

**PROCUREMENT CODE AMENDMENTS**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gage Froerer**

Senate Sponsor: D. Gregg Buxton

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**LONG TITLE**

**General Description:**

This bill modifies provisions of the Utah Procurement Code.

**Highlighted Provisions:**

This bill:

- ▶ modifies the stated purposes of the Utah Procurement Code;
- ▶ enacts and modifies definitions applicable to the Utah Procurement Code;
- ▶ modifies a provision relating to public notice;
- ▶ provides that it is the responsibility of a person seeking information provided by a public notice to seek out, find, and respond to the public notice;
- ▶ modifies minimum experience requirements for the chief procurement officer;
- ▶ modifies language relating to the bidding process and request for proposals process;
- ▶ clarifies the use of multiple award contracts in the bidding process and request for proposals process;
- ▶ clarifies provisions involving the terms "responsible" and "responsive";
- ▶ modifies language relating to the situations where the use of a request for proposals process is appropriate;
- ▶ repeals and reenacts a provision relating to best and final offers;
- ▶ modifies a provision relating to a determination concerning a contract extension;
- ▶ modifies a provision relating to a determination of nonresponsibility;
- ▶ eliminates an appeal to the procurement appeals panel for a debarment or suspension and modifies the process of obtaining judicial review of a suspension or debarment;

- 30           ▶ modifies provisions relating to protests and appeals of protest decisions;
- 31           ▶ makes it unlawful for a person to divide a single procurement in order to avoid the
- 32 use of a standard procurement process and for a person to take certain action against
- 33 a public officer or employee involved in the procurement process;
- 34           ▶ exempts taxed interlocal entities and their directors, officers, and employees from
- 35 provisions relating to unlawful conduct and penalties;
- 36           ▶ modifies language relating to the consequence of failing to report unlawful conduct;
- 37 and
- 38           ▶ makes technical changes.

39 **Money Appropriated in this Bill:**

40           None

41 **Other Special Clauses:**

42           This bill provides a coordination clause.

43 **Utah Code Sections Affected:**

44 AMENDS:

- 45           **63G-6a-102**, as last amended by Laws of Utah 2014, Chapter 196
- 46           **63G-6a-103**, as last amended by Laws of Utah 2016, Chapters 176, 237, 355 and last
- 47 amended by Coordination Clause, Laws of Utah 2016, Chapter 355
- 48           **63G-6a-112**, as renumbered and amended by Laws of Utah 2016, Chapter 355
- 49           **63G-6a-116**, as enacted by Laws of Utah 2016, Chapter 355 and last amended by
- 50 Coordination Clause, Laws of Utah 2016, Chapter 355
- 51           **63G-6a-302**, as last amended by Laws of Utah 2013, Chapter 445
- 52           **63G-6a-410**, as enacted by Laws of Utah 2016, Chapter 355
- 53           **63G-6a-506**, as last amended by Laws of Utah 2016, Chapters 237, 348 and
- 54 renumbered and amended by Laws of Utah 2016, Chapter 355
- 55           **63G-6a-507**, as enacted by Laws of Utah 2016, Chapter 355
- 56           **63G-6a-602**, as last amended by Laws of Utah 2013, Chapter 445
- 57           **63G-6a-603**, as last amended by Laws of Utah 2016, Chapter 355

- 58            **63G-6a-606**, as last amended by Laws of Utah 2016, Chapter 355
- 59            **63G-6a-607**, as last amended by Laws of Utah 2014, Chapter 196
- 60            **63G-6a-608**, as last amended by Laws of Utah 2013, Chapter 445
- 61            **63G-6a-612**, as last amended by Laws of Utah 2014, Chapter 196
- 62            **63G-6a-702**, as last amended by Laws of Utah 2014, Chapter 196
- 63            **63G-6a-703**, as last amended by Laws of Utah 2016, Chapter 355
- 64            **63G-6a-707**, as last amended by Laws of Utah 2016, Chapters 237 and 355
- 65            **63G-6a-709**, as last amended by Laws of Utah 2016, Chapter 355
- 66            **63G-6a-802.7**, as enacted by Laws of Utah 2016, Chapter 355
- 67            **63G-6a-903**, as last amended by Laws of Utah 2013, Chapter 445
- 68            **63G-6a-904**, as last amended by Laws of Utah 2015, Chapter 258
- 69            **63G-6a-1002**, as last amended by Laws of Utah 2013, Chapter 445
- 70            **63G-6a-1003**, as last amended by Laws of Utah 2013, Chapter 445
- 71            **63G-6a-1204.5**, as renumbered and amended by Laws of Utah 2013, Chapter 445
- 72            **63G-6a-1402**, as last amended by Laws of Utah 2014, Chapter 196
- 73            **63G-6a-1403**, as renumbered and amended by Laws of Utah 2012, Chapter 347
- 74            **63G-6a-1601.5**, as enacted by Laws of Utah 2016, Chapter 355
- 75            **63G-6a-1602**, as last amended by Laws of Utah 2016, Chapter 355
- 76            **63G-6a-1603**, as last amended by Laws of Utah 2016, Chapter 355
- 77            **63G-6a-1702**, as last amended by Laws of Utah 2016, Chapter 355
- 78            **63G-6a-1703**, as last amended by Laws of Utah 2016, Chapter 355
- 79            **63G-6a-1802**, as last amended by Laws of Utah 2015, Chapter 218
- 80            **63G-6a-2403**, as enacted by Laws of Utah 2014, Chapter 196
- 81            **63G-6a-2407**, as last amended by Laws of Utah 2016, Chapter 355
- 82            **63G-10-403**, as last amended by Laws of Utah 2016, Chapter 355
- 83    ENACTS:
- 84            **63G-6a-1701.5**, Utah Code Annotated 1953
- 85            **63G-6a-2404.3**, Utah Code Annotated 1953

86 **63G-6a-2404.7**, Utah Code Annotated 1953

87 REPEALS AND REENACTS:

88 **63G-6a-707.5**, as last amended by Laws of Utah 2016, Chapter 355

89 REPEALS:

90 **63G-6a-1604**, as enacted by Laws of Utah 2012, Chapter 347 and last amended by  
91 Coordination Clause, Laws of Utah 2012, Chapter 347

92 **63G-6a-1706**, as last amended by Laws of Utah 2014, Chapter 196

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

94 **63G-6a-702**, as last amended by Laws of Utah 2014, Chapter 196

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

97 Section 1. Section **63G-6a-102** is amended to read:

98 **63G-6a-102. Purpose of chapter.**

99 The underlying purposes and policies of this chapter are:

100 [~~(1) to simplify, clarify, and modernize the law governing procurement in the state;~~]

101 (1) to ensure transparency in the public procurement process;

102 (2) to ensure the fair and equitable treatment of all persons who [~~deal with the~~]

103 participate in the public procurement [system] process;

104 (3) to provide increased economy in state procurement activities; and

105 (4) to foster effective broad-based competition within the free enterprise system.

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

107 **63G-6a-103. Definitions.**

108 As used in this chapter:

109 [~~(1) "Administrative law judge" means the same as that term is defined in Section~~

110 ~~67-19c-102.~~]

111 [~~(2) "Administrative law judge service" means service provided by an administrative~~

112 ~~law judge.~~]

113 [~~(3)~~] (1) "Applicable rulemaking authority" means:

- 114 (a) for a legislative procurement unit, the Legislative Management Committee;
- 115 (b) for a judicial procurement unit, the Judicial Council;
- 116 (c) (i) only to the extent of the procurement authority expressly granted to the
- 117 procurement unit by statute:
  - 118 (A) for the building board or the Division of Facilities Construction and Management,
  - 119 created in Section 63A-5-201, the building board;
  - 120 (B) for the Office of the Attorney General, the attorney general; and
  - 121 (C) for the Department of Transportation created in Section 72-1-201, the executive
  - 122 director of the Department of Transportation; and
    - 123 (ii) for each other executive branch procurement unit, the board;
  - 124 (d) for a local government procurement unit:
    - 125 (i) the legislative body of the local government procurement unit; or
    - 126 (ii) an individual or body designated by the legislative body of the local government
    - 127 procurement unit;
  - 128 (e) for a school district or a public school, the board, except to the extent of a school
  - 129 district's own nonadministrative rules that do not conflict with the provisions of this chapter;
  - 130 (f) for a state institution of higher education, the State Board of Regents;
  - 131 (g) for a public transit district, the chief executive of the public transit district;
  - 132 (h) for a local district other than a public transit district or for a special service district:
    - 133 (i) before January 1, 2015, the board of trustees of the local district or the governing
    - 134 body of the special service district; or
    - 135 (ii) on or after January 1, 2015, the board, except to the extent that the board of trustees
    - 136 of the local district or the governing body of the special service district makes its own rules:
      - 137 (A) with respect to a subject addressed by board rules; or
      - 138 (B) that are in addition to board rules; [or]
      - 139 (i) for an applied technology college within the Utah College of Applied Technology,
      - 140 the Utah College of Applied Technology board of trustees; or
      - 141 [~~(i)~~] (j) for any other procurement unit, the board.

142           ~~[(4)]~~ (2) "Approved vendor" means a vendor who has been approved through the  
143 approved vendor list process.

144           ~~[(5)]~~ (3) "Approved vendor list" means a list of approved vendors established under  
145 Section [63G-6a-507](#).

146           ~~[(6)]~~ (4) "Approved vendor list process" means the procurement process described in  
147 Section [63G-6a-507](#).

148           ~~[(7)]~~ (5) "Bidder" means a person who submits a bid or price quote in response to an  
149 invitation for bids.

150           ~~[(8)]~~ (6) "Bidding process" means the procurement process described in Part 6,  
151 Bidding.

152           ~~[(9)]~~ (7) "Board" means the Utah State Procurement Policy Board, created in Section  
153 [63G-6a-202](#).

154           ~~[(10)]~~ (8) "Building board" means the State Building Board, created in Section  
155 [63A-5-101](#).

156           ~~[(11)]~~ (9) "Change directive" means a written order signed by the procurement officer  
157 that directs the contractor to suspend work or make changes, as authorized by contract, without  
158 the consent of the contractor.

159           ~~[(12)]~~ (10) "Change order" means a written alteration in specifications, delivery point,  
160 rate of delivery, period of performance, price, quantity, or other provisions of a contract, upon  
161 mutual agreement of the parties to the contract.

162           ~~[(13)]~~ (11) "Chief procurement officer" means the chief procurement officer appointed  
163 under Subsection [63G-6a-302\(1\)](#).

164           ~~[(14)]~~ (12) "Conducting procurement unit" means a procurement unit that conducts all  
165 aspects of a procurement:

166           (a) except:

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

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

169           (b) including:

- 170 (i) preparing any solicitation document;
- 171 (ii) appointing an evaluation committee;
- 172 (iii) conducting the evaluation process, except as provided in Subsection
- 173 [63G-6a-707](#)(6)(b) relating to scores calculated for costs of proposals;
- 174 (iv) selecting and recommending the person to be awarded a contract;
- 175 (v) negotiating the terms and conditions of a contract, subject to the issuing
- 176 procurement unit's approval; and
- 177 (vi) contract administration.
- 178 ~~[(15)]~~ [\(13\)](#) "Conservation district" means the same as that term is defined in Section
- 179 [17D-3-102](#).
- 180 ~~[(16)]~~ [\(14\)](#) "Construction":
- 181 (a) means services, including work, and supplies for a project for the construction,
- 182 renovation, alteration, improvement, or repair of a public facility on real property; and
- 183 (b) does not include services and supplies for the routine, day-to-day operation, repair,
- 184 or maintenance of an existing public facility.
- 185 ~~[(17)]~~ [\(15\)](#) "Construction manager/general contractor":
- 186 (a) means a contractor who enters into a contract:
- 187 (i) for the management of a construction project; and
- 188 (ii) that allows the contractor to subcontract for additional labor and materials that are
- 189 not included in the contractor's cost proposal submitted at the time of the procurement of the
- 190 contractor's services; and
- 191 (b) does not include a contractor whose only subcontract work not included in the
- 192 contractor's cost proposal submitted as part of the procurement of the contractor's services is to
- 193 meet subcontracted portions of change orders approved within the scope of the project.
- 194 [\(16\)](#) "Construction subcontractor":
- 195 (a) means a person under contract with a contractor or another subcontractor to provide
- 196 services or labor for the design or construction of a construction project;
- 197 (b) includes a general contractor or specialty contractor licensed or exempt from

198 licensing under Title 58, Chapter 55, Utah Construction Trades Licensing Act; and

199 (c) does not include a supplier who provides only materials, equipment, or supplies to a  
200 contractor or subcontractor for a construction project.

201 ~~[(18)]~~ (17) "Contract" means an agreement for a procurement.

202 ~~[(19)]~~ (18) "Contract administration" means all functions, duties, and responsibilities  
203 associated with managing, overseeing, and carrying out a contract between a procurement unit  
204 and a contractor, including:

205 (a) implementing the contract;

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

208 (c) executing change orders;

209 (d) processing contract amendments;

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

211 (f) curing contract errors and deficiencies;

212 (g) terminating a contract;

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

214 (i) computing payments under the contract; and

215 (j) closing out a contract.

216 ~~[(20)]~~ (19) "Contractor" means a person who is awarded a contract with a procurement  
217 unit.

218 ~~[(21)]~~ (20) "Cooperative procurement" means procurement conducted by, or on behalf  
219 of:

220 (a) more than one procurement unit; or

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

222 ~~[(22)]~~ (21) "Cooperative purchasing organization" means an organization, association,  
223 or alliance of purchasers established to combine purchasing power in order to obtain the best  
224 value for the purchasers by engaging in procurements in accordance with Section [63G-6a-2105](#).

225 ~~[(23)]~~ (22) "Cost-plus-a-percentage-of-cost contract" means a contract under which the



226 contractor is paid a percentage of the total actual expenses or costs in addition to the  
227 contractor's actual expenses or costs.

228 ~~[(24)]~~ (23) "Cost-reimbursement contract" means a contract under which a contractor  
229 is reimbursed for costs which are allowed and allocated in accordance with the contract terms  
230 and the provisions of this chapter, and a fee, if any.

231 ~~[(25)]~~ (24) "Days" means calendar days, unless expressly provided otherwise.

232 ~~[(26)]~~ (25) "Definite quantity contract" means a fixed price contract that provides for a  
233 specified amount of supplies over a specified period, with deliveries scheduled according to a  
234 specified schedule.

235 ~~[(27)]~~ (26) "Design-build" means the procurement of design professional services and  
236 construction by the use of a single contract.

237 ~~[(28)]~~ (27) "Design professional" means:

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

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

243 ~~[(29)]~~ (28) "Design professional procurement process" means the procurement process  
244 described in Part 15, Design Professional Services.

245 ~~[(30)]~~ (29) "Design professional services" means:

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

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

249 (c) master planning and programming services.

250 ~~[(31)]~~ (30) "Director" means the director of the division.

251 ~~[(32)]~~ (31) "Division" means the Division of Purchasing and General Services, created  
252 in Section [63A-2-101](#).

253 ~~[(33)]~~ (32) "Educational procurement unit" means:

- 254 (a) a school district;
- 255 (b) a public school, including a local school board and a charter school;
- 256 (c) the Utah Schools for the Deaf and Blind;
- 257 (d) the Utah Education and Telehealth Network; ~~[or]~~
- 258 (e) an institution of higher education of the state~~[-];~~ or
- 259 (f) an applied technology college within the Utah College of Applied Technology.

260 ~~[(34)]~~ (33) "Established catalogue price" means the price included in a catalogue, price  
 261 list, schedule, or other form that:

- 262 (a) is regularly maintained by a manufacturer or contractor;
- 263 (b) is published or otherwise available for inspection by customers; and
- 264 (c) states prices at which sales are currently or were last made to a significant number  
 265 of any category of buyers or buyers constituting the general buying public for the supplies or  
 266 services involved.

267 ~~[(35)]~~ (34) "Executive branch procurement unit" means a department, division, office,  
 268 bureau, agency, or other organization within the state executive branch.

269 ~~[(36)]~~ (35) "Fixed price contract" means a contract that provides a price, for each  
 270 procurement item obtained under the contract, that is not subject to adjustment except to the  
 271 extent that:

- 272 (a) the contract provides, under circumstances specified in the contract, for an  
 273 adjustment in price that is not based on cost to the contractor; or
- 274 (b) an adjustment is required by law.

275 ~~[(37)]~~ (36) "Fixed price contract with price adjustment" means a fixed price contract  
 276 that provides for an upward or downward revision of price, precisely described in the contract,  
 277 that:

- 278 (a) is based on the consumer price index or another commercially acceptable index,  
 279 source, or formula; and
- 280 (b) is not based on a percentage of the cost to the contractor.

