iii) take an action relating to the administration of a contract or grant.

3401 (3) Notwithstanding Subsections (1) and (2), it is not unlawful for a person to give or  
3402 receive, offer to give or receive, or promise or pledge to give or ask for a promise or pledge of,  
3403 a hospitality gift, if:

3404 (a) the total value of the hospitality gift is less than \$10; and

3405 (b) the aggregate value of all hospitality gifts from the person to the recipient in a  
3406 calendar year is less than \$50.

3407 (4) A person who engages in the conduct made unlawful under Subsection (1) or (2) is  
3408 guilty of:

3409 (a) a second degree felony, if the total value of the gratuity or kickback is \$1,000 or  
3410 more;

3411 (b) a third degree felony, if the total value of the gratuity or kickback is \$250 or more  
3412 but less than \$1,000;

3413 (c) a class A misdemeanor, if the total value of the gratuity or kickback is \$100 or more  
3414 but less than \$250; and

3415 (d) a class B misdemeanor, if the total value of the gratuity or kickback is less than  
3416 \$100.

3417 (5) The criminal sanctions described in Subsection (4) do not preclude the imposition  
3418 of other penalties for conduct made unlawful under this part, in accordance with other  
3419 applicable law, including:

3420 (a) dismissal from employment or other disciplinary action;

3421 (b) for an elected officer listed in Section 77-6-1, removal from office as provided in  
3422 Title 77, Chapter 6, Removal by Judicial Proceedings;

3423 (c) requiring the public officer or employee to return the value of the unlawful gratuity  
3424 or kickback; and

3425 (d) any other civil penalty provided by law.

3426 Section 60. Section 63G-6a-2407 is amended to read:

3427 **63G-6a-2407. Duty to report unlawful conduct.**

3428 ~~[(1) A procurement professional shall notify the attorney general or other appropriate~~  
3429 ~~prosecuting attorney if the procurement professional has actual knowledge that a person has~~  
3430 ~~engaged in:]~~

3431 (1) As used in this section, "unlawful conduct" means:

3432 (a) conduct made unlawful under this part; or

3433 (b) conduct, including bid rigging, improperly steering a contract to a favored vendor,  
3434 exercising undue influence on an individual involved in the procurement process, or  
3435 participating in collusion or other anticompetitive practices, made unlawful under other

3436 applicable law.

3437 (2) (a) A procurement professional with actual knowledge that a person has engaged in  
3438 unlawful conduct shall report the person's unlawful conduct to:

3439 (i) the state auditor; or

3440 (ii) the attorney general or other appropriate prosecuting attorney.

3441 (b) An individual not subject to the requirement of Subsection (2)(a) who has actual  
3442 knowledge that a person has engaged in unlawful conduct may report the person's unlawful  
3443 conduct to:

3444 (i) the state auditor; or

3445 (ii) the attorney general or other appropriate prosecuting attorney.

3446 [~~2~~] (3) A procurement professional who fails to comply with the requirement of  
3447 Subsection [~~1~~] (2)(a) is subject to any applicable disciplinary action or civil penalty identified  
3448 in Subsection 63G-6a-2404(5).

3449 Section 61. Section 63G-10-403 is amended to read:

3450 **63G-10-403. Department of Transportation bid or request for proposals protest**  
3451 **settlement agreement approval and review.**

3452 (1) As used in this section:

3453 (a) "Department" means the Department of Transportation created in Section 72-1-201.

3454 (b) "Settlement agreement" includes stipulations, consent decrees, settlement  
3455 agreements, or other legally binding documents or representations resolving a dispute between  
3456 the department and another party when the department is required to pay money or required to  
3457 take legally binding action.

3458 (2) The department shall obtain the approval of the Transportation Commission or the  
3459 governor or review by the Legislative Management Committee of a settlement agreement that  
3460 involves a bid or request for proposal protest in accordance with this section.

3461 (3) A settlement agreement that is being settled by the department as part of a bid or  
3462 request for proposal protest, in accordance with Subsection 63G-6a-1602[~~4~~](7), that might  
3463 cost government entities more than \$100,000 to implement shall be presented to the  
3464 Transportation Commission for approval or rejection.