281 ~~[(38)]~~ (37) "Grant" means an expenditure of public funds or other assistance, or an

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

284 [~~(39)~~] (38) "Head of a procurement unit" means:

285 (a) for a legislative procurement unit, any person designated by rule made by the  
286 applicable rulemaking authority;

287 (b) for an executive branch procurement unit:

288 (i) the director of the division; or

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

290 (c) for a judicial procurement unit:

291 (i) the Judicial Council; or

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

293 (d) for a local government procurement unit:

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

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

296 (e) for a local district other than a public transit district, the board of trustees of the  
297 local district or a designee of the board of trustees;

298 (f) for a special service district, the governing body of the special service district or a  
299 designee of the governing body;

300 (g) for a local building authority, the board of directors of the local building authority or  
301 a designee of the board of directors;

302 (h) for a conservation district, the board of supervisors of the conservation district or a  
303 designee of the board of supervisors;

304 (i) for a public corporation, the board of directors of the public corporation or a  
305 designee of the board of directors;

306 (j) for a school district or any school or entity within a school district, the board of the  
307 school district, or the board's designee;

308 (k) for a charter school, the individual or body with executive authority over the charter  
309 school, or the individual's or body's designee;

310 (l) for an institution of higher education of the state, the president of the institution of  
311 higher education, or the president's designee; [~~or~~]

312 (m) for an applied technology college within the Utah College of Applied Technology,  
313 the president of the applied technology college or the president's designee; or

314 [~~(m)~~] (n) for a public transit district, the board of trustees or a designee of the board of  
315 trustees.

316 [~~(40)~~] (39) "Immaterial error":

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

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

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

321 (b) includes:

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

324 (ii) a typographical error;

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

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

328 [~~(41)~~] (40) "Indefinite quantity contract" means a fixed price contract that:

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

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

332 (ii) provides a maximum purchase limit.

333 [~~(42)~~] (41) "Independent procurement authority" means authority granted to a  
334 procurement unit under Subsection [63G-6a-106\(4\)\(a\)](#).

335 [~~(43)~~] (42) "Invitation for bids":

336 (a) means a document used to solicit:

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

338 (ii) quotes for a price of a procurement item to be provided to a procurement unit; and  
339 (b) includes all documents attached to or incorporated by reference in a document  
340 described in Subsection ~~[(43)]~~ (42)(a).

341 ~~[(44)]~~ (43) "Issuing procurement unit" means a procurement unit that:

- 342 (a) reviews a solicitation to verify that it is in proper form;
- 343 (b) causes the notice of a solicitation to be published; and
- 344 (c) negotiates and approves the terms and conditions of a contract.

345 ~~[(45)]~~ (44) "Judicial procurement unit" means:

- 346 (a) the Utah Supreme Court;
- 347 (b) the Utah Court of Appeals;
- 348 (c) the Judicial Council;
- 349 (d) a state judicial district; or
- 350 (e) an office, committee, subcommittee, or other organization within the state judicial  
351 branch.

352 ~~[(46)]~~ (45) "Labor hour contract" is a contract under which:

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

356 ~~[(47)]~~ (46) "Legislative procurement unit" means:

- 357 (a) the Legislature;
- 358 (b) the Senate;
- 359 (c) the House of Representatives;
- 360 (d) a staff office of the Legislature, the Senate, or the House of Representatives; or
- 361 (e) ~~[an office;]~~ a committee, subcommittee, commission, or other organization;
  - 362 (i) within the state legislative branch~~[-];~~ or
  - 363 (ii) (A) that is created by statute to advise or make recommendations to the Legislature;
  - 364 (B) the membership of which includes legislators; and
  - 365 (C) for which the Office of Legislative Research and General Counsel provides staff

366 support.

367 ~~[(48)]~~ (47) "Local building authority" means the same as that term is defined in Section  
368 17D-2-102.

369 ~~[(49)]~~ (48) "Local district" means the same as that term is defined in Section  
370 17B-1-102.

371 ~~[(50)]~~ (49) "Local government procurement unit" means:

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

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

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

379 ~~[(51)]~~ (50) "Multiple award contracts" means the award of a contract for an indefinite  
380 quantity of a procurement item to more than one ~~[bidder or offeror]~~ person.

381 ~~[(52)]~~ (51) "Multiyear contract" means a contract that extends beyond a one-year  
382 period, including a contract that permits renewal of the contract, without competition, beyond  
383 the first year of the contract.

384 ~~[(53)]~~ (52) "Municipality" means a city, town, or metro township.

385 ~~[(54)]~~ (53) "Nonadopting local government procurement unit" means:

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

389 (b) each office or agency of a county or municipality described in Subsection (54)(a).

390 ~~[(55)]~~ (54) "Offeror" means a person who submits a proposal in response to a request  
391 for proposals.

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

394 government.]

395 [~~(57)~~] (55) "Preferred bidder" means a bidder that is entitled to receive a reciprocal  
396 preference under the requirements of this chapter.

397 [~~(58)~~] (56) "Procure" means to acquire a procurement item through a procurement.

398 [~~(59)~~] (57) "Procurement":

399 (a) means a procurement unit's acquisition of a procurement item through an  
400 expenditure of public funds, or an agreement to expend public funds;

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

403 (i) preparing and issuing a solicitation; and

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

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

407 (c) does not include a grant.

408 [~~(60)~~] (58) "Procurement item" means a supply, a service, or construction.

409 [~~(61)~~] (59) "Procurement officer" means:

410 (a) for a procurement unit with independent procurement authority:

411 (i) the head of the procurement unit;

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

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

414 (b) for the division or a procurement unit without independent procurement authority,  
415 the chief procurement officer.

416 [~~(62)~~] (60) "Procurement unit":

417 (a) means:

418 (i) a legislative procurement unit;

419 (ii) an executive branch procurement unit;

420 (iii) a judicial procurement unit;

421 (iv) an educational procurement unit;

- 422 (v) a local government procurement unit;
- 423 (vi) a local district;
- 424 (vii) a special service district;
- 425 (viii) a local building authority;
- 426 (ix) a conservation district;
- 427 (x) a public corporation; or
- 428 (xi) a public transit district; and
- 429 (b) does not include a political subdivision created under Title 11, Chapter 13,
- 430 Interlocal Cooperation Act.
- 431 ~~[(63)]~~ (61) "Professional service" means labor, effort, or work that requires an elevated
- 432 degree of specialized knowledge and discretion, including labor, effort, or work in the field of:
- 433 (a) accounting;
- 434 (b) architecture;
- 435 (c) construction design and management;
- 436 (d) engineering;
- 437 (e) financial services;
- 438 (f) information technology;
- 439 (g) the law;
- 440 (h) medicine;
- 441 (i) psychiatry; or
- 442 (j) underwriting.
- 443 ~~[(64)]~~ (62) "Protest officer" means:
- 444 (a) for the division or a procurement unit with independent procurement authority:
- 445 (i) the head of the procurement unit;
- 446 (ii) ~~[a designee of]~~ the head of the procurement unit's designee who is an employee of
- 447 the procurement unit; or
- 448 (iii) a person designated by rule made by the applicable rulemaking authority; or
- 449 (b) for a procurement unit without independent procurement authority, the chief



450 procurement officer or the chief procurement officer's designee who is an employee of the  
451 division.

452 ~~[(65)]~~ (63) "Public corporation" means the same as that term is defined in Section  
453 63E-1-102.

454 ~~[(66)]~~ (64) "Public entity" means any government entity of the state or political  
455 subdivision of the state, including:

456 (a) a procurement unit;

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

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

460 ~~[(67)]~~ (65) "Public facility" means a building, structure, infrastructure, improvement,  
461 or other facility of a public entity.

462 ~~[(68)]~~ (66) "Public funds" means money, regardless of its source, including from the  
463 federal government, that is owned or held by a procurement unit.

464 ~~[(69)]~~ (67) "Public transit district" means a public transit district organized under Title  
465 17B, Chapter 2a, Part 8, Public Transit District Act.

466 ~~[(70)]~~ (68) "Qualified vendor" means a vendor who:

467 (a) is responsible; and

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

471 ~~[(71)]~~ (69) "Real property" means land and any building, fixture, improvement,  
472 appurtenance, structure, or other development that is permanently affixed to land.

473 ~~[(72)]~~ (70) "Request for information" means a nonbinding process through which a  
474 procurement unit requests information relating to a procurement item.

475 ~~[(73)]~~ (71) "Request for proposals" means a document used to solicit proposals to  
476 provide a procurement item to a procurement unit, including all other documents that are  
477 attached to that document or incorporated in that document by reference.

478           ~~[(74)]~~ (72) "Request for proposals process" means the procurement process described  
479 in Part 7, Request for Proposals.

480           ~~[(75)]~~ (73) "Request for statement of qualifications" means a document used to solicit  
481 information about the qualifications of a person interested in responding to a potential  
482 procurement, including all other documents attached to that document or incorporated in that  
483 document by reference.

484           ~~[(76)]~~ (74) "Requirements contract" means a contract:

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

487           (b) that:

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

489           (ii) provides a maximum purchase limit.

490           ~~[(77)]~~ (75) "Responsible" means being capable, in all respects, of:

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

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

494           ~~[(78)]~~ (76) "Responsive" means conforming in all material respects to the requirements  
495 of a solicitation.

496           ~~[(79)]~~ (77) "Sealed" means manually or electronically secured to prevent disclosure.

497           ~~[(80)]~~ (78) "Service":

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

500           (b) includes a professional service; and

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

503           ~~[(81)]~~ (79) "Small purchase process" means the procurement process described in  
504 Section [63G-6a-506](#).

505           ~~[(82)]~~ (80) "Sole source contract" means a contract resulting from a sole source

506 procurement.

507           ~~[(83)]~~ (81) "Sole source procurement" means a procurement without competition  
508 pursuant to a determination under Subsection [63G-6a-802\(1\)\(a\)](#) that there is only one source  
509 for the procurement item.

510           ~~[(84)]~~ (82) "Solicitation" means an invitation for bids, request for proposals, request  
511 for statement of qualifications, or request for information.

512           ~~[(85)]~~ (83) "Solicitation response" means:

- 513           (a) a bid submitted in response to an invitation for bids;
- 514           (b) a proposal submitted in response to a request for proposals; or
- 515           (c) a statement of qualifications submitted in response to a request for statement of  
516 qualifications.

517           ~~[(86)]~~ (84) "Special service district" means the same as that term is defined in Section  
518 [17D-1-102](#).

519           ~~[(87)]~~ (85) "Specification" means any description of the physical or functional  
520 characteristics or of the nature of a procurement item included in an invitation for bids or a  
521 request for proposals, or otherwise specified or agreed to by a procurement unit, including a  
522 description of:

- 523           (a) a requirement for inspecting or testing a procurement item; or
  - 524           (b) preparing a procurement item for delivery.
- 525           ~~[(88)]~~ (86) "Standard procurement process" means:
- 526           (a) the bidding process;
  - 527           (b) the request for proposals process;
  - 528           (c) the approved vendor list process;
  - 529           (d) the small purchase process; or
  - 530           (e) the design professional procurement process.

531           ~~[(89)]~~ (87) "State cooperative contract" means a contract awarded by the division for  
532 and in behalf of all public entities.

533           ~~[(90)]~~ (88) "Statement of qualifications" means a written statement submitted to a

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

535 ~~[(91)]~~ (89) "Subcontractor":

536 ~~[(a) means a person under contract with a contractor or another subcontractor to~~  
537 ~~provide services or labor for design or construction;]~~

538 ~~[(b) includes a trade contractor or specialty contractor; and]~~

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

541 (a) means a person under contract to perform part of a contractual obligation under the  
542 control of the contractor, whether the person's contract is with the contractor directly or with  
543 another person who is under contract to perform part of a contractual obligation under the  
544 control of the contractor; and

545 (b) includes a supplier, distributor, or other vendor that furnishes supplies or services  
546 to a contractor.

547 ~~[(92)]~~ (90) "Supply" means a good, material, technology, piece of equipment, or any  
548 other item of personal property.

549 ~~[(93)]~~ (91) "Tie bid" means that the lowest responsive bids of responsible bidders are  
550 identical in price.

551 ~~[(94)]~~ (92) "Time and materials contract" means a contract under which the contractor  
552 is paid:

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

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

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

557 ~~[(95)]~~ (93) "Transitional costs":

558 (a) means the costs of changing:

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

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

- 562 (b) includes:
- 563 (i) training costs;
- 564 (ii) conversion costs;
- 565 (iii) compatibility costs;
- 566 (iv) costs associated with system downtime;
- 567 (v) disruption of service costs;
- 568 (vi) staff time necessary to implement the change;
- 569 (vii) installation costs; and
- 570 (viii) ancillary software, hardware, equipment, or construction costs; and

571 (c) does not include:

- 572 (i) the costs of preparing for or engaging in a procurement process; or
- 573 (ii) contract negotiation or drafting costs.

574 [~~96~~] (94) "Trial use contract" means a contract for a procurement item that the  
575 procurement unit acquires for a trial use or testing to determine whether the procurement item  
576 will benefit the procurement unit.

577 [~~97~~] (95) "Vendor":

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

580 (b) includes:

- 581 (i) a bidder;
- 582 (ii) an offeror;
- 583 (iii) an approved vendor; and
- 584 (iv) a design professional.

585 Section 3. Section **63G-6a-112** is amended to read:

586 **63G-6a-112. Required public notice.**

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

590 ~~[(a) the name of the conducting procurement unit;]~~  
591 ~~[(b)]~~ (a) the name of the procurement unit acquiring the procurement item;  
592 ~~[(c)]~~ (b) information on how to contact the issuing procurement unit;  
593 ~~[(d)]~~ (c) the date of the opening and closing of the solicitation;  
594 ~~[(e)]~~ (d) information on how to obtain a copy of the procurement documents;  
595 ~~[(f)]~~ (e) a general description of the procurement items that will be obtained through  
596 the standard procurement process or procurement under Section 63G-6a-802; and  
597 ~~[(g)]~~ (f) for a notice of a procurement under Section 63G-6a-802:  
598 (i) contact information and other information relating to contesting or obtaining  
599 additional information relating to the procurement; and  
600 (ii) the earliest date that the procurement unit may make the procurement.  
601 (2) Except as provided in Subsection (4), the issuing procurement unit shall publish the  
602 notice described in Subsection (1):  
603 (a) at least seven days before the day of the deadline for submission of a bid or other  
604 response; and  
605 (b) (i) in a newspaper of general circulation in the state;  
606 (ii) in a newspaper of local circulation in the area:  
607 (A) directly impacted by the procurement; or  
608 (B) over which the procurement unit has jurisdiction;  
609 (iii) on the main website for the issuing procurement unit or the procurement unit  
610 acquiring the procurement item; or  
611 (iv) on a state website that is owned, managed by, or provided under contract with, the  
612 division for posting a public procurement notice.  
613 (3) Except as provided in Subsection (4), for a procurement under Section 63G-6a-802  
614 for which notice is required to be published in accordance with this section, the issuing  
615 procurement unit shall publish the notice described in Subsection (1):  
616 (a) at least seven days before the acquisition of the procurement item; and  
617 (b) (i) in a newspaper of general circulation in the state;

618 (ii) in a newspaper of local circulation in the area:  
619 (A) directly impacted by the procurement; or  
620 (B) over which the procurement unit has jurisdiction;  
621 (iii) on the main website for the procurement unit acquiring the procurement item; or  
622 (iv) on a state website that is owned by, managed by, or provided under contract with,  
623 the division for posting a procurement notice.

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

627 (a) states that a shorter time is needed; and  
628 (b) determines that competition from multiple sources may be obtained within the  
629 shorter period of time.

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

634 (b) A procurement unit issuing a procurement under Section 63G-6a-802 shall make a  
635 copy of information related to the procurement available for public inspection at the main  
636 office of the procurement unit or on the website described in Subsection (3)(b) until the award  
637 of the contract or the cancellation of the procurement.

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

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

644 (7) (a) It is the responsibility of a person seeking information provided by a public  
645 notice under this section to seek out, find, and respond to a public notice issued by a

646 procurement unit.

647 (b) As a courtesy and in order to promote competition, a procurement unit may  
648 provide, but is not required to provide, individual notice.

649 Section 4. Section **63G-6a-116** is amended to read:

650 **63G-6a-116. Procurement of administrative law judge service.**

651 (1) As used in this section:

652 (a) "Administrative law judge" means the same as that term is defined in Section  
653 67-19e-102.

654 (b) "Administrative law judge service" means service provided by an administrative  
655 law judge.

656 ~~[(1)]~~ (2) A procurement unit shall use a standard procurement process under this  
657 chapter for the procurement of administrative law judge service.

658 (3) For a procurement of administrative law judge service, an evaluation committee  
659 shall consist of:

660 (a) the head of the conducting procurement unit, or the head's designee;

661 (b) the head of an executive branch procurement unit other than the conducting  
662 procurement unit, appointed by the executive director of the Department of Human Resource  
663 Management, or the head's designee; and

664 (c) the executive director of the Department of Human Resource Management, or the  
665 executive director's designee.

666 ~~[(2)]~~ (4) Within 30 days after the day on which a conducting procurement unit awards a  
667 contract for administrative law judge service, the conducting procurement unit shall give  
668 written notice to the Department of Human Resource Management that states:

669 (a) that the conducting procurement unit awarded a contract for administrative law  
670 judge service;

671 (b) the name of the conducting procurement unit; and

672 (c) the expected term of the contract.