3465 (4) A settlement agreement that is being settled by the department as part of a bid or  
3466 request for proposal protest, in accordance with Subsection 63G-6a-1602[~~4~~](7), that might



3467 cost government entities more than \$500,000 to implement shall be presented:

3468 (a) to the Transportation Commission for approval or rejection; and

3469 (b) to the governor for approval or rejection.

3470 (5) (a) A settlement agreement that is being settled by the department as part of a bid or  
3471 request for proposal protest, in accordance with Subsection 63G-6a-1602[(4)](7), that might  
3472 cost government entities more than \$1,000,000 to implement shall be presented:

3473 (i) to the Transportation Commission for approval or rejection;

3474 (ii) to the governor for approval or rejection; and

3475 (iii) if the settlement agreement is approved by the Transportation Commission and the  
3476 governor, to the Legislative Management Committee.

3477 (b) The Legislative Management Committee may recommend approval or rejection of  
3478 the settlement agreement.

3479 (6) (a) The department may not enter into a settlement agreement that resolves a bid or  
3480 request for proposal protest, in accordance with Subsection 63G-6a-1602[(4)](7), that might  
3481 cost government entities more than \$100,000 to implement until the Transportation  
3482 Commission has approved the agreement.

3483 (b) The department may not enter into a settlement agreement that resolves a bid or  
3484 request for proposal protest, in accordance with Subsection 63G-6a-1602[(4)](7), that might  
3485 cost government entities more than \$500,000 to implement until the Transportation  
3486 Commission and the governor have approved the agreement.

3487 (c) The department may not enter into a settlement agreement that resolves a bid or  
3488 request for proposal protest, in accordance with Subsection 63G-6a-1602[(4)](7), that might  
3489 cost government entities more than \$1,000,000 to implement until:

3490 (i) the Transportation Commission has approved the agreement;

3491 (ii) the governor has approved the agreement; and

3492 (iii) the Legislative Management Committee has reviewed the agreement.

3493 Section 62. Section 72-6-107.5 is amended to read:

3494 **72-6-107.5. Construction of improvements of highway -- Contracts -- Health**  
3495 **insurance coverage.**

3496 (1) For purposes of this section:

3497 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section

3498 34A-2-104 who:

3499 (i) works at least 30 hours per calendar week; and

3500 (ii) meets employer eligibility waiting requirements for health care insurance which  
3501 may not exceed the first day of the calendar month following 60 days from the date of hire.

3502 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

3503 (c) "Qualified health insurance coverage" is as defined in Section 26-40-115.

3504 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

3505 (2) (a) Except as provided in Subsection (3), this section applies to contracts entered  
3506 into by the department on or after July 1, 2009, for construction or design of highways and to a  
3507 prime contractor or to a subcontractor in accordance with Subsection (2)(b).

3508 (b) (i) A prime contractor is subject to this section if the prime contract is in the  
3509 amount of \$1,500,000 or greater.

3510 (ii) A subcontractor is subject to this section if a subcontract is in the amount of  
3511 \$750,000 or greater.

3512 (3) This section does not apply if:

3513 (a) the application of this section jeopardizes the receipt of federal funds;

3514 (b) the contract is a sole source contract; or

3515 (c) the contract is an emergency procurement.

3516 (4) (a) This section does not apply to a change order as defined in Section 63G-6a-103,  
3517 or a modification to a contract, when the contract does not meet the initial threshold required  
3518 by Subsection (2).

3519 (b) A person who intentionally uses change orders or contract modifications to  
3520 circumvent the requirements of Subsection (2) is guilty of an infraction.

3521 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the department that  
3522 the contractor has and will maintain an offer of qualified health insurance coverage for the  
3523 contractor's employees and the employees' dependents during the duration of the contract.

3524 (b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall  
3525 demonstrate to the department that the subcontractor has and will maintain an offer of qualified  
3526 health insurance coverage for the subcontractor's employees and the employees' dependents  
3527 during the duration of the contract.