673 (5) A procurement of administrative law judge service using a small purchase process



674 is subject to rules made pursuant to Subsection [63G-6a-506\(2\)\(c\)](#).

675 Section 5. Section **63G-6a-302** is amended to read:

676 **63G-6a-302. Chief procurement officer -- Appointment -- Qualifications --**

677 **Authority.**

678 (1) The executive director of the Department of Administrative Services, with the  
679 consent of the governor, shall appoint the chief procurement officer after considering  
680 recommendations from the board.

681 (2) The chief procurement officer shall:

682 (a) have a minimum of eight years' experience;

683 (i) (A) in the large-scale procurement of supplies ~~[and]~~, services<sub>2</sub> or ~~[services and]~~  
684 construction~~[,];~~ or

685 (B) negotiating contract terms and conditions; and

686 (ii) at least five years of which shall have been in public or comparable private  
687 procurement within 12 years preceding the date of appointment; and

688 (b) be a person with demonstrated executive and organizational ability.

689 (3) The chief procurement officer appointed under Subsection (1) is also the director of  
690 the Division of Purchasing and General Services.

691 (4) The chief procurement officer has authority over a procurement by a procurement  
692 unit, except:

693 (a) a procurement unit with independent procurement authority; or

694 (b) as otherwise expressly provided in this chapter.

695 Section 6. Section **63G-6a-410** is amended to read:

696 **63G-6a-410. Request for statement of qualifications -- Process.**

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

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

699 (A) bidding process;

700 (B) request for proposals process; or

701 (C) design professional procurement process; and

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

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

707 (2) A procurement unit may not:

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

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

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

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

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

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

720 (i) experience and work history;

721 (ii) management and staff requirements or standards;

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

723 (iv) performance ratings or references;

724 (v) financial stability; and

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

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

729 (5) A request for statement of qualifications in an approved vendor list process under

730 Section 63G-6a-507 shall include:

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

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

733 (ii) the type of project or scope or category of work that will be the subject of a

734 procurement by the procurement unit;

735 (iii) the procurement process the procurement unit will use to acquire the procurement

736 item; and

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

738 (b) the minimum mandatory requirements, evaluation criteria, and applicable score

739 thresholds that vendors are required to meet to be included on the approved vendor list;

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

741 vendors that:

742 (i) submit a responsive statement of qualifications; and

743 (ii) meet the minimum mandatory requirements, evaluation criteria, and applicable

744 score thresholds described in the request for statement of qualifications;

745 (d) a statement indicating that only vendors on the approved vendor list will be able to

746 participate in the procurements identified in the request for statement of qualifications;

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

748 system for evaluating the performance of vendors on the approved vendor list, including

749 whether a vendor on the approved vendor list may be disqualified and removed from the list;

750 (f) (i) a statement indicating whether the procurement unit uses a closed-ended

751 approved vendor list, as defined in Section 63G-6a-507, or an open-ended approved vendor

752 list, as defined in Section 63G-6a-507; and

753 (ii) (A) if the procurement unit uses a closed-ended approved vendor list, the deadline

754 by which a vendor is required to submit a statement of qualifications and a specified period of

755 time after which the approved vendor list will expire; or

756 (B) if the procurement unit uses an open-ended approved vendor list, the deadline by

757 which a vendor is required to submit a statement of qualifications to be considered for the

758 initial approved vendor list, a schedule indicating when a vendor not on the initial approved  
759 vendor list may submit a statement of qualifications to be considered to be added to the  
760 approved vendor list, and the specified period of time after which a vendor is required to  
761 submit a new statement of qualifications for evaluation before the vendor's status as an  
762 approved vendor on the approved vendor list may be renewed; and

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

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

767 (7) After the deadline for submitting a statement of qualifications, the chief  
768 procurement officer or the head of a procurement unit with independent procurement authority  
769 may allow a vendor to correct an immaterial error in a statement of qualifications, as provided  
770 in Section [63G-6a-114](#).

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

773 (i) the vendor who submitted the statement of qualifications:

774 (A) is not responsible;

775 (B) is in violation of a provision of this chapter;

776 (C) has engaged in unethical conduct; or

777 (D) receives a performance rating below the satisfactory performance threshold  
778 specified in the request for statement of qualifications;

779 (ii) there has been a change in the vendor's circumstances after the vendor submits a  
780 statement of qualifications that, if the change had been known at the time the statement of  
781 qualifications was evaluated, would have caused the statement of qualifications not to have  
782 received a qualifying score; or

783 (iii) the statement of qualifications:

784 (A) is not responsive; or

785 (B) does not meet the mandatory minimum requirements, evaluation criteria, or

786 applicable score thresholds stated in the request for statement of qualifications.

787 (b) A procurement unit that rejects a statement of qualifications under Subsection  
788 (8)(a) shall:

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

790 (ii) provide a copy of the written finding to the vendor that submitted the rejected  
791 statement of qualifications.

792 (9) (a) (i) After the issuance of a request for statement of qualifications, the conducting  
793 procurement unit shall appoint an evaluation committee consisting of [~~membership as provided~~  
794 ~~in Subsection (9)(a)(ii) or (iii), as applicable.~~ (ii) ~~An evaluation committee for a procurement of~~  
795 ~~administrative law judge service shall consist of: (A) the head of the conducting procurement~~  
796 ~~unit, or the head's designee; (B) the head of an executive branch procurement unit other than~~  
797 ~~the conducting procurement unit, appointed by the executive director of the Department of~~  
798 ~~Human Resource Management, or the head's designee; and (C) the executive director of the~~  
799 ~~Department of Human Resource Management, or the executive director's designee.~~ (iii) ~~An~~  
800 ~~evaluation committee for each other procurement shall consist of]~~ at least three individuals  
801 with at least a general familiarity with or basic understanding of:

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

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

805 [~~(iv)~~] (ii) The conducting procurement unit shall ensure that each member of [~~the~~] an  
806 evaluation committee [~~under Subsection (9)(a)(iii)]~~ and each individual participating in the  
807 evaluation committee process:

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

810 (B) can fairly evaluate each statement of qualifications;

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

813 (D) conducts or participates in the evaluation in a manner that ensures a fair and

814 competitive process and avoids the appearance of impropriety.

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

817 (i) from an expert or consultant who:

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

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

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

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

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

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

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

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

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

833 (ii) may not:

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

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

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

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

841 (E) substitute or alter a required form or other document specified in the statement of

842 qualifications;

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

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

848 (e) After the evaluation committee completes its evaluation and scoring of the  
849 statements of qualifications, the evaluation committee shall submit the statements of  
850 qualifications and evaluation scores to the head of the procurement unit for review and final  
851 determination of:

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

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

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

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

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

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

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

868 (12) If only one vendor meets the minimum qualifications, evaluation criteria, and  
869 applicable score thresholds set forth in the request for statement of qualifications that the

870 procurement unit is using as part of an approved vendor list process, the conducting  
871 procurement unit:

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

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

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

879 (14) After receiving and reviewing the statements of qualifications and evaluation  
880 scores submitted by the evaluation committee [~~under Subsection (9)(d)~~], the head of the  
881 procurement unit using the request for statement of qualifications process under this section as  
882 one of the stages of a multiple-stage procurement process shall identify those vendors meeting  
883 the minimum mandatory requirements, evaluation criteria, and applicable score thresholds as  
884 qualified vendors who are allowed to participate in the remaining stages of the multiple-stage  
885 procurement process.

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

888 Section 7. Section **63G-6a-506** is amended to read:

889 **63G-6a-506. Small purchases.**

890 (1) As used in this section:

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

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

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



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

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

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

905 (i) establishing expenditure thresholds, including:

906 (A) an annual cumulative threshold;

907 (B) an individual procurement threshold; and

908 (C) a single procurement aggregate threshold;

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

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

912 (c) If a procurement unit obtains administrative law judge service through a small  
913 purchase standard procurement process, rules made under Subsection (2)(a) shall provide that  
914 the process for the procurement of administrative law judge service include an evaluation  
915 committee described in Subsection [~~63G-6a-707(3)(a)~~] [63G-6a-116\(3\)](#).

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

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

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

925 (a) the procurement item is obtained for an unanticipated, urgent, or emergency

926 condition, including:

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

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

929 (iii) another emergency condition; or

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

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

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

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

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

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

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

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

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

954 (6) Except as otherwise expressly provided in this section, a procurement unit:  
955 (a) may not use the small purchase standard procurement process described in this  
956 section for ongoing, continuous, and regularly scheduled procurements that exceed the annual  
957 cumulative threshold; and

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

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

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

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

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

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

972 ~~[(i) a second degree felony, if the value of the procurement before being divided is  
973 \$1,000,000 or more;]~~

974 ~~[(ii) a third degree felony, if the value of the procurement before being divided is  
975 \$250,000 or more but less than \$1,000,000;]~~

976 ~~[(iii) a class A misdemeanor, if the value of the procurement before being divided is  
977 \$100,000 or more but less than \$250,000; or]~~

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

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

982 ~~[(a) making two or more separate purchases;]~~

983 ~~[(b) dividing an invoice or purchase order into two or more invoices or purchase~~  
984 ~~orders; or]~~

985 ~~[(c) making smaller purchases over a period of time.]~~

986 (8) (a) It is unlawful for a person knowingly to divide a single procurement into  
987 multiple smaller procurements, including by dividing an invoice or purchase order into  
988 multiple invoices or purchase orders, if:

989 (i) the single procurement would not have qualified as a small purchase under this  
990 section;

991 (ii) one or more of the multiple smaller procurements qualify as a small purchase under  
992 this section; and

993 (iii) the division is done with the intent to:

994 (A) avoid having to use a standard procurement process, other than the small purchase  
995 process, that the person would otherwise be required to use for the single procurement; or

996 (B) make one or more of the multiple smaller procurements fall below a small  
997 purchase expenditure threshold established by rule under Subsection (2)(b) that the single  
998 procurement would not have fallen below without the division.

999 (b) A violation of Subsection (8)(a) is subject to penalties as provided in Subsection  
1000 [63G-6a-2404.3\(2\)](#).

1001 ~~[(10)]~~ (9) The Division of Finance within the Department of Administrative Services  
1002 may conduct an audit of an executive branch procurement unit to verify compliance with the  
1003 requirements of this section.

1004 ~~[(11)]~~ (10) An executive branch procurement unit may not make a small purchase after  
1005 January 1, 2014, unless the chief procurement officer certifies that the person responsible for  
1006 procurements in the procurement unit has satisfactorily completed training on this section and  
1007 the rules made under this section.

1008 Section 8. Section **63G-6a-507** is amended to read:

1009 **63G-6a-507. Approved vendor list procurement process.**

1010 (1) As used in this section:

1011 (a) "Closed-ended approved vendor list" means an approved vendor list that is subject  
1012 to:

1013 (i) a short period of time, specified by the procurement unit, during which vendors may  
1014 be added to the list; and

1015 (ii) a specified period of time after which the list will expire.

1016 (b) "Open-ended approved vendor list" means an approved vendor list that is subject  
1017 to:

1018 (i) an indeterminate period of time during which vendors may be added to the list;

1019 (ii) the addition of vendors to the list throughout the term of the list; and

1020 (iii) a specified period of time after which a vendor on the list is required to submit the  
1021 vendor's qualifications for evaluation before the vendor may be renewed as an approved  
1022 vendor.

1023 (2) A procurement unit may not establish an approved vendor list unless the  
1024 procurement unit has first completed the statement of qualifications process described in  
1025 Section [63G-6a-410](#).

1026 (3) (a) A procurement unit may establish an approved vendor list for:

1027 (i) a specific, fully defined procurement item; or

1028 (ii) a future procurement item that is not specifically and fully defined, if the request  
1029 for statement of qualifications contains a general description of:

1030 (A) the procurement item; and

1031 (B) the type of vendor that the procurement unit seeks to provide the procurement item.

1032 (b) A procurement unit may not award a contract to a vendor on an approved vendor  
1033 list for a procurement item that is outside the scope of the general description of the  
1034 procurement item contained in the request for statement of qualifications.

1035 (4) After receiving the statements of qualifications and evaluation scores submitted by  
1036 the evaluation committee under Subsection [63G-6a-410\(9\)\(~~d~~\)\(e\)](#), the head of the conducting  
1037 procurement unit using the request for statement of qualifications process under Section

1038 [63G-6a-410](#) as part of an approved vendor list process shall:

1039 (a) include on an approved vendor list those vendors meeting the minimum mandatory  
1040 requirements, evaluation criteria, and applicable score thresholds; and

1041 (b) reject any vendor not meeting the minimum mandatory requirements, evaluation  
1042 criteria, and applicable score thresholds as ineligible for inclusion on the approved vendor list.

1043 (5) (a) A procurement unit shall include approved vendors on a closed-ended approved  
1044 vendor list or an open-ended approved vendor list.

1045 (b) (i) A closed-ended approved vendor list shall expire no later than 18 months after  
1046 the publication of the closed-ended approved vendor list.

1047 (ii) A procurement unit shall require a vendor on an open-ended approved vendor list,  
1048 in order to remain on the approved vendor list, to submit an updated statement of qualifications  
1049 for evaluation no later than 18 months after the vendor was added to the list as an approved  
1050 vendor.

1051 (6) A procurement unit may:

1052 (a) (i) using a bidding process, request for proposals process, small purchase process,  
1053 or design professional procurement process, award a contract to a vendor on an approved  
1054 vendor list for any procurement item or type of procurement item specified by the procurement  
1055 unit in the request for statement of qualifications, including procurement items that the  
1056 procurement unit intends to acquire in a series of future procurements described in the request  
1057 for statement of qualifications; and

1058 (ii) limit participation in a bidding process, request for proposals process, small  
1059 purchase process, or design professional procurement process to vendors on an approved  
1060 vendor list; or

1061 (b) award a contract to a vendor on an approved vendor list at a price established as  
1062 provided in Section [63G-6a-113](#).

1063 (7) After establishing an approved vendor list as provided in this section, the  
1064 conducting procurement unit shall, before using the approved vendor list, submit the approved  
1065 vendor list to the issuing procurement unit for publication by the issuing procurement unit.

1066 (8) A conducting procurement unit administering an open-ended approved vendor list  
1067 shall:

1068 (a) require a vendor seeking inclusion on the approved vendor list to submit a  
1069 statement of qualifications that complies with all requirements applicable at the time of the  
1070 initial request for statement of qualifications;

1071 (b) if modifying the requirements for inclusion on the approved vendor list, apply any  
1072 new or additional requirement to all vendors equally, whether a vendor is seeking inclusion on  
1073 the approved vendor list for the first time or is already included on the approved vendor list;  
1074 and

1075 (c) keep the request for statement of qualifications posted on a website as required  
1076 under Subsection 63G-6a-112(6).

1077 (9) The applicable rulemaking authority shall make rules pertaining to an approved  
1078 vendor list process, including:

1079 (a) procedures to ensure that all vendors on an approved vendor list have a fair and  
1080 equitable opportunity to compete for a contract for a procurement item; and

1081 (b) requirements for using an approved vendor list with the small purchase process.

1082 Section 9. Section 63G-6a-602 is amended to read:

1083 **63G-6a-602. Contracts awarded by bidding.**

1084 (1) [~~Except as otherwise provided in this chapter, the~~] The division or a procurement  
1085 unit with independent procurement authority [~~shall~~] may award a contract for a procurement  
1086 item by the bidding process, in accordance with the rules of the applicable rulemaking  
1087 authority.

1088 (2) The bidding standard procurement process is appropriate to use when cost is the  
1089 major factor in determining the award of a procurement.

1090 Section 10. Section 63G-6a-603 is amended to read:

1091 **63G-6a-603. Invitation for bids -- Requirements -- Publication.**

1092 (1) The bidding standard procurement process begins when the issuing procurement  
1093 unit issues an invitation for bids.

- 1094 (2) An invitation for bids shall:
- 1095 (a) state the period of time during which bids will be accepted;
- 1096 (b) describe the manner in which a bid shall be submitted;
- 1097 (c) state the place where a bid shall be submitted; and
- 1098 (d) include, or incorporate by reference:
- 1099 (i) to the extent practicable, a full description of the procurement items sought and the
- 1100 full scope of work;
- 1101 (ii) the objective criteria that will be used to evaluate the bids; and
- 1102 (iii) the required contractual terms and conditions.

1103 (3) An issuing procurement unit shall publish an invitation for bids in accordance with

1104 the requirements of Section 63G-6a-112.