3528 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during

3529 the duration of the contract is subject to penalties in accordance with administrative rules  
3530 adopted by the department under Subsection (6).

3531 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the  
3532 requirements of Subsection (5)(b).

3533 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during  
3534 the duration of the contract is subject to penalties in accordance with administrative rules  
3535 adopted by the department under Subsection (6).

3536 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the  
3537 requirements of Subsection (5)(a).

3538 (6) The department shall adopt administrative rules:

3539 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

3540 (b) in coordination with:

3541 (i) the Department of Environmental Quality in accordance with Section 19-1-206;

3542 (ii) the Department of Natural Resources in accordance with Section 79-2-404;

3543 (iii) the State Building Board in accordance with Section 63A-5-205;

3544 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

3545 (v) a public transit district in accordance with Section 17B-2a-818.5; and

3546 (vi) the Legislature's Administrative Rules Review Committee; and

3547 (c) which establish:

3548 (i) the requirements and procedures a contractor must follow to demonstrate to the  
3549 department compliance with this section which shall include:

3550 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or

3551 (b) more than twice in any 12-month period; and

3552 (B) that the actuarially equivalent determination required for qualified health insurance  
3553 coverage in Subsection (1) is met by the contractor if the contractor provides the department or  
3554 division with a written statement of actuarial equivalency from either:

3555 (I) the Utah Insurance Department;

3556 (II) an actuary selected by the contractor or the contractor's insurer; or

3557 (III) an underwriter who is responsible for developing the employer group's premium  
3558 rates;

3559 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally

3560 violates the provisions of this section, which may include:

3561 (A) a three-month suspension of the contractor or subcontractor from entering into  
3562 future contracts with the state upon the first violation;

3563 (B) a six-month suspension of the contractor or subcontractor from entering into future  
3564 contracts with the state upon the second violation;

3565 (C) an action for debarment of the contractor or subcontractor in accordance with  
3566 Section [63G-6a-904](#) upon the third or subsequent violation; and

3567 (D) monetary penalties which may not exceed 50% of the amount necessary to  
3568 purchase qualified health insurance coverage for an employee and a dependent of the employee  
3569 of the contractor or subcontractor who was not offered qualified health insurance coverage  
3570 during the duration of the contract; and

3571 (iii) a website on which the department shall post the benchmark for the qualified  
3572 health insurance coverage identified in Subsection (1)(c).

3573 (7) (a) (i) In addition to the penalties imposed under Subsection (6), a contractor or  
3574 subcontractor who intentionally violates the provisions of this section shall be liable to the  
3575 employee for health care costs that would have been covered by qualified health insurance  
3576 coverage.

3577 (ii) An employer has an affirmative defense to a cause of action under Subsection  
3578 (7)(a)(i) if:

3579 (A) the employer relied in good faith on a written statement of actuarial equivalency  
3580 provided by:

3581 (I) an actuary; or

3582 (II) an underwriter who is responsible for developing the employer group's premium  
3583 rates; or

3584 (B) the department determines that compliance with this section is not required under  
3585 the provisions of Subsection (3) or (4).

3586 (b) An employee has a private right of action only against the employee's employer to  
3587 enforce the provisions of this Subsection (7).

3588 (8) Any penalties imposed and collected under this section shall be deposited into the  
3589 Medicaid Restricted Account created in Section [26-18-402](#).

3590 (9) The failure of a contractor or subcontractor to provide qualified health insurance

3591 coverage as required by this section:

3592 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,  
3593 or contractor under Section [~~63G-6a-1603~~] [63G-6a-1602](#) or any other provision in Title 63G,  
3594 Chapter 6a, Utah Procurement Code; and

3595 (b) may not be used by the procurement entity or a prospective bidder, offeror, or  
3596 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design  
3597 or construction.

3598 Section 63. Section **79-2-404** is amended to read:

3599 **79-2-404. Contracting powers of department -- Health insurance coverage.**

3600 (1) For purposes of this section:

3601 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section  
3602 [34A-2-104](#) who:

3603 (i) works at least 30 hours per calendar week; and

3604 (ii) meets employer eligibility waiting requirements for health care insurance which  
3605 may not exceed the first day of the calendar month following 60 days from the date of hire.