1105 Section 11. Section 63G-6a-606 is amended to read:

1106 **63G-6a-606. Evaluation of bids -- Award -- Cancellation -- Rejecting a bid.**

1107 (1) A procurement unit that conducts a procurement using a bidding [~~standard~~

1108 ~~procurement~~] process shall evaluate each bid using the objective criteria described in the

1109 invitation for bids, which may include:

- 1110 (a) experience;
- 1111 (b) performance ratings;
- 1112 (c) inspection;
- 1113 (d) testing;
- 1114 (e) quality;
- 1115 (f) workmanship;
- 1116 (g) time and manner of delivery;
- 1117 (h) references;
- 1118 (i) financial stability;
- 1119 (j) cost;
- 1120 (k) suitability for a particular purpose;
- 1121 (l) the contractor's work site safety program, including any requirement that the



1122 contractor imposes on subcontractors for a work site safety program; or  
1123 (m) other objective criteria specified in the invitation for bids.  
1124 (2) Criteria not described in the invitation for bids may not be used to evaluate a bid.  
1125 (3) The conducting procurement unit shall:  
1126 (a) subject to the provisions of Section 63G-6a-1204.5 for multiple award contracts,  
1127 award the contract as soon as practicable to:  
1128 (i) the responsible bidder who submits the lowest responsive bid that meets the  
1129 objective criteria described in the invitation for bids; or  
1130 (ii) if, in accordance with Subsection (4), the procurement officer or the head of the  
1131 conducting procurement unit rejects a bid described in Subsection (3)(a)(i), the responsible  
1132 bidder who submits the next lowest responsive bid that meets the objective criteria described in  
1133 the invitation for bids; or  
1134 (b) cancel the invitation for bids without awarding a contract.  
1135 (4) In accordance with Subsection (5), the procurement officer or the head of the  
1136 conducting procurement unit may reject a bid for:  
1137 (a) a violation of this chapter by the bidder who submitted the bid;  
1138 (b) a violation of a requirement of the invitation for bids;  
1139 (c) unlawful or unethical conduct by the bidder who submitted the bid; or  
1140 (d) a change in a bidder's circumstance that, had the change been known at the time the  
1141 bid was submitted, would have caused the bid to be rejected.  
1142 (5) A procurement officer or head of a conducting procurement unit who rejects a bid  
1143 under Subsection (4) shall:  
1144 (a) make a written finding, stating the reasons for the rejection; and  
1145 (b) provide a copy of the written finding to the bidder who submitted the rejected bid.  
1146 (6) If a conducting procurement unit cancels an invitation for bids without awarding a  
1147 contract, the conducting procurement unit shall make available for public inspection a written  
1148 justification for the cancellation.  
1149 Section 12. Section **63G-6a-607** is amended to read:

1150 **63G-6a-607. Action if all bids exceed available funds -- Exemption.**

1151 (1) Except as provided in Subsection (2) or (3), if the fiscal officer for the conducting  
1152 procurement unit certifies that all accepted bids exceed available funds and that the lowest  
1153 responsive [~~and~~] bid from a responsible bidder does not exceed the available funds by more  
1154 than 5%, the procurement officer may negotiate an adjustment of the bid price and bid  
1155 requirements with the responsible bidder who submitted the lowest responsive [~~and responsible~~  
1156 ~~bidder~~] bid in order to bring the bid within the amount of available funds.

1157 (2) A procurement officer may not adjust the bid requirements under Subsection (1) if  
1158 there is a substantial likelihood that, had the adjustment been included in the invitation for  
1159 bids, a person that did not submit a bid would have submitted a responsive[~~, responsible,~~] and  
1160 competitive bid.

1161 (3) The Division of Facilities Construction and Management is exempt from the  
1162 requirements of this section if:

1163 (a) the building board adopts rules governing procedures when all accepted bids exceed  
1164 available funds; and

1165 (b) the Division of Facilities Construction and Management complies with the rules  
1166 described in Subsection (3)(a).

1167 Section 13. Section **63G-6a-608** is amended to read:

1168 **63G-6a-608. Tie bids -- Resolution -- Copies provided to attorney general.**

1169 (1) A procurement officer shall resolve a tie bid in accordance with a method  
1170 established by rule made by the applicable rulemaking authority. The method may include  
1171 awarding the tie bid:

1172 (a) to the tie bidder who:

1173 (i) is a provider of state products, if no other tie bidder is a [~~responsive~~] provider of  
1174 state products;

1175 (ii) is closest to the point of delivery;

1176 (iii) received the previous award; or

1177 (iv) will provide the earliest delivery date;

- 1178 (b) by drawing lots; or
- 1179 (c) by any other reasonable method of resolving a tie bid.
- 1180 (2) The method chosen by the procurement officer to resolve a tie bid shall be at the
- 1181 sole discretion of the procurement officer, subject to the rules established under Subsection (1).
- 1182 (3) A procurement unit in the state executive branch shall provide a copy of the
- 1183 procurement to the attorney general if an award of a contract to a tie bidder exceeds \$100,000
- 1184 in expenditures.

1185 Section 14. Section **63G-6a-612** is amended to read:

1186 **63G-6a-612. Conduct of reverse auction.**

- 1187 (1) A procurement unit conducting a reverse auction:
- 1188 (a) may conduct the reverse auction at a physical location or by electronic means;
- 1189 (b) shall permit all prequalified bidders to participate in the reverse auction;
- 1190 (c) may not permit a bidder to participate in the reverse auction if the bidder did not
- 1191 prequalify to participate in the reverse auction;
- 1192 (d) may not accept a bid after the time for submission of a bid has expired;
- 1193 (e) shall update the bids on a real time basis; and
- 1194 (f) shall conduct the reverse auction in a manner that permits each bidder to:
- 1195 (i) bid against each other; and
- 1196 (ii) lower the bidder's price below the lowest bid before the reverse auction closes.
- 1197 (2) At the end of the reverse auction, the conducting procurement unit shall:
- 1198 (a) award the contract as soon as practicable to the [~~lowest responsive and~~] responsible
- 1199 bidder who:
- 1200 (i) meets the objective criteria described in the invitation for bids; [or] and
- 1201 submitted the lowest responsive bid; or
- 1202 (b) cancel the reverse auction without awarding a contract.
- 1203 (3) After the reverse auction is finished, the conducting procurement unit shall make
- 1204 publicly available:
- 1205 (a) (i) the amount of the final bid submitted by each bidder during the reverse auction;

1206 and

1207 (ii) the identity of the bidder that submitted each final bid; and

1208 (b) if practicable:

1209 (i) the amount of each bid submitted during the reverse auction; and

1210 (ii) the identity of the bidder that submitted each bid.

1211 Section 15. Section **63G-6a-702** is amended to read:

1212 **63G-6a-702. Contracts awarded by request for proposals.**

1213 ~~[(1) A request for proposals standard procurement process may be used instead of~~  
1214 ~~bidding if the procurement officer determines, in writing, that the request for proposals~~  
1215 ~~standard procurement process will provide the best value to the procurement unit.]~~

1216 (1) The division or a procurement unit with independent procurement authority may  
1217 award a contract for a procurement item by the request for proposals process, in accordance  
1218 with the rules of the applicable rulemaking authority.

1219 (2) (a) The request for proposals [standard procurement] process is appropriate for a  
1220 procurement unit to use [for] in selecting the proposal that provides the best value or is the  
1221 most advantageous to the procurement unit, including when:

1222 ~~[(a) the procurement of professional services;]~~

1223 ~~[(b) a design-build procurement;]~~

1224 (i) the procurement involves a contract whose terms and conditions are to be negotiated  
1225 in order to achieve the result that is the most advantageous to the procurement unit;

1226 ~~[(c) when]~~ (ii) cost is not the most important factor to be considered in making the  
1227 selection that is most advantageous to the procurement unit; or

1228 ~~[(d) when]~~ (iii) factors, apart from or in addition to cost, are highly significant in  
1229 making the selection that is most advantageous to the procurement unit.

1230 (b) The types of procurements for which it is appropriate to use the request for  
1231 proposals process include:

1232 (i) a procurement of professional services; and

1233 (ii) a procurement of design-build or construction manager/general contractor services.

1234 (3) The procurement of architect-engineer services is governed by Part 15,  
1235 [~~Architect-Engineer Services~~] Design Professional Services.  
1236 Section 16. Section **63G-6a-703** is amended to read:  
1237 **63G-6a-703. Request for proposals -- Requirements -- Publication of request.**  
1238 (1) The request for proposals standard procurement process begins when the division  
1239 or a procurement unit with independent procurement authority issues a request for proposals.  
1240 (2) A request for proposals shall:  
1241 (a) state the period of time during which a proposal will be accepted;  
1242 (b) describe the manner in which a proposal shall be submitted;  
1243 (c) state the place where a proposal shall be submitted;  
1244 (d) include, or incorporate by reference:  
1245 (i) to the extent practicable, a full description of the procurement items sought and the  
1246 full scope of work;  
1247 (ii) a description of the subjective and objective criteria that will be used to evaluate  
1248 the proposal; and  
1249 (iii) the standard contractual terms and conditions required by the authorized  
1250 purchasing entity;  
1251 (e) state the relative weight that will be given to each score for the criteria described in  
1252 Subsection (2)(d)(ii), including cost;  
1253 (f) state the formula that will be used to determine the score awarded for the cost of  
1254 each proposal;  
1255 (g) if the request for proposals will be conducted in multiple stages, as described in  
1256 Section **63G-6a-710**, include a description of the stages and the criteria and scoring that will be  
1257 used to screen offerors at each stage; and  
1258 (h) state that best and final offers may be allowed, as provided in Section  
1259 **63G-6a-707.5**, from responsible offerors who submit responsive proposals that meet minimum  
1260 qualifications, evaluation criteria, or applicable score thresholds identified in the request for  
1261 proposals.

1262 (3) The division or a procurement unit with independent procurement authority shall  
1263 publish a request for proposals in accordance with the requirements of Section 63G-6a-112.

1264 Section 17. Section 63G-6a-707 is amended to read:

1265 **63G-6a-707. Evaluation of proposals -- Evaluation committee.**

1266 (1) To determine which proposal provides the best value to the procurement unit, the  
1267 evaluation committee shall evaluate each responsible offeror's responsive [~~and responsible~~]  
1268 proposal that has not been disqualified from consideration under the provisions of this chapter,  
1269 using the criteria described in the request for proposals, which may include:

- 1270 (a) experience;
- 1271 (b) performance ratings;
- 1272 (c) inspection;
- 1273 (d) testing;
- 1274 (e) quality;
- 1275 (f) workmanship;
- 1276 (g) time, manner, or schedule of delivery;
- 1277 (h) references;
- 1278 (i) financial solvency;
- 1279 (j) suitability for a particular purpose;
- 1280 (k) management plans;
- 1281 (l) the presence and quality of a work site safety program, including any requirement  
1282 that the offeror imposes on subcontractors for a work site safety program;
- 1283 (m) cost; or
- 1284 (n) other subjective or objective criteria specified in the request for proposals.

1285 (2) Criteria not described in the request for proposals may not be used to evaluate a  
1286 proposal.

1287 [~~(3) (a) For a procurement of administrative law judge service, an evaluation~~  
1288 ~~committee shall consist of:]~~

1289 [~~(i) the head of the conducting procurement unit, or the head's designee;]~~

1290           ~~[(ii) the head of an executive branch procurement unit other than the conducting~~  
1291 ~~procurement unit, appointed by the executive director of the Department of Human Resource~~  
1292 ~~Management, or the head's designee; and]~~

1293           ~~[(iii) the executive director of the Department of Human Resource Management, or the~~  
1294 ~~executive director's designee.]~~

1295           ~~[(b) For every other procurement requiring an evaluation by an evaluation committee,~~  
1296 ~~the]~~

1297           (3) The conducting procurement unit shall:

1298           ~~[(†)]~~ (a) appoint an evaluation committee consisting of at least three individuals with at  
1299 least a general familiarity with or basic understanding of:

1300           ~~[(A)]~~ (i) the technical requirements relating to the type of procurement item that is the  
1301 subject of the procurement; or

1302           ~~[(B)]~~ (ii) the need that the procurement item is intended to address; and

1303           ~~[(†)]~~ (b) ensure that the evaluation committee and each individual participating in the  
1304 evaluation committee process:

1305           ~~[(A)]~~ (i) does not have a conflict of interest with any of the offerors;

1306           ~~[(B)]~~ (ii) can fairly evaluate each proposal;

1307           ~~[(C)]~~ (iii) does not contact or communicate with an offeror concerning the procurement  
1308 outside the official evaluation committee process; and

1309           ~~[(D)]~~ (iv) conducts or participates in the evaluation in a manner that ensures a fair and  
1310 competitive process and avoids the appearance of impropriety.

1311           (4) A conducting procurement unit may authorize an evaluation committee to receive  
1312 assistance:

1313           (a) from an expert or consultant who:

1314           (i) is not a member of the evaluation committee; and

1315           (ii) does not participate in the evaluation scoring; and

1316           (b) to better understand a technical issue involved in the procurement.

1317           (5) (a) An evaluation committee may, with the approval of the head of the conducting

1318 procurement unit, enter into discussions or conduct interviews with, or attend presentations by,  
1319 the offerors, for the purpose of clarifying information contained in proposals.

1320 (b) In a discussion, interview, or presentation under Subsection (5)(a), an offeror:

1321 (i) may only explain, illustrate, or interpret the contents of the offeror's original  
1322 proposal; and

1323 (ii) may not:

1324 (A) address criteria or specifications not contained in the offeror's original proposal;

1325 (B) correct a deficiency, inaccuracy, or mistake in a proposal that is not an immaterial  
1326 error;

1327 (C) correct an incomplete submission of documents that the solicitation required to be  
1328 submitted with the proposal;

1329 (D) correct a failure to submit a timely proposal;

1330 (E) substitute or alter a required form or other document specified in the solicitation;

1331 (F) remedy a cause for an offeror being considered to be not responsible or a proposal  
1332 not responsive; or

1333 (G) correct a defect or inadequacy resulting in a determination that an offeror does not  
1334 meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds  
1335 established in the solicitation.

1336 (6) (a) Except as provided in Subsection (7)(b) relating to access to management fee  
1337 information, and except as provided in Subsection (9), each member of the evaluation  
1338 committee is prohibited from knowing, or having access to, any information relating to the  
1339 cost, or the scoring of the cost, of a proposal until after the evaluation committee submits its  
1340 final recommended scores on all other criteria to the issuing procurement unit.

1341 (b) The issuing procurement unit shall:

1342 (i) if applicable, assign an individual who is not a member of the evaluation committee  
1343 to calculate scores for cost based on the applicable scoring formula, weighting, and other  
1344 scoring procedures contained in the request for proposals;

1345 (ii) review the evaluation committee's scores and correct any errors, scoring



1346 inconsistencies, and reported noncompliance with this chapter;

1347 (iii) add the scores calculated for cost, if applicable, to the evaluation committee's final  
1348 recommended scores on criteria other than cost to derive the total combined score for each  
1349 responsive [~~and responsible~~] proposal from a responsible offeror; and

1350 (iv) provide to the evaluation committee the total combined score calculated for each  
1351 responsive [~~and responsible~~] proposal from a responsible offeror, including any applicable cost  
1352 formula, weighting, and scoring procedures used to calculate the total combined scores.

1353 (c) The evaluation committee may not:

1354 (i) change its final recommended scores described in Subsection (6)(a) after the  
1355 evaluation committee has submitted those scores to the issuing procurement unit; or

1356 (ii) change cost scores calculated by the issuing procurement unit.

1357 (7) (a) As used in this Subsection (7), "management fee" includes only the following  
1358 fees of the construction manager/general contractor:

1359 (i) preconstruction phase services;

1360 (ii) monthly supervision fees for the construction phase; and

1361 (iii) overhead and profit for the construction phase.

1362 (b) When selecting a construction manager/general contractor for a construction  
1363 project, the evaluation committee:

1364 (i) may score a construction manager/general contractor based upon criteria contained  
1365 in the solicitation, including qualifications, performance ratings, references, management plan,  
1366 certifications, and other project specific criteria described in the solicitation;

1367 (ii) may, as described in the solicitation, weight and score the management fee as a  
1368 fixed rate or as a fixed percentage of the estimated contract value;

1369 (iii) may, at any time after the opening of the responses to the request for proposals,  
1370 have access to, and consider, the management fee proposed by the offerors; and

1371 (iv) except as provided in Subsection (9), may not know or have access to any other  
1372 information relating to the cost of construction submitted by the offerors, until after the  
1373 evaluation committee submits its final recommended scores on all other criteria to the issuing

1374 procurement unit.

1375 (8) (a) The deliberations of an evaluation committee may be held in private.

1376 (b) If the evaluation committee is a public body, as defined in Section 52-4-103, the  
1377 evaluation committee shall comply with Section 52-4-205 in closing a meeting for its  
1378 deliberations.

1379 (9) An issuing procurement unit is not required to comply with Subsection (6) or  
1380 (7)(b)(iv), as applicable, if the head of the issuing procurement unit or a person designated by  
1381 rule made by the applicable rulemaking authority:

1382 (a) signs a written statement:

1383 (i) indicating that, due to the nature of the proposal or other circumstances, it is in the  
1384 best interest of the procurement unit to waive compliance with Subsection (6) or (7)(b)(iv), as  
1385 the case may be; and

1386 (ii) describing the nature of the proposal and the other circumstances relied upon to  
1387 waive compliance with Subsection (6) or (7)(b)(iv); and

1388 (b) makes the written statement available to the public, upon request.

1389 Section 18. Section 63G-6a-707.5 is repealed and reenacted to read:

1390 **63G-6a-707.5. Best and final offers.**

1391 (1) The best and final offer process described in this section:

1392 (a) may be used only in a request for proposals process, whether the request for  
1393 proposals process is used independently or after the establishment of an approved vendor list  
1394 through the approved vendor list process; and

1395 (b) may not be used in any other standard procurement process, whether the other  
1396 standard procurement process is used independently or after the establishment of an approved  
1397 vendor list through the approved vendor list process.

1398 (2) Subject to Subsection (3), a conducting procurement unit may request best and final  
1399 offers from responsible offerors:

1400 (a) only with the approval of the chief procurement officer or the head of the issuing  
1401 procurement unit; and

1402           (b) if:  
1403           (i) no single proposal adequately addresses all the specifications stated in the request  
1404 for proposals;  
1405           (ii) all proposals are unclear or deficient in one or more respects;  
1406           (iii) all cost proposals exceed the identified budget or the procurement unit's available  
1407 funding; or  
1408           (iv) two or more proposals receive an identical evaluation score that is the highest  
1409 score.  
1410           (3) A conducting procurement unit may request a best and final offer from, and a best  
1411 and final offer may be submitted to the conducting procurement unit by, only a responsible  
1412 offeror that has submitted a responsive proposal that meets the minimum mandatory criteria  
1413 stated in the request for proposals required to be considered in the stage of the procurement  
1414 process at which best and final offers are being requested.  
1415           (4) The best and final offer process may not be used to change:  
1416           (a) a determination that an offeror is not responsible to a determination that the offeror  
1417 is responsible; or  
1418           (b) a determination that a proposal is not responsive to a determination that the  
1419 proposal is responsive.  
1420           (5) (a) This Subsection (5) applies if a request for best and final offers is issued  
1421 because all cost proposals exceed the identified budget or the procurement unit's available  
1422 funding.  
1423           (b) (i) The conducting procurement unit may, in the request for best and final offers:  
1424           (A) specify the scope of work reductions the procurement unit is making in order to  
1425 generate proposals that are within the identified budget or the procurement unit's available  
1426 funding; or  
1427           (B) invite offerors submitting best and final offers to specify the scope of work  
1428 reductions being made so that the reduced cost proposal is within the identified budget or the  
1429 procurement unit's available funding.

- 1430 (ii) The conducting procurement unit is not required to accept a scope of work  
1431 reduction that an offeror has specified in the offeror's best and final offer.
- 1432 (c) A best and final offer submitted with a reduced cost proposal shall include an  
1433 itemized list identifying specific reductions in the offeror's proposed scope of work that  
1434 correspond to the offeror's reduced cost proposal.
- 1435 (d) A reduction in the scope of work may not:
- 1436 (i) eliminate a component identified in the request for proposals as a minimum  
1437 mandatory requirement; or
- 1438 (ii) alter the nature of the original request for proposals to the extent that a request for  
1439 proposals for the reduced scope of work would have likely attracted a significantly different set  
1440 of offerors submitting proposals in response to the request for proposals.
- 1441 (6) If a request for best and final offers is issued because two or more proposals  
1442 received an identical evaluation score that is the highest score:
- 1443 (a) the request may be issued only to offerors who submitted a proposal receiving the  
1444 highest score; and
- 1445 (b) an offeror submitting a best and final offer may revise:
- 1446 (i) the technical aspects of the offeror's proposal;  
1447 (ii) the offeror's cost proposal, as provided in Subsection (5); or  
1448 (iii) both the technical aspects of the offeror's proposal and, as provided in Subsection  
1449 (5), the offeror's cost proposal.
- 1450 (7) In a request for best and final offers, the conducting procurement unit shall:
- 1451 (a) clearly specify:
- 1452 (i) the issues that the procurement unit requests the offerors to address in their best and  
1453 final offers; and
- 1454 (ii) how best and final offers will be evaluated and scored in accordance with Section  
1455 [63G-6a-707](#);
- 1456 (b) establish a deadline for an offeror to submit a best and final offer; and  
1457 (c) if applicable, establish a schedule and procedure for conducting discussions with

1458 offerors concerning the best and final offers.

1459 (8) In conducting a best and final offer process under this section, a conducting  
1460 procurement unit shall:

1461 (a) maintain confidential the information the procurement unit receives from an  
1462 offeror, including any cost information, until a contract has been awarded or the request for  
1463 proposals canceled;

1464 (b) ensure that each offeror receives fair and equal treatment; and

1465 (c) safeguard the integrity of the scope of the original request for proposals, except as  
1466 specifically provided otherwise in this section.

1467 (9) In a best and final offer, an offeror:

1468 (a) may address only the issues described in the request for best and final offers; and

1469 (b) may not correct a material error or deficiency in the offeror's proposal or address  
1470 any issue not described in the request for best and final offers.

1471 (10) If an offeror fails to submit a best and final offer, the conducting procurement unit  
1472 shall treat the offeror's original proposal as the offeror's best and final offer.

1473 (11) After the deadline for submitting best and final offers has passed, the evaluation  
1474 committee shall evaluate the best and final offers submitted using the criteria described in the  
1475 request for proposals.

1476 (12) An offeror may not make and a conducting procurement unit may not consider a  
1477 best and final offer that the conducting procurement unit has not requested under this section.

1478 (13) To implement the best and final offer process described in this section, an  
1479 applicable rulemaking authority may make rules consistent with this section and the other  
1480 provisions of this chapter.

1481 Section 19. Section **63G-6a-709** is amended to read:

1482 **63G-6a-709. Award of contract -- Cancellation -- Rejection of proposal.**

1483 (1) After the completion of the evaluation and scoring of proposals and the justification  
1484 statement, including any required cost-benefit analysis, the evaluation committee shall submit  
1485 the proposals, evaluation scores, and justification statement to the head of the procurement unit

1486 or designee for review and final determination of a contract award or an award of multiple  
1487 contracts as provided in Section 63G-6a-1204.5.

1488 (2) After reviewing the proposals, evaluation scores, and justification statement,  
1489 including any required cost-benefit analysis, the head of the issuing procurement unit shall:

1490 (a) (i) award the contract as soon as practicable to the responsible offeror with the  
1491 responsive proposal receiving the highest total score; or

1492 (ii) (A) if the head of the issuing procurement unit [~~disqualifies an offeror~~] rejects a  
1493 proposal under Subsection (3) of an offeror who would otherwise have been awarded a  
1494 contract, award the contract to the responsible offeror with the responsive proposal receiving  
1495 the next highest total score; and

1496 (B) if the head of the issuing procurement unit [~~disqualifies an offeror~~] rejects a  
1497 proposal under Subsection (3) of an offeror who would otherwise have been awarded a contract  
1498 under Subsection (2)(a)(ii)(A), repeat the process described in Subsection (2)(a)(ii)(A) as many  
1499 times as necessary until a contract is awarded to a responsible offeror [~~who is not disqualified~~]  
1500 whose proposal is not rejected; or

1501 (b) cancel the request for proposals without awarding a contract.

1502 (3) The head of an issuing procurement unit may reject a proposal if:

1503 (a) the offeror who submitted the proposal:

1504 (i) is not responsible;

1505 (ii) is in violation of a provision of this chapter;

1506 (iii) has engaged in unethical conduct; or

1507 (iv) fails to sign a contract within:

1508 (A) 90 days after the contract award, if no time is specified in the solicitation; or

1509 (B) a time authorized in writing by the head of the issuing procurement unit;

1510 (b) there is a change in the offeror's circumstances that, if the change had been known  
1511 at the time the offeror's proposal was evaluated, would have caused the proposal not to have  
1512 received the highest score; or

1513 (c) the proposal:

- 1514 (i) is not responsive; or
- 1515 (ii) does not meet the mandatory minimum requirements, evaluation criteria, or
- 1516 applicable score thresholds stated in the solicitation.
- 1517 (4) A head of an issuing procurement unit who rejects a proposal under Subsection (3)
- 1518 shall:
- 1519 (a) make a written finding, stating the reasons for the rejection; and
- 1520 (b) provide a copy of the written finding to the offeror whose proposal is rejected.
- 1521 (5) If an issuing procurement unit cancels a request for proposals without awarding a
- 1522 contract, the issuing procurement unit shall make available for public inspection a written
- 1523 justification for the cancellation.

1524 Section 20. Section **63G-6a-802.7** is amended to read:

1525 **63G-6a-802.7. Extension of a contract without engaging in a standard**  
1526 **procurement process.**

1527 The chief procurement officer or the head of a procurement unit with independent  
1528 procurement authority may extend an existing contract without engaging in a standard  
1529 procurement process:

- 1530 (1) for a period of time not to exceed 120 days, if:
  - 1531 (a) an extension of the contract is necessary to:
    - 1532 (i) avoid a lapse in a critical government service; or
    - 1533 (ii) to mitigate a circumstance that is likely to have a negative impact on public health,
    - 1534 safety, welfare, or property; and
  - 1535 (b) (i) (A) the procurement unit is engaged in a standard procurement process for a
  - 1536 procurement item that is the subject of the contract being extended; and
  - 1537 (B) the standard procurement process is delayed due to an unintentional error;
  - 1538 (ii) a change in an industry standard requires one or more significant changes to
  - 1539 specifications for the procurement item; or
  - 1540 (iii) an extension is necessary:
    - 1541 (A) to prevent the loss of federal funds;

- 1542 (B) to mitigate the effects of a delay of a state or federal appropriation;
- 1543 (C) to enable the procurement unit to continue to receive a procurement item during a
- 1544 delay in the implementation of a contract awarded pursuant to a procurement that has already
- 1545 been conducted; or
- 1546 (D) to enable the procurement unit to continue to receive a procurement item during a
- 1547 period of time during which negotiations with a vendor under a new contract for the
- 1548 procurement item are being conducted;
- 1549 (2) for the period of a protest, appeal, or court action, if the protest, appeal, or court
- 1550 action is the reason for delaying the award of a new contract; or
- 1551 (3) for a period of time exceeding 120 days, if, after consulting with the attorney
- 1552 general or the procurement unit's attorney, the chief procurement officer or head of a
- 1553 procurement unit with independent procurement authority determines in writing that the
- 1554 contract extension does not violate state or federal antitrust laws and is consistent with the
- 1555 purpose of ensuring the fair and equitable treatment of all persons who deal with the
- 1556 procurement system.

1557 Section 21. Section **63G-6a-903** is amended to read:

1558 **63G-6a-903. Determination of nonresponsibility.**

1559 (1) A determination of nonresponsibility of a [~~bidder or offeror~~] person made by an

1560 issuing procurement unit shall be made in writing, in accordance with the rules of the

1561 applicable rulemaking authority.

1562 (2) [~~The~~] A person's unreasonable failure [~~of a bidder or offeror~~] to promptly supply

1563 information in connection with an inquiry with respect to responsibility may be grounds for a

1564 determination of nonresponsibility with respect to the [~~bidder or offeror~~] person.

1565 (3) Subject to Title 63G, Chapter 2, Government Records Access and Management

1566 Act, information furnished by a [~~bidder or offeror~~] person pursuant to this section may not be

1567 disclosed outside of a procurement unit without the person's prior written consent [~~by the~~

1568 ~~bidder or offeror~~].

1569 Section 22. Section **63G-6a-904** is amended to read:



1570           **63G-6a-904. Debarment or suspension from consideration for award of contracts**

1571 -- **Process -- Causes for debarment -- Judicial review.**

1572           (1) (a) Subject to Subsection (1)(b), the chief procurement officer or the head of a  
1573 procurement unit with independent procurement authority may:

1574           (i) debar a person for cause from consideration for award of contracts for a period not  
1575 to exceed three years; or

1576           (ii) suspend a person from consideration for award of contracts if there is [~~probable~~]  
1577 cause to believe that the person has engaged in any activity that might lead to debarment.

1578           (b) Before debarring or suspending a person under Subsection (1)(a), the chief  
1579 procurement officer or head of a procurement unit with independent procurement authority  
1580 shall:

1581           (i) consult with:

1582           (A) the procurement unit involved in the matter for which debarment or suspension is  
1583 sought; and

1584           (B) the attorney general, if the procurement unit is in the state executive branch, or the  
1585 procurement unit's attorney, if the procurement unit is not in the state executive branch;

1586           (ii) give the person at least 10 days' prior written notice of:

1587           (A) the reasons for which debarment or suspension is being considered; and

1588           (B) the hearing under Subsection (1)(b)(iii); and

1589           (iii) hold [~~a~~] an informal hearing in accordance with Subsection (1)(c).

1590           (c) (i) At [~~a~~] an informal hearing under Subsection (1)(b)(iii), the chief procurement  
1591 officer or head of a procurement unit with independent procurement authority may:

1592           (A) subpoena witnesses and compel their attendance at the hearing;

1593           (B) subpoena documents for production at the hearing;

1594           (C) obtain additional factual information; and

1595           (D) obtain testimony from experts, the person who is the subject of the proposed  
1596 debarment or suspension, representatives of the procurement unit, or others to assist the chief  
1597 procurement officer or head of a procurement unit with independent procurement authority to

1598 make a decision on the proposed debarment or suspension.

1599 (ii) The Rules of Evidence do not apply to [a] an informal hearing under Subsection  
1600 (1)(b)(iii).

1601 (iii) The chief procurement officer or head of a procurement unit with independent  
1602 procurement authority shall:

1603 (A) record a hearing under Subsection (1)(b)(iii); and

1604 (B) preserve all records and other evidence relied upon in reaching a decision until the  
1605 decision becomes final[;].

1606 [~~(C) for an appeal of a debarment or suspension by a procurement unit other than a~~  
1607 ~~legislative procurement unit, a judicial procurement unit, a local government procurement unit,~~  
1608 ~~or a public transit district, submit to the procurement policy board chair a copy of the written~~  
1609 ~~decision and all records and other evidence relied upon in reaching the decision, within seven~~  
1610 ~~days after receiving a notice that an appeal of a debarment or suspension has been filed under~~  
1611 ~~Section 63G-6a-1702 or after receiving a request from the procurement policy board chair;~~  
1612 ~~and]~~

1613 [~~(D) for an appeal of a debarment or suspension by a legislative procurement unit, a~~  
1614 ~~judicial procurement unit, a local government procurement unit, or a public transit district,~~  
1615 ~~submit to the Utah Court of Appeals a copy of the written decision and all records and other~~  
1616 ~~evidence relied upon in reaching the decision, within seven days after receiving a notice that an~~  
1617 ~~appeal of a debarment or suspension has been filed under Section 63G-6a-1802.]~~

1618 (iv) The holding of [a] an informal hearing under Subsection (1)(b)(iii) or the issuing  
1619 of a decision under Subsection (1)(c)(v) does not affect a person's right to later question or  
1620 challenge the jurisdiction of the chief procurement officer or head of a procurement unit with  
1621 independent procurement authority to hold a hearing or issue a decision.

1622 (v) The chief procurement officer or head of a procurement unit with independent  
1623 procurement authority shall:

1624 (A) promptly issue a written decision regarding a proposed debarment or suspension,  
1625 unless the matter is settled by mutual agreement; and

1626 (B) mail, email, or otherwise immediately furnish a copy of the decision to the person  
1627 who is the subject of the decision.

1628 (vi) A written decision under Subsection (1)(c)(v) shall:

1629 (A) state the reasons for the debarment or suspension, if debarment or suspension is  
1630 ordered; and

1631 (B) inform the person who is debarred or suspended of the right to judicial [~~or~~  
1632 ~~administrative~~] review as provided in this chapter[~~; and~~].

1633 [~~(C) indicate the amount of the security deposit or bond required under Section~~  
1634 ~~63G-6a-1703 and how that amount was calculated.~~]

1635 [~~(vii) (A) A decision of debarment or suspension issued by a procurement unit other~~  
1636 ~~than a legislative procurement unit, a judicial procurement unit, a local government~~  
1637 ~~procurement unit, or a public transit district is final and conclusive unless the person who is~~  
1638 ~~debarred or suspended files an appeal of the decision under Section 63G-6a-1702.~~]

1639 [~~(B)~~] (vii) A decision of debarment or suspension [issued by a legislative procurement  
1640 unit, a judicial procurement unit, a local government procurement unit, or a public transit  
1641 district] is final and conclusive unless [the person who is debarred or suspended files an appeal  
1642 of] the decision is overturned by a court under [Section ~~63G-6a-1802~~] Subsection (4).

1643 (2) A suspension under this section may not be for a period exceeding three months,  
1644 unless an indictment has been issued for an offense which would be a cause for debarment  
1645 under Subsection (3), in which case the suspension shall, at the request of the attorney general,  
1646 if the procurement unit is in the state executive branch, or the procurement unit's attorney, if  
1647 the procurement unit is not in the state executive branch, remain in effect until after the trial of  
1648 the suspended person.