3606 (b) "Health benefit plan" has the same meaning as provided in Section [31A-1-301](#).

3607 (c) "Qualified health insurance coverage" is as defined in Section [26-40-115](#).

3608 (d) "Subcontractor" has the same meaning provided for in Section [63A-5-208](#).

3609 (2) (a) Except as provided in Subsection (3), this section applies a design or  
3610 construction contract entered into by, or delegated to, the department or a division, board, or  
3611 council of the department on or after July 1, 2009, and to a prime contractor or to a  
3612 subcontractor in accordance with Subsection (2)(b).

3613 (b) (i) A prime contractor is subject to this section if the prime contract is in the  
3614 amount of \$1,500,000 or greater.

3615 (ii) A subcontractor is subject to this section if a subcontract is in the amount of  
3616 \$750,000 or greater.

3617 (3) This section does not apply to contracts entered into by the department or a  
3618 division, board, or council of the department if:

3619 (a) the application of this section jeopardizes the receipt of federal funds;

3620 (b) the contract or agreement is between:

3621 (i) the department or a division, board, or council of the department; and

- 3622 (ii) (A) another agency of the state;
- 3623 (B) the federal government;
- 3624 (C) another state;
- 3625 (D) an interstate agency;
- 3626 (E) a political subdivision of this state; or
- 3627 (F) a political subdivision of another state; or
- 3628 (c) the contract or agreement is:
  - 3629 (i) for the purpose of disbursing grants or loans authorized by statute;
  - 3630 (ii) a sole source contract; or
  - 3631 (iii) an emergency procurement.
- 3632 (4) (a) This section does not apply to a change order as defined in Section [63G-6a-103](#),
- 3633 or a modification to a contract, when the contract does not meet the initial threshold required
- 3634 by Subsection (2).
  - 3635 (b) A person who intentionally uses change orders or contract modifications to
  - 3636 circumvent the requirements of Subsection (2) is guilty of an infraction.
  - 3637 (5) (a) A contractor subject to Subsection (2)(b)(i) shall demonstrate to the department
  - 3638 that the contractor has and will maintain an offer of qualified health insurance coverage for the
  - 3639 contractor's employees and the employees' dependents during the duration of the contract.
  - 3640 (b) If a subcontractor of the contractor is subject to Subsection (2)(b)(ii), the contractor
  - 3641 shall demonstrate to the department that the subcontractor has and will maintain an offer of
  - 3642 qualified health insurance coverage for the subcontractor's employees and the employees'
  - 3643 dependents during the duration of the contract.
  - 3644 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
  - 3645 the duration of the contract is subject to penalties in accordance with administrative rules
  - 3646 adopted by the department under Subsection (6).
  - 3647 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
  - 3648 requirements of Subsection (5)(b).
  - 3649 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
  - 3650 the duration of the contract is subject to penalties in accordance with administrative rules
  - 3651 adopted by the department under Subsection (6).
  - 3652 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the

3653 requirements of Subsection (5)(a).

3654 (6) The department shall adopt administrative rules:

3655 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

3656 (b) in coordination with:

3657 (i) the Department of Environmental Quality in accordance with Section 19-1-206;

3658 (ii) a public transit district in accordance with Section 17B-2a-818.5;

3659 (iii) the State Building Board in accordance with Section 63A-5-205;

3660 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

3661 (v) the Department of Transportation in accordance with Section 72-6-107.5; and

3662 (vi) the Legislature's Administrative Rules Review Committee; and

3663 (c) which establish:

3664 (i) the requirements and procedures a contractor must follow to demonstrate

3665 compliance with this section to the department which shall include:

3666 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or

3667 (b) more than twice in any 12-month period; and

3668 (B) that the actuarially equivalent determination required for qualified health insurance

3669 coverage in Subsection (1) is met by the contractor if the contractor provides the department or

3670 division with a written statement of actuarial equivalency from either:

3671 (I) the Utah Insurance Department;

3672 (II) an actuary selected by the contractor or the contractor's insurer; or

3673 (III) an underwriter who is responsible for developing the employer group's premium

3674 rates;

3675 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally

3676 violates the provisions of this section, which may include:

3677 (A) a three-month suspension of the contractor or subcontractor from entering into

3678 future contracts with the state upon the first violation;

3679 (B) a six-month suspension of the contractor or subcontractor from entering into future

3680 contracts with the state upon the second violation;

3681 (C) an action for debarment of the contractor or subcontractor in accordance with

3682 Section 63G-6a-904 upon the third or subsequent violation; and

3683 (D) monetary penalties which may not exceed 50% of the amount necessary to

3684 purchase qualified health insurance coverage for an employee and a dependent of an employee  
3685 of the contractor or subcontractor who was not offered qualified health insurance coverage  
3686 during the duration of the contract; and

3687 (iii) a website on which the department shall post the benchmark for the qualified  
3688 health insurance coverage identified in Subsection (1)(c).

3689 (7) (a) (i) In addition to the penalties imposed under Subsection (6), a contractor or  
3690 subcontractor who intentionally violates the provisions of this section shall be liable to the  
3691 employee for health care costs that would have been covered by qualified health insurance  
3692 coverage.

3693 (ii) An employer has an affirmative defense to a cause of action under Subsection  
3694 (7)(a)(i) if:

3695 (A) the employer relied in good faith on a written statement of actuarial equivalency  
3696 provided by:

3697 (I) an actuary; or

3698 (II) an underwriter who is responsible for developing the employer group's premium  
3699 rates; or

3700 (B) the department determines that compliance with this section is not required under  
3701 the provisions of Subsection (3) or (4).

3702 (b) An employee has a private right of action only against the employee's employer to  
3703 enforce the provisions of this Subsection (7).

3704 (8) Any penalties imposed and collected under this section shall be deposited into the  
3705 Medicaid Restricted Account created in Section [26-18-402](#).

3706 (9) The failure of a contractor or subcontractor to provide qualified health insurance  
3707 coverage as required by this section:

3708 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,  
3709 or contractor under Section [~~63G-6a-1603~~] [63G-6a-1602](#) or any other provision in Title 63G,  
3710 Chapter 6a, Utah Procurement Code; and

3711 (b) may not be used by the procurement entity or a prospective bidder, offeror, or  
3712 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design  
3713 or construction.

3714 Section 64. **Repealer.**



3715 This bill repeals:

3716 Section **63G-6a-104, Definitions relating to governmental bodies.**

3717 Section **63G-6a-403, Prequalification of potential vendors.**

3718 Section **63G-6a-404, Approved vendor list.**

3719 Section **63G-6a-503, Request for information and response nonbinding.**

3720 Section **63G-6a-504, Contents of request for information.**

3721 Section **63G-6a-505, Protected information.**

3722 Section 65. **Effective date.**

3723 If approved by two-thirds of all the members elected to each house, this bill takes effect  
3724 upon approval by the governor, or the day following the constitutional time limit of Utah  
3725 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,  
3726 the date of veto override.

3727 Section 66. **Coordinating S.B. 184 with S.B. 135 -- Merging technical and**  
3728 **substantive amendments.**

3729 If this S.B. 184 and S.B. 135, Administrative Law Judge Amendments, both pass and  
3730 become law, it is the intent of the Legislature that the Office of Legislative Research and  
3731 General Counsel shall prepare the Utah Code database for publication by:

3732 (1) modifying Subsection 63G-6a-103(2), as enacted in S.B. 135, to read:

3733 "(2) "Administrative law judge service" means service provided by an administrative  
3734 law judge.";

3735 (2) modifying Subsection 63G-6a-103(41)(m), as enacted in S.B. 135, to read:

3736 "(m) administrative law judge service.";

3737 (3) inserting a newly enacted Section 63G-6a-116 to read:

3738 **"63G-6a-116. Procurement of administrative law judge service.**

3739 (1) A procurement unit shall use a standard procurement process under this chapter for  
3740 the procurement of administrative law judge service.