1649 (3) The causes for debarment include the following:

1650 (a) conviction of a criminal offense as an incident to obtaining or attempting to obtain a  
1651 public or private contract or subcontract or in the performance of a public or private contract or  
1652 subcontract;

1653 (b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery,

1654 falsification or destruction of records, receiving stolen property, or any other offense indicating  
 1655 a lack of business integrity or business honesty which currently, seriously, and directly affects  
 1656 responsibility as a contractor for the procurement unit;

1657 (c) conviction under state or federal antitrust statutes;

1658 (d) failure without good cause to perform in accordance with the terms of the contract;

1659 (e) a violation of this chapter; or

1660 (f) any other cause that the chief procurement officer or the head of a procurement unit  
 1661 with independent procurement authority determines to be so serious and compelling as to affect  
 1662 responsibility as a contractor for the procurement unit, including debarment by another  
 1663 governmental entity.

1664 (4) (a) A person who is debarred or suspended under this section may ~~[appeal]~~ seek  
 1665 judicial review of the debarment or suspension[:] by filing a petition for judicial review in  
 1666 district court.

1667 [~~(a) as provided in Section 63G-6a-1702, if the debarment or suspension is by a~~  
 1668 ~~procurement unit other than a legislative procurement unit, a judicial procurement unit, a local~~  
 1669 ~~government procurement unit, or a public transit district; or (b) as provided in Section~~  
 1670 ~~63G-6a-1802, if the debarment or suspension is by a legislative procurement unit, a judicial~~  
 1671 ~~procurement unit, a local government procurement unit, or a public transit district.]~~

1672 (b) A petition under Subsection (4)(a):

1673 (i) is a complaint governed by the Utah Rules of Civil Procedure;

1674 (ii) shall name the procurement unit as respondent;

1675 (iii) shall be accompanied by a copy of the written decision as to which judicial review  
 1676 is sought; and

1677 (iv) is barred unless filed in district court within 30 days after the date of the issuance  
 1678 of the written decision of suspension or debarment under Subsection (1)(c)(v).

1679 (c) A district court's review of a petition under Subsection (4)(a) shall be de novo.

1680 (d) A district court shall, without a jury, determine all questions of fact and law,  
 1681 including any constitutional issue, presented in the pleadings.

1682 (5) A procurement unit may consider a cause for debarment under Subsection (3) as the  
1683 basis for determining that a person responding to a solicitation is not responsible:

1684 (a) independent of any effort or proceeding under this section to debar or suspend the  
1685 person; and

1686 (b) even if the procurement unit does not choose to seek debarment or suspension.

1687 (6) An applicable rulemaking authority may make rules pertaining to the suspension  
1688 and debarment process under this section, including rules governing an informal hearing under  
1689 Subsection (1)(b)(iii).

1690 Section 23. Section **63G-6a-1002** is amended to read:

1691 **63G-6a-1002. Reciprocal preference for providers of state products.**

1692 (1) (a) An issuing procurement unit shall, for all procurements, give a reciprocal  
1693 preference to those bidders offering procurement items that are produced, manufactured,  
1694 mined, grown, or performed in Utah over those bidders offering procurement items that are  
1695 produced, manufactured, mined, grown, or performed in any state that gives or requires a  
1696 preference to procurement items that are produced, manufactured, mined, grown, or performed  
1697 in that state.

1698 (b) The amount of reciprocal preference shall be equal to the amount of the preference  
1699 applied by the other state for that particular procurement item.

1700 (c) In order to receive a reciprocal preference under this section, the bidder shall certify  
1701 on the bid that the procurement items offered are produced, manufactured, mined, grown, or  
1702 performed in Utah.

1703 (d) The reciprocal preference is waived if the certification described in Subsection  
1704 (1)(c) does not appear on the bid.

1705 (2) (a) If the responsible bidder submitting the lowest responsive [~~and responsible~~] bid  
1706 offers procurement items that are produced, manufactured, mined, grown, or performed in a  
1707 state that gives or requires a preference, and if another responsible bidder has submitted a  
1708 responsive [~~and responsible~~] bid offering procurement items that are produced, manufactured,  
1709 mined, grown, or performed in Utah, and with the benefit of the reciprocal preference, the bid

1710 of the other bidder is equal to or less than the original lowest bid, the issuing procurement unit  
1711 shall:

1712 (i) give notice to the bidder offering procurement items that are produced,  
1713 manufactured, mined, grown, or performed in Utah that the bidder qualifies as a preferred  
1714 bidder; and

1715 (ii) make the purchase from the preferred bidder if the bidder agrees, in writing, to  
1716 meet the low bid within 72 hours after notification that the bidder is a preferred bidder.

1717 (b) The issuing procurement unit shall include the exact price submitted by the lowest  
1718 bidder in the notice the issuing procurement unit submits to the preferred bidder.

1719 (c) The issuing procurement unit may not enter into a contract with any other bidder for  
1720 the purchase until 72 hours have elapsed after notification to the preferred bidder.

1721 (3) (a) If there is more than one preferred bidder, the issuing procurement unit shall  
1722 award the contract to the willing preferred bidder who was the lowest preferred bidder  
1723 originally.

1724 (b) If there were two or more equally low preferred bidders, the issuing procurement  
1725 unit shall comply with the rules of the applicable rulemaking authority to determine which  
1726 bidder should be awarded the contract.

1727 (4) The provisions of this section do not apply if application of this section might  
1728 jeopardize the receipt of federal funds.

1729 Section 24. Section **63G-6a-1003** is amended to read:

1730 **63G-6a-1003. Preference for resident contractors.**

1731 (1) As used in this section, "resident contractor" means a person, partnership,  
1732 corporation, or other business entity that:

1733 (a) either has its principal place of business in Utah or that employs workers who are  
1734 residents of this state when available; and

1735 (b) was transacting business on the date when bids for the public contract were first  
1736 solicited.

1737 (2) (a) When awarding contracts for construction, an issuing procurement unit shall

1738 grant a resident contractor a reciprocal preference over a nonresident contractor from any state  
1739 that gives or requires a preference to contractors from that state.

1740 (b) The amount of the reciprocal preference shall be equal to the amount of the  
1741 preference applied by the state of the nonresident contractor.

1742 (3) (a) In order to receive the reciprocal preference under this section, the bidder shall  
1743 certify on the bid that the bidder qualifies as a resident contractor.

1744 (b) The reciprocal preference is waived if the certification described in Subsection  
1745 (2)(a) does not appear on the bid.

1746 (4) (a) If the responsible contractor submitting the lowest responsive [~~and responsible~~]  
1747 bid is not a resident contractor whose principal place of business is in a state that gives or  
1748 requires a preference to contractors from that state, and if a resident responsible contractor has  
1749 also submitted a responsive [~~and responsible~~] bid, and, with the benefit of the reciprocal  
1750 preference, the resident contractor's bid is equal to or less than the original lowest bid, the  
1751 issuing procurement unit shall:

1752 (i) give notice to the resident contractor that the resident contractor qualifies as a  
1753 preferred resident contractor; and

1754 (ii) issue the contract to the resident contractor if the resident contractor agrees, in  
1755 writing, to meet the low bid within 72 hours after notification that the resident contractor is a  
1756 preferred resident contractor.

1757 (b) The issuing procurement unit shall include the exact price submitted by the lowest  
1758 bidder in the notice that the issuing procurement unit submits to the preferred resident  
1759 contractor.

1760 (c) The issuing procurement unit may not enter into a contract with any other bidder for  
1761 the construction until 72 hours have elapsed after notification to the preferred resident  
1762 contractor.

1763 (5) (a) If there is more than one preferred resident contractor, the issuing procurement  
1764 unit shall award the contract to the willing preferred resident contractor who was the lowest  
1765 preferred resident contractor originally.

1766 (b) If there were two or more equally low preferred resident contractors, the issuing  
1767 procurement unit shall comply with the rules of the applicable rulemaking authority to  
1768 determine which bidder should be awarded the contract.

1769 (6) The provisions of this section do not apply if application of this section might  
1770 jeopardize the receipt of federal funds.

1771 Section 25. Section **63G-6a-1204.5** is amended to read:

1772 **63G-6a-1204.5. Multiple award contracts.**

1773 (1) (a) [~~The~~] Through a standard procurement process, the division or a procurement  
1774 unit with independent procurement authority may enter into multiple award contracts with  
1775 [~~bidders or offerors~~] multiple persons.

1776 (b) The applicable rulemaking authority may make rules, consistent with this section,  
1777 regulating the use of multiple award contracts.

1778 (2) Multiple award contracts may be in a procurement unit's best interest if award to  
1779 two or more bidders or offerors for similar procurement items is needed or desired for adequate  
1780 delivery, service, availability, or product compatibility.

1781 (3) A procurement unit that enters into multiple award contracts under this section  
1782 shall:

1783 (a) exercise care to protect and promote competition among bidders or offerors when  
1784 seeking to enter into multiple award contracts;

1785 (b) name all eligible users of the multiple award contracts in the invitation for bids or  
1786 request for proposals; and

1787 (c) if the procurement unit anticipates entering into multiple award contracts before  
1788 issuing the invitation for bids or request for proposals, state in the invitation for bids or request  
1789 for proposals that the procurement unit may enter into multiple award contracts at the end of  
1790 the procurement process.

1791 (4) A procurement unit that enters into multiple award contracts under this section  
1792 shall:

1793 (a) obtain, under the multiple award contracts, all of its normal, recurring requirements



1794 for the procurement items that are the subject of the contracts until the contracts terminate; and

1795 (b) reserve the right to obtain the procurement items described in Subsection (4)(a)  
1796 separately from the contracts if:

1797 (i) there is a need to obtain a quantity of the procurement items that exceeds the  
1798 amount specified in the contracts; or

1799 (ii) the procurement officer makes a written finding that the procurement items  
1800 available under the contract will not effectively or efficiently meet a nonrecurring special need  
1801 of a procurement unit.

1802 (5) An applicable rulemaking authority may make rules to further regulate a  
1803 procurement under this section.

1804 Section 26. Section **63G-6a-1402** is amended to read:

1805 **63G-6a-1402. Procurement of design-build transportation project contracts.**

1806 (1) As used in this section:

1807 (a) "Design-build transportation project contract" means the procurement of both the  
1808 design and construction of a transportation project in a single contract with a company or  
1809 combination of companies capable of providing the necessary engineering services and  
1810 construction.

1811 (b) "Transportation agency" means:

1812 (i) the Department of Transportation;

1813 (ii) a county of the first or second class, as defined in Section [17-50-501](#);

1814 (iii) a municipality of the first class, as defined in Section [10-2-301](#);

1815 (iv) a public transit district that has more than 200,000 people residing within its  
1816 boundaries; and

1817 (v) a public airport authority.

1818 (2) Except as provided in Subsection (3), a transportation agency may award a  
1819 design-build transportation project contract for any transportation project that has an estimated  
1820 cost of at least \$50,000,000 by following the requirements of this section.

1821 (3) (a) The Department of Transportation:

1822 (i) may award a design-build transportation project contract for any transportation  
1823 project by following the requirements of this section; and

1824 (ii) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative  
1825 Rulemaking Act, establishing requirements for the procurement of its design-build  
1826 transportation project contracts in addition to those required by this section.

1827 (b) A public transit district that has more than 200,000 people residing within its  
1828 boundaries:

1829 (i) may award a design-build transportation project contract for any transportation  
1830 project by following the requirements of this section; and

1831 (ii) shall pass ordinances or a resolution establishing requirements for the procurement  
1832 of its design-build transportation project contracts in addition to those required by this section.

1833 (c) A design-build transportation project contract authorized under this Subsection (3)  
1834 is not subject to the estimated cost threshold described in Subsection (2).

1835 (d) A design-build transportation project contract may include provision by the  
1836 contractor of operations, maintenance, or financing.

1837 (4) (a) Before entering into a design-build transportation project contract, a  
1838 transportation agency may issue a request for qualifications to prequalify potential contractors.

1839 (b) Public notice of the request for qualifications shall be given in accordance with  
1840 board rules.

1841 (c) A transportation agency shall require, as part of the qualifications specified in the  
1842 request for qualifications, that potential contractors at least demonstrate their:

1843 (i) construction experience;

1844 (ii) design experience;

1845 (iii) financial, manpower, and equipment resources available for the project; and

1846 (iv) experience in other design-build transportation projects with attributes similar to  
1847 the project being procured.

1848 (d) The request for qualifications shall identify the number of eligible competing  
1849 proposers that the transportation agency will select to submit a proposal, which may not be less

1850 than two.

1851 (5) The transportation agency shall:

1852 (a) evaluate the responses received from the request for qualifications;

1853 (b) select from their number those qualified to submit proposals; and

1854 (c) invite those respondents to submit proposals based upon the transportation agency's  
1855 request for proposals.

1856 (6) If the transportation agency fails to receive at least two qualified eligible competing  
1857 proposals, the transportation agency shall readvertise the project.

1858 (7) The transportation agency shall issue a request for proposals to those qualified  
1859 respondents that:

1860 (a) includes a scope of work statement constituting an information for proposal that  
1861 may include:

1862 (i) preliminary design concepts;

1863 (ii) design criteria, needs, and objectives;

1864 (iii) warranty and quality control requirements;

1865 (iv) applicable standards;

1866 (v) environmental documents;

1867 (vi) constraints;

1868 (vii) time expectations or limitations;

1869 (viii) incentives or disincentives; and

1870 (ix) other special considerations;

1871 (b) requires submitters to provide:

1872 (i) a sealed cost proposal;

1873 (ii) a critical path matrix schedule, including cash flow requirements;

1874 (iii) proposal security; and

1875 (iv) other items required by the department for the project; and

1876 (c) may include award of a stipulated fee to be paid to offerors who submit  
1877 unsuccessful proposals.

- 1878 (8) The transportation agency shall:
- 1879 (a) evaluate the submissions received in response to the request for proposals from the
- 1880 prequalified offerors;
- 1881 (b) comply with rules relating to discussion of proposals, best and final offers, and
- 1882 evaluations of the proposals submitted; and
- 1883 (c) after considering price and other identified factors, award the contract to the
- 1884 [~~responsive and~~] responsible offeror whose responsive proposal is most advantageous to the
- 1885 transportation agency or the state.

1886 Section 27. Section **63G-6a-1403** is amended to read:

1887 **63G-6a-1403. Procurement of tollway development agreements.**

1888 (1) As used in this section, "tollway development agreement" is as defined in Section

1889 [72-6-202](#).

1890 (2) The Department of Transportation and the Transportation Commission:

1891 (a) may solicit a tollway development agreement proposal by following the

1892 requirements of this section;

1893 (b) may award a solicited tollway development agreement contract for any tollway

1894 project by following the requirements of this section; and

1895 (c) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative

1896 Rulemaking Act, establishing requirements for the procurement of tollway development

1897 agreement proposals in addition to those required by this section.

1898 (3) (a) Before entering into a tollway development agreement, the Department of

1899 Transportation may issue a request for qualifications to prequalify potential contractors.

1900 (b) Public notice of the request for qualifications shall be given in accordance with

1901 board rules.

1902 (c) The Department of Transportation shall require, as part of the qualifications

1903 specified in the request for qualifications, that potential contractors at least provide:

1904 (i) a demonstration of their experience with other transportation concession projects

1905 with attributes similar to the project being procured;

- 1906 (ii) a financial statement of the firm or consortium of firms making the proposal;
- 1907 (iii) a conceptual project development plan and financing plan;
- 1908 (iv) the legal structure of the firm or consortium of firms making the proposal;
- 1909 (v) the organizational structure for the project; and
- 1910 (vi) a statement describing why the firm or consortium of firms is best qualified for the
- 1911 project.
- 1912 (d) The request for qualifications shall identify the number of eligible competing
- 1913 offerors that the Department of Transportation will select to submit a proposal.
- 1914 (4) The Department of Transportation shall:
- 1915 (a) evaluate the responses received from the request for qualifications;
- 1916 (b) select from their number those qualified to submit proposals; and
- 1917 (c) invite those respondents to submit proposals based upon the Department of
- 1918 Transportation's request for proposals.
- 1919 (5) The Department of Transportation shall issue a request for proposals to those
- 1920 qualified respondents that may require, as appropriate for the procurement:
- 1921 (a) a description of the proposed project or projects;
- 1922 (b) a financial plan for the project, including:
- 1923 (i) the anticipated financial commitment of all parties;
- 1924 (ii) equity, debt, and other financing mechanisms;
- 1925 (iii) an analysis of the projected return, rate of return, or both; and
- 1926 (iv) the monetary benefit and other value to a government entity;
- 1927 (c) assumptions about user fees or toll rates;
- 1928 (d) a project development and management plan, including:
- 1929 (i) the contracting structure;
- 1930 (ii) the plan for quality management;
- 1931 (iii) the proposed toll enforcement plan; and
- 1932 (iv) the plan for safety management; and
- 1933 (e) that the proposal to comply with the minimum guidelines for tollway development

1934 agreement proposals under Section 72-6-204.

1935 (6) The Department of Transportation and the Transportation Commission:

1936 (a) shall evaluate the submissions received in response to the request for proposals  
1937 from the prequalified offerors;

1938 (b) shall comply with rules relating to discussion of proposals, best and final offers,  
1939 and evaluations of the proposals submitted; and

1940 (c) may, after considering price and other identified factors and complying with the  
1941 requirements of Section 72-6-206, award the contract to the ~~[responsive and]~~ responsible  
1942 offeror whose responsive proposal is most advantageous to the state.

1943 Section 28. Section 63G-6a-1601.5 is amended to read:

1944 **63G-6a-1601.5. Definitions.**

1945 As used in this part:

1946 (1) "Constructive knowledge":

1947 (a) means knowledge or information that a protestor would have if the protestor had  
1948 exercised reasonable care or diligence, regardless of whether the protestor actually has the  
1949 knowledge or information; and

1950 (b) includes knowledge of:

1951 (i) applicable provisions of this chapter and other law and administrative rule;

1952 (ii) instructions, criteria, deadlines, and requirements contained in the solicitation or in  
1953 other documents made available to persons interested in the solicitation or provided in a  
1954 mandatory pre-solicitation meeting;

1955 (iii) relevant facts and evidence supporting the protest or leading the protestor to  
1956 contend that the protestor has been aggrieved in connection with a procurement;

1957 (iv) communications or actions, pertaining to the procurement, of all persons within the  
1958 protestor's organization or under the supervision of the protestor; and

1959 (v) any other applicable information discoverable by the exercise of reasonable care or  
1960 diligence.

1961 (2) "Hearing" means a proceeding in which evidence, which may include oral

1962 testimony, or argument relevant to a protest is presented to a protest officer in connection with  
1963 the protest officer's determination of an issue of fact or law or both.

1964 (3) "Protest appeal record" means:

1965 (a) a copy of the protest officer's written decision;

1966 (b) all documentation and other evidence the protest officer relied upon in reaching the  
1967 protest officer's decision;

1968 (c) the recording of the hearing, if the protest officer held a hearing;

1969 (d) a copy of the protestor's written protest; and

1970 (e) all documentation and other evidence submitted by the protestor supporting the  
1971 protest or the protestor's claim of standing.

1972 [~~(2)~~] (4) "Protestor" means a person who files a protest under this part.

1973 [~~(3)~~] (5) "Standing" means to have suffered an injury or harm or to be about to suffer  
1974 imminent injury or harm, if:

1975 (a) the cause of the injury or harm is:

1976 (i) an infringement of the protestor's own right and not the right of another person who  
1977 is not a party to the procurement;

1978 (ii) reasonably connected to the procurement unit's conduct; and

1979 (iii) the sole reason the protestor is not considered, or is no longer considered, for an  
1980 award of a contract under the procurement that is the subject of the protest;

1981 (b) a decision on the protest in favor of the protestor:

1982 (i) is likely to redress the injury or harm; and

1983 (ii) would give the protestor a reasonable likelihood of being awarded a contract; and

1984 (c) the protestor has the legal authority to file the protest on behalf of the actual or  
1985 prospective bidder or offeror or prospective contractor involved in the procurement that is the  
1986 subject of the protest.

1987 Section 29. Section **63G-6a-1602** is amended to read:

1988 **63G-6a-1602. Protest -- Time for filing -- Basis of protest -- Authority to resolve**  
1989 **protest.**

- 1990 (1) A protest may be filed with the protest officer by a person who:
- 1991 (a) has standing; and
- 1992 (b) is aggrieved in connection with a procurement or an award of a contract.
- 1993 (2) A protest may not be filed after:
- 1994 (a) (i) (A) the opening of bids, for a protest relating to a procurement under a bidding
- 1995 process; or
- 1996 (B) the deadline for submitting responses to the solicitation, for a protest relating to
- 1997 another standard procurement process; or
- 1998 (ii) the closing of the procurement stage that is the subject of the protest:
- 1999 (A) if the protest relates to a multiple-stage procurement; and
- 2000 (B) notwithstanding Subsections (2)(a)(i)(A) and (B); or
- 2001 (b) the day that is seven days after the day on which the person knows or first has
- 2002 constructive knowledge of the facts giving rise to the protest, if:
- 2003 (i) the protestor did not know and did not have constructive knowledge of the facts
- 2004 giving rise to the protest before:
- 2005 (A) the opening of bids, for a protest relating to a procurement under a bidding process;
- 2006 (B) the deadline for submitting responses to the solicitation, for a protest relating to
- 2007 another standard procurement process; or
- 2008 (C) the closing of the procurement stage that is the subject of the protest, if the protest
- 2009 relates to a multiple-stage procurement; or
- 2010 (ii) the protest relates to a procurement process not described in Subsection (2)(a).
- 2011 (3) A deadline under Subsection (2) for filing a protest may not be modified.
- 2012 [~~3~~] (4) (a) A protestor shall include in a protest:
- 2013 (i) the protestor's mailing address and email address; and
- 2014 (ii) a concise statement of the facts and evidence:
- 2015 (A) leading the protestor to claim that the protestor has been aggrieved in connection
- 2016 with a procurement and providing the grounds for the protestor's protest; and
- 2017 (B) supporting the protestor's claim of standing.



2018 (b) A protest may not be considered unless it contains facts and evidence that, if true,  
2019 would establish:

2020 (i) a violation of this chapter or other applicable law or rule;

2021 (ii) the procurement unit's failure to follow a provision of a solicitation;

2022 (iii) an error made by an evaluation committee or conducting procurement unit;

2023 (iv) a bias exercised by an evaluation committee or an individual committee member,  
2024 excluding a bias that is a preference arising during the evaluation process because of how well  
2025 a solicitation response meets criteria in the solicitation;

2026 (v) a failure to correctly apply or calculate a scoring criterion; or

2027 (vi) that specifications in a solicitation are unduly restrictive or unduly anticompetitive.

2028 [~~4~~] (5) A protest may not be based on:

2029 (a) the rejection of a solicitation response due to a protestor's failure to attend or  
2030 participate in a mandatory conference, meeting, or site visit held before the deadline for  
2031 submitting a solicitation response; [~~or~~]

2032 (b) a vague or unsubstantiated allegation[~~:-~~]; or

2033 (c) a person's claim that:

2034 (i) a procurement unit that complied with Section 63G-6a-112 did not provide  
2035 individual notice of a solicitation to the person; or

2036 (ii) the person received late notice of a solicitation for which notice was provided in  
2037 accordance with Section 63G-6a-112.

2038 [~~5~~] (6) A protest may not include a request for:

2039 (a) an explanation of the rationale or scoring of evaluation committee members;

2040 (b) the disclosure of a protected record or protected information in addition to the  
2041 information provided under the disclosure provisions of this chapter; or

2042 (c) other information, documents, or explanations not explicitly provided for in this  
2043 chapter.

2044 [~~6~~] (7) A person who fails to file a protest within the time prescribed in Subsection

2045 (2) may not:

2046 (a) protest to the protest officer a solicitation or award of a contract; or  
2047 (b) file an action or appeal challenging a solicitation or award of a contract before an  
2048 appeals panel, a court, or any other forum.

2049 [(7)] (8) Subject to the applicable requirements of Section 63G-10-403, a protest  
2050 officer or the head of a procurement unit may enter into a settlement agreement to resolve a  
2051 protest.

2052 Section 30. Section 63G-6a-1603 is amended to read:

2053 **63G-6a-1603. Protest officer responsibilities and authority -- Proceedings on**  
2054 **protest -- Effect of decision.**

2055 (1) After a protest is filed, the protest officer shall determine whether the protest is  
2056 timely filed and complies fully with the requirements of Section 63G-6a-1602.

2057 (2) If the protest officer determines that the protest is not timely filed or that the protest  
2058 does not fully comply with Section 63G-6a-1602, the protest officer shall dismiss the protest  
2059 without holding a hearing.

2060 (3) If the protest officer determines that the protest is timely filed and complies fully  
2061 with Section 63G-6a-1602, the protest officer shall:

2062 (a) dismiss the protest without holding a hearing if the protest officer determines that  
2063 the protest alleges facts that, if true, do not provide an adequate basis for the protest;

2064 (b) uphold the protest without holding a hearing if the protest officer determines that  
2065 the undisputed facts of the protest indicate that the protest should be upheld; or

2066 (c) hold a hearing on the protest if there is a genuine issue of material fact or law that  
2067 needs to be resolved in order to determine whether the protest should be upheld.

2068 (4) (a) If a hearing is held on a protest, the protest officer may:

2069 (i) subpoena witnesses and compel their attendance at the protest hearing;

2070 (ii) subpoena documents for production at the protest hearing;

2071 (iii) obtain additional factual information; and

2072 (iv) obtain testimony from experts, the person filing the protest, representatives of the  
2073 procurement unit, or others to assist the protest officer to make a decision on the protest.

- 2074 (b) The Rules of Evidence do not apply to a protest hearing.
- 2075 (c) The applicable rulemaking authority shall make rules relating to intervention in a  
2076 protest, including designating:
- 2077 (i) who may intervene; and
- 2078 (ii) the time and manner of intervention.
- 2079 (d) A protest officer shall:
- 2080 (i) record each hearing held on a protest under this section;
- 2081 (ii) regardless of whether a hearing on a protest is held under this section, preserve all  
2082 records and other evidence relied upon in reaching the protest officer's written decision until  
2083 the decision, and any appeal of the decision, becomes final; and
- 2084 ~~[(iii) submit to the procurement policy board chair a copy of the protest officer's  
2085 written decision and all records and other evidence relied upon in reaching the decision, within  
2086 seven days after receiving:]~~
- 2087 ~~[(A) notice that an appeal of the protest officer's decision has been filed under Section  
2088 [63G-6a-1702](#); or]~~
- 2089 ~~[(B) a request from the chair of the procurement policy board.]~~
- 2090 (iii) if the protestor appeals the protest officer's decision, submit the protest appeal  
2091 record to the procurement policy board chair within seven days after receiving:
- 2092 (A) notice that an appeal of the protest officer's decision has been filed under Section  
2093 [63G-6a-1702](#); or
- 2094 (B) a request for the protest appeal record from the chair of the procurement policy  
2095 board.
- 2096 (e) A protest officer's holding a hearing, considering a protest, or issuing a written  
2097 decision under this section does not affect a person's right to later question or challenge the  
2098 protest officer's jurisdiction to hold the hearing, consider the protest, or issue the decision.
- 2099 (5) (a) The deliberations of a protest officer may be held in private.
- 2100 (b) If the protest officer is a public body, as defined in Section [52-4-103](#), the protest  
2101 officer shall comply with Section [52-4-205](#) in closing a meeting for its deliberations.

2102 (6) (a) A protest officer~~[, or the protest officer's designee,]~~ shall promptly issue a  
2103 written decision regarding any protest, unless the protest is settled by mutual agreement.

2104 (b) The decision shall:

2105 (i) state the reasons for the action taken;

2106 (ii) inform the protestor of the right to judicial or administrative review as provided in  
2107 this chapter; and

2108 (iii) indicate the amount of the security deposit or bond required under Section  
2109 [63G-6a-1703](#).

2110 (c) A person who issues a decision under Subsection (6)(a) shall mail, email, or  
2111 otherwise immediately furnish a copy of the decision to the protestor.

2112 (7) A decision described in this section is effective until stayed or reversed on appeal,  
2113 except to the extent provided in Section [63G-6a-1903](#).

2114 (8) (a) A decision described in Subsection (6)(a) that is issued in relation to a  
2115 procurement unit other than a legislative procurement unit, a judicial procurement unit, a  
2116 nonadopting local government procurement unit, or a public transit district is final and  
2117 conclusive unless the protestor files an appeal under Section [63G-6a-1702](#).

2118 (b) A decision described in Subsection (6)(a) that is issued in relation to a legislative  
2119 procurement unit, a judicial procurement unit, a nonadopting local government procurement  
2120 unit, or a public transit district is final and conclusive unless the protestor files an appeal under  
2121 Section [63G-6a-1802](#).

2122 (9) If the protest officer does not issue the written decision regarding a protest within  
2123 30 calendar days after the day on which the protest was filed with the protest officer, or within  
2124 a longer period as may be agreed upon by the parties, the protestor may proceed as if an adverse  
2125 decision had been received.

2126 (10) A determination under this section by the protest officer regarding an issue of fact  
2127 may not be overturned on appeal unless the decision is arbitrary and capricious or clearly  
2128 erroneous.

2129 (11) An individual is not precluded from acting, and may not be disqualified or

2130 required to be recused from acting, as a protest officer because the individual also acted in  
 2131 another capacity during the procurement process, as required or allowed in this chapter.

2132 Section 31. Section **63G-6a-1701.5** is enacted to read:

2133 **63G-6a-1701.5. Definitions.**

2134 As used in this part:

2135 (1) "Appointing officer" means:

2136 (a) the chair of the board; or

2137 (b) a designee of the chair who is not employed by the procurement unit responsible for  
 2138 the solicitation, contract award, or other action that is the subject of the protestor's protest.

2139 (2) "Protest appeal record" means the same as that term is defined in Section

2140 [63G-6a-1601.5.](#)

2141 (3) "Protestor" means the same as that term is defined in Section [63G-6a-1601.5.](#)

2142 Section 32. Section **63G-6a-1702** is amended to read:

2143 **63G-6a-1702. Appeal to Utah State Procurement Policy Board -- Appointment of**  
 2144 **procurement appeals panel -- Proceedings.**

2145 (1) This part applies to all procurement units other than:

2146 (a) a legislative procurement unit;

2147 (b) a judicial procurement unit;

2148 (c) a nonadopting local government procurement unit; or

2149 (d) a public transit district.

2150 (2) (a) Subject to Section [63G-6a-1703](#), a [~~party to a protest involving a procurement~~

2151 ~~unit other than a procurement unit listed in Subsection (1)(a), (b), (c), or (d)] protestor may~~

2152 appeal [~~the protest decision~~] to the board a protest decision of a procurement unit that is subject

2153 to this part by filing a written notice of appeal with the chair of the board within seven days

2154 after:

2155 (i) the day on which the written decision described in Section [63G-6a-1603](#) is:

2156 (A) personally served on the party or the party's representative; or

2157 (B) emailed or mailed to the address or email address provided by the party under

2158 Subsection ~~63G-6a-1602~~~~(3)~~(4); or

2159 (ii) the day on which the 30-day period described in Subsection ~~63G-6a-1603~~(9) ends,  
2160 if a written decision is not issued before the end of the 30-day period.

2161 ~~[(b) A person appealing a debarment or suspension of a procurement unit other than a~~  
2162 ~~procurement unit listed in Subsection (1)(a), (b), (c), or (d) shall file a written notice of appeal~~  
2163 ~~with the chair of the board no later than seven days after the debarment or suspension.]~~

2164 ~~[(c)]~~ (b) A notice of appeal under Subsection (2)(a) ~~[or (b)]~~ shall:

2165 (i) include the address of record and email address of record of the party filing the  
2166 notice of appeal; and

2167 (ii) be accompanied by a copy of any written protest decision ~~[or debarment or~~  
2168 ~~suspension order]~~.

2169 (c) The deadline for appealing a protest decision may not be modified.

2170 (3) A person may not base an appeal of a protest under this section on:

2171 (a) a ground not specified in the person's protest under Section ~~63G-6a-1602~~[-]; or

2172 (b) new or additional evidence not considered by the protest officer.

2173 (4) (a) A person may not appeal from a protest described in Section ~~63G-6a-1602~~,

2174 unless:

2175 ~~[(a)]~~ (i) a decision on the protest has been issued; or

2176 ~~[(b)]~~ (ii) a decision is not issued and the 30-day period described in Subsection  
2177 ~~63G-6a-1603~~(9), or a longer period agreed to by the parties, has passed.

2178 ~~[(5) The chair of the board or a designee of the chair who is not employed by the~~  
2179 ~~procurement unit responsible for the solicitation, contract award, or other action complained~~  
2180 ~~of:]~~

2181 ~~[(a) shall, within seven days after the day on which the chair receives a timely written~~  
2182 ~~notice of appeal under Subsection (2), and if all the requirements of Subsection (2) and Section~~  
2183 ~~63G-6a-1703 have been met, appoint:]~~

2184 ~~[(i) a procurement appeals panel to hear and decide the appeal, consisting of at least~~  
2185 ~~three individuals, each of whom is:]~~

2186 (b) A procurement unit may not appeal a protest decision or other determination made  
2187 by the procurement unit's protest officer.

2188 (5) (a) Within seven days after the chair of the board receives a written notice of an  
2189 appeal under this section, the chair shall submit a written request to the protest officer for the  
2190 protest appeal record.

2191 (b) Within seven days after the chair receives the protest appeal record from the protest  
2192 officer, the appointing officer shall, in consultation with the attorney general's office:

2193 (i) review the appeal to determine whether the appeal complies with the requirements  
2194 of Subsections (2), (3), and (4) and Section 63G-6a-1703; and

2195 (ii) (A) dismiss any claim asserted in the appeal, or dismiss the appeal, without holding  
2196 a hearing if the appointing officer determines that the claim or appeal, respectively, fails to  
2197 comply with any of the requirements listed in Subsection (5)(b)(i); or

2198 (B) appoint a procurement appeals panel to conduct an administrative review of any  
2199 claim in the appeal that has not been dismissed under Subsection (5)(b)(ii)(A), if the appointing  
2200 officer determines that one or more claims asserted in the appeal comply with the requirements  
2201 listed in Subsection (5)(b)(i).