3741 (2) Within 30 days after the day on which a conducting procurement unit awards a  
3742 contract for administrative law judge service, the conducting procurement unit shall give  
3743 written notice to the Department of Human Resource Management that states:

3744 (a) that the conducting procurement unit awarded a contract for administrative law  
3745 judge service;

3746 (b) the name of the conducting procurement unit; and  
3747 (c) the expected term of the contract.";  
3748 (4) modifying language in Subsection 63G-6a-408(2)(c), as enacted in S.B. 135, by  
3749 replacing the word "services" in the two places it appears with the word "service" and replacing  
3750 "Section 63G-6a-409" with "Subsection 63G-6a-707(3)(a)";  
3751 (5) not enacting Section 63G-6a-409 from S.B. 135;  
3752 (6) modifying Subsection 63G-6a-410(9)(a), as enacted in this bill, to read:  
3753 "(9) (a) (i) After the issuance of a request for statement of qualifications, the  
3754 conducting procurement unit shall appoint an evaluation committee consisting of membership  
3755 as provided in Subsection (9)(a)(ii) or (iii), as applicable.  
3756 (ii) An evaluation committee for a procurement of administrative law judge service  
3757 shall consist of:  
3758 (A) the head of the conducting procurement unit, or the head's designee;  
3759 (B) the head of an executive branch procurement unit other than the conducting  
3760 procurement unit, appointed by the executive director of the Department of Human Resource  
3761 Management, or the head's designee; and  
3762 (C) the executive director of the Department of Human Resource Management, or the  
3763 executive director's designee.  
3764 (iii) An evaluation committee for each other procurement shall consist of at least three  
3765 individuals with at least a general familiarity with or basic understanding of:  
3766 (A) the technical requirements relating to the type of procurement item that is the  
3767 subject of the request for statement of qualifications; or  
3768 (B) the need that the procurement item is intended to address.  
3769 (iv) The conducting procurement unit shall ensure that each member of the evaluation  
3770 committee under Subsection (9)(a)(iii) and each individual participating in the evaluation  
3771 committee process:  
3772 (A) does not have a conflict of interest with any vendor that submits a statement of  
3773 qualifications;  
3774 (B) can fairly evaluate each statement of qualifications;  
3775 (C) does not contact or communicate with a vendor concerning the evaluation process  
3776 or procurement outside the official evaluation committee process; and

3777 (D) conducts or participates in the evaluation in a manner that ensures a fair and  
3778 competitive process and avoids the appearance of impropriety."; and  
3779 (7) modifying Subsection 63G-6a-707(3) to read:  
3780 "(3) [The] (a) For a procurement of administrative law judge service, an evaluation  
3781 committee shall consist of:  
3782 (i) the head of the conducting procurement unit, or the head's designee;  
3783 (ii) the head of an executive branch procurement unit other than the conducting  
3784 procurement unit, appointed by the executive director of the Department of Human Resource  
3785 Management, or the head's designee; and  
3786 (iii) the executive director of the Department of Human Resource Management, or the  
3787 executive director's designee.  
3788 (b) For every other procurement requiring an evaluation by an evaluation committee,  
3789 the conducting procurement unit shall:  
3790 [~~(a)~~] (i) appoint an evaluation committee consisting of at least three individuals with at  
3791 least a general familiarity with or basic understanding of:  
3792 (A) the technical requirements relating to the type of procurement item that is the  
3793 subject of the procurement; or  
3794 (B) the need that the procurement item is intended to address; and  
3795 [~~(b)~~] (ii) ensure that the evaluation committee and each [member of the evaluation  
3796 committee] individual participating in the evaluation committee process:  
3797 [~~(i)~~] (A) does not have a conflict of interest with any of the offerors;  
3798 [~~(ii)~~] (B) can fairly evaluate each proposal;  
3799 [~~(iii)~~] (C) does not contact or communicate with an offeror concerning the procurement  
3800 outside the official evaluation committee process; and  
3801 [~~(iv)~~] (D) conducts or participates in the evaluation in a manner that ensures a fair and  
3802 competitive process and avoids the appearance of impropriety."