2202 (c) A procurement appeals panel appointed under Subsection (5)(a) shall consist of an  
2203 odd number of at least three individuals, each of whom is:

2204 ~~[(A)]~~ (i) a member of the board; or

2205 ~~[(B)]~~ (ii) a designee of a member appointed under Subsection (5)~~[(a)(i)(A)]~~(c)(i), if the  
2206 designee is approved by the chair~~[-and]~~ of the board.

2207 ~~[(ii)]~~ (d) The appointing officer shall appoint one of the members of the procurement  
2208 appeals panel to ~~[be the chair]~~ serve as the coordinator of the panel~~[-]~~.

2209 ~~[(b)]~~ (e) The appointing officer may:

2210 (i) appoint the same procurement appeals panel to hear more than one appeal; or

2211 (ii) appoint a separate procurement appeals panel for each appeal~~[-]~~.

2212 ~~[(c)]~~ (f) The appointing officer may not appoint a person to a procurement appeals  
2213 panel if the person is employed by the procurement unit responsible for the solicitation,

2214 contract award, or other action ~~[complained of, and]~~ that is the subject of the protestor's protest.

2215 ~~[(d)]~~ (g) The appointing officer shall, at the time the procurement appeals panel is  
2216 appointed, provide appeals panel members with a copy of the [protest officer's written decision  
2217 and all other records and other evidence that the protest officer relied on in reaching the  
2218 decision] notice of appeal filed under Subsection (2) and the protest decision record.

2219 (6) (a) A procurement appeals panel described in Subsection (5) [shall]:

2220 ~~[(a) consist of an odd number of members;]~~

2221 ~~[(b)]~~ (i) shall conduct an [informal proceeding on] administrative review of the appeal  
2222 within [60] 30 days after the day on which the procurement appeals panel is appointed[-], or  
2223 before a later date that all parties agree upon, unless the appeal is dismissed under Subsection  
2224 (8)(a); and

2225 ~~[(i) unless all parties stipulate to a later date; and]~~

2226 ~~[(ii) subject to Subsection (8);]~~

2227 (ii) (A) may, as part of the administrative review and at the sole discretion of the  
2228 procurement appeals panel, conduct an informal hearing, if the procurement appeals panel  
2229 considers a hearing to be necessary; and

2230 ~~[(c)]~~ (B) if the procurement appeals panel conducts an informal hearing, shall, at least  
2231 seven days before the [proceeding] hearing, mail, email, or hand-deliver a written notice of the  
2232 [proceeding] hearing to the parties to the appeal[-, and].

2233 (b) A procurement appeals panel may, during an informal hearing, ask questions and  
2234 receive responses regarding the appeal and the protest appeal record to assist the procurement  
2235 appeals panel to understand the basis of the appeal and information contained in the protest  
2236 appeal record, but may not otherwise take any additional evidence or consider any additional  
2237 ground for the appeal.

2238 (7) A procurement appeals panel shall consider and decide the appeal based solely on:

2239 (a) the notice of appeal and the protest appeal record; and

2240 (b) responses received during an informal hearing, if an informal hearing is held and to  
2241 the extent allowed under Subsection (6)(b).



2242 (8) A procurement appeals panel:  
 2243 (a) may dismiss an appeal if the appeal does not comply with the requirements of this  
 2244 chapter; and  
 2245 (b) shall uphold the protest decision unless the protest decision is arbitrary and  
 2246 capricious or clearly erroneous.  
 2247 ~~[(d)]~~ (9) The procurement appeals panel shall, within seven days after the day on which  
 2248 the [proceeding ends] procurement appeals panel concludes the administrative review:  
 2249 ~~[(i)]~~ (a) issue a written decision on the appeal; and  
 2250 ~~[(ii)]~~ (b) mail, email, or hand-deliver the written decision on the appeal to the parties to  
 2251 the appeal and to the protest officer.  
 2252 ~~[(7)]~~ (10) (a) The deliberations of a procurement appeals panel may be held in private.  
 2253 (b) If the procurement appeals panel is a public body, as defined in Section 52-4-103,  
 2254 the procurement appeals panel shall comply with Section 52-4-205 in closing a meeting for its  
 2255 deliberations.  
 2256 ~~[(8)]~~ (11) A procurement appeals panel may continue [a procurement appeals  
 2257 proceeding] an administrative review under this section beyond the [60-day] 30-day period  
 2258 described in Subsection (6)[(b)](a)(i) if the procurement appeals panel determines that the  
 2259 continuance is in the interests of justice.  
 2260 ~~[(9) A procurement appeals panel:]~~  
 2261 ~~[(a) shall, subject to Subsection (9)(c), consider the appeal based solely on:]~~  
 2262 ~~[(i) the protest decision;]~~  
 2263 ~~[(ii) the record considered by the person who issued the protest decision; and]~~  
 2264 ~~[(iii) if a protest hearing was held, the record of the protest hearing;]~~  
 2265 ~~[(b) may not take additional evidence;]~~  
 2266 ~~[(c) notwithstanding Subsection (9)(b), may, during an informal hearing, ask questions~~  
 2267 ~~and receive responses regarding the appeal, the protest decision, or the record in order to assist~~  
 2268 ~~the panel to understand the appeal, the protest decision, and the record; and]~~  
 2269 ~~[(d) shall uphold the decision of the protest officer, unless the decision is arbitrary and~~

2270 capricious or clearly erroneous.]

2271 [(10)] (12) If a procurement appeals panel determines that the decision of the protest  
2272 officer is arbitrary and capricious or clearly erroneous, the procurement appeals panel:

2273 (a) shall remand the matter to the protest officer, to cure the problem or render a new  
2274 decision;

2275 (b) may recommend action that the protest officer should take; and

2276 (c) may not order that:

2277 (i) a contract be awarded to a certain person;

2278 (ii) a contract or solicitation be cancelled; or

2279 (iii) any other action be taken other than the action described in Subsection [(10)]

2280 (12)(a).

2281 [(11)] (13) The board shall make rules relating to the conduct of an appeals proceeding,  
2282 including rules that provide for:

2283 (a) expedited proceedings; and

2284 (b) electronic participation in the proceedings by panel members and participants.

2285 [(12)] (14) The Rules of Evidence do not apply to [an appeals proceeding] a hearing  
2286 held by a procurement appeals panel.

2287 (15) Part 20, Records, applies to the records involved in the process described in this  
2288 section, including the decision issued by a procurement appeals panel.

2289 Section 33. Section **63G-6a-1703** is amended to read:

2290 **63G-6a-1703. Requirement to pay a security deposit or post a bond -- Exceptions**  
2291 **-- Amount -- Forfeiture of security deposit or bond.**

2292 (1) A person who files a notice of appeal under Section **63G-6a-1702** shall, before the  
2293 expiration of the time provided under Subsection **63G-6a-1702(2)** for filing a notice of appeal,  
2294 pay a security deposit or post a bond with the office of the protest officer.

2295 (2) The amount of a security deposit or bond required under Subsection (1) is:

2296 (a) for an appeal relating to an invitation for bids or request for proposals and except as  
2297 provided in Subsection (2)(b)(ii):

- 2298 (i) \$20,000, if the total contract value is under \$500,000;
- 2299 (ii) \$25,000, if the total contract value is \$500,000 or more but less than \$1,000,000;
- 2300 (iii) \$50,000, if the total contract value is \$1,000,000 or more but less than \$2,000,000;
- 2301 (iv) \$95,000, if the total contract value is \$2,000,000 or more but less than \$4,000,000;
- 2302 (v) \$180,000, if the total contract value is \$4,000,000 or more but less than \$8,000,000;
- 2303 (vi) \$320,000, if the total contract value is \$8,000,000 or more but less than
- 2304 \$16,000,000;
- 2305 (vii) \$600,000, if the total contract value is \$16,000,000 or more but less than
- 2306 \$32,000,000;
- 2307 (viii) \$1,100,000, if the total contract value is \$32,000,000 or more but less than
- 2308 \$64,000,000;
- 2309 (ix) \$1,900,000, if the total contract value is \$64,000,000 or more but less than
- 2310 \$128,000,000;
- 2311 (x) \$3,500,000, if the total contract value is \$128,000,000 or more but less than
- 2312 \$256,000,000;
- 2313 (xi) \$6,400,000, if the total contract value is \$256,000,000 or more but less than
- 2314 \$512,000,000; and
- 2315 (xii) \$10,200,000, if the total contract value is \$512,000,000 or more; or
- 2316 (b) \$20,000, for an appeal:
  - 2317 (i) relating to any type of procurement process other than an invitation for bids or
  - 2318 request for proposals;
  - 2319 (ii) relating to an invitation for bids or request for proposals, if the estimated total
  - 2320 contract value cannot be determined; or
  - 2321 (iii) of a debarment or suspension.
- 2322 (3) (a) For an appeal relating to an invitation for bids, the estimated total contract value
- 2323 shall be based on:
  - 2324 (i) the lowest [~~responsible and~~] responsive bid amount for the entire term of the
  - 2325 contract, excluding any renewal period, if the bid opening has occurred;

- 2326           (ii) the total budget for the procurement item for the entire term of the contract,  
2327 excluding any renewal period, if bids are based on unit or rate pricing; or
- 2328           (iii) if the contract is being rebid, the historical usage and amount spent on the contract  
2329 over the life of the contract.
- 2330           (b) For an appeal relating to a request for proposals, the estimated total contract value  
2331 shall be based on:
- 2332           (i) the lowest cost proposed in a response to a request for proposals, considering the  
2333 entire term of the contract, excluding any renewal period, if the opening of proposals has  
2334 occurred;
- 2335           (ii) the total budget for the procurement item over the entire term of the contract,  
2336 excluding any renewal period, if opened cost proposals are based on unit or rate pricing; or
- 2337           (iii) if the contract is being reissued, the historical usage and amount spent on the  
2338 contract over the life of the contract that is being reissued.
- 2339           (4) The protest officer shall:
- 2340           (a) retain the security deposit or bond until the protest and any appeal of the protest  
2341 decision is final;
- 2342           (b) as it relates to a security deposit:
- 2343           (i) deposit the security deposit into an interest-bearing account; and
- 2344           (ii) after any appeal of the protest decision becomes final, return the security deposit  
2345 and the interest it accrues to the person who paid the security deposit, unless the security  
2346 deposit is forfeited to the general fund of the procurement unit under Subsection (5); and
- 2347           (c) as it relates to a bond:
- 2348           (i) retain the bond until the protest and any appeal of the protest decision becomes  
2349 final; and
- 2350           (ii) after the protest and any appeal of the protest decision becomes final, return the  
2351 bond to the person who posted the bond, unless the bond is forfeited to the general fund of the  
2352 procurement unit under Subsection (5).
- 2353           (5) A security deposit that is paid, or a bond that is posted, under this section shall

2354 forfeit to the general fund of the procurement unit if:

2355 (a) the person who paid the security deposit or posted the bond fails to ultimately  
2356 prevail on appeal; and

2357 (b) the procurement appeals panel finds that the protest or appeal is frivolous or that its  
2358 primary purpose is to harass or cause a delay.

2359 Section 34. Section **63G-6a-1802** is amended to read:

2360 **63G-6a-1802. Appeal to Utah Court of Appeals.**

2361 (1) (a) As provided in this part:

2362 (i) a person may appeal a dismissal of an appeal by the board chair under Subsection  
2363 [~~63G-6a-1706(1)~~] 63G-6a-1702(5)(b)(ii)(A);

2364 (ii) a person who receives an adverse decision by a procurement appeals panel may  
2365 appeal that decision;

2366 (iii) subject to Subsection (2), a procurement unit, other than a legislative procurement  
2367 unit, a judicial procurement unit, a nonadopting local government procurement unit, or a public  
2368 transit district, may appeal an adverse decision by a procurement appeals panel; and

2369 (iv) a person who receives an adverse decision in a protest relating to a legislative  
2370 procurement unit, a judicial procurement unit, a nonadopting local government procurement  
2371 unit, or a public transit district may appeal that decision[~~; and~~].

2372 [~~(v) a person who is debarred or suspended under Section 63G-6a-904 by a legislative  
2373 procurement unit, a judicial procurement unit, a nonadopting local government procurement  
2374 unit, or a public transit district may appeal the debarment or suspension.~~]

2375 (b) A person seeking to appeal a dismissal[~~;~~] or decision[~~;~~ ~~or debarment or suspension~~]  
2376 under Subsection (1)(a) shall file a notice of appeal with the Utah Court of Appeals within  
2377 seven days after the dismissal[~~;~~] or decision[~~;~~ ~~or debarment or suspension~~].

2378 (2) A procurement unit may not appeal the decision of a procurement appeals panel,  
2379 unless the appeal is:

2380 (a) recommended by the protest officer involved; and

2381 (b) except for a procurement unit that is not represented by the attorney general's

2382 office, approved by the attorney general.

2383 (3) A person appealing a dismissal, decision, or protest[, ~~debarment, or suspension~~]  
2384 under this section may not base the appeal on a ground not specified in the proceeding from  
2385 which the appeal is taken.

2386 (4) The Utah Court of Appeals:

2387 (a) shall consider the appeal as an appellate court;

2388 (b) may not hear the matter as a trial de novo; and

2389 (c) may not overturn a finding, dismissal, or decision[, ~~or debarment or suspension,~~]

2390 unless the finding, dismissal, or decision, [~~or debarment or suspension~~] is arbitrary and  
2391 capricious or clearly erroneous.

2392 (5) The Utah Court of Appeals is encouraged to:

2393 (a) give an appeal made under this section priority; and

2394 (b) consider the appeal and render a decision in an expeditious manner.

2395 Section 35. Section **63G-6a-2403** is amended to read:

2396 **63G-6a-2403. Applicability.**

2397 (1) This part applies to each public entity.

2398 (2) A procurement professional is subject to this part at all times during:

2399 (a) the procurement process; and

2400 (b) the administration of a contract or grant.

2401 (3) A contract administration professional is subject to this part at all times during the  
2402 period the contract administration professional is:

2403 (a) under contract with a procurement unit; and

2404 (b) involved in:

2405 (i) the procurement process; or

2406 (ii) the administration of a contract or grant.

2407 (4) This part does not apply to:

2408 (a) an individual described in Subsection [63G-6a-2402\(9\)\(b\)](#); [~~or~~]

2409 (b) any individual other than a procurement professional or contract administration

2410 professional[-]; or

2411 (c) a taxed interlocal entity, as defined in Section 11-13-602, or a director, officer, or  
2412 employee of a taxed interlocal entity.

2413 (5) The other subsections of this section do not affect the applicability or effect of any  
2414 other ethics, bribery, or other law.

2415 Section 36. Section **63G-6a-2404.3** is enacted to read:

2416 **63G-6a-2404.3. Dividing a procurement to avoid using a standard procurement**  
2417 **process.**

2418 (1) It is unlawful for a person knowingly to divide a single procurement into multiple  
2419 smaller procurements if dividing the single procurement:

2420 (a) is done with the intent to avoid the use of a standard procurement process that  
2421 would have otherwise been required if the procurement had not been divided;

2422 (b) constitutes unlawful conduct under Subsection 63G-6a-506(8); or

2423 (c) is otherwise prohibited by this chapter.

2424 (2) A violation of Subsection (1) is:

2425 (a) a second degree felony, if the value of the procurement before being divided is  
2426 \$1,000,000 or more;

2427 (b) a third degree felony, if the value of the procurement before being divided is  
2428 \$250,000 or more but less than \$1,000,000;

2429 (c) a class A misdemeanor, if the value of the procurement before being divided is  
2430 \$100,000 or more but less than \$250,000; or

2431 (d) a class B misdemeanor, if the value of the procurement before being divided is less  
2432 than \$100,000.

2433 Section 37. Section **63G-6a-2404.7** is enacted to read:

2434 **63G-6a-2404.7. Improper action against a public officer or employee involved in**  
2435 **the procurement process.**

2436 (1) (a) It is unlawful for a person knowingly to threaten to make a false allegation  
2437 against a public officer or employee, or knowingly to threaten to take a menacing or

2438 intimidating action against a public officer or employee, with the intent to:

2439 (i) prevent the officer or employee from performing a duty or responsibility that the  
2440 officer or employee has under this chapter;

2441 (ii) influence the officer or employee to award a contract under this chapter to the  
2442 person or take other action under this chapter in favor of the person; or

2443 (iii) retaliate against the officer or employee for:

2444 (A) not awarding a contract under this chapter to the person;

2445 (B) issuing a decision or taking an action under this chapter that is adverse to the  
2446 person; or

2447 (C) performing a duty or responsibility the officer or employee has under this chapter.

2448 (b) A violation of Subsection (1)(a) is a class A misdemeanor.

2449 (2) (a) It is unlawful for a person knowingly to make a false allegation against a public  
2450 officer or employee, or knowingly to take a menacing or intimidating action against a public  
2451 officer or employee, with the intent to:

2452 (i) prevent the officer or employee from performing a duty or responsibility that the  
2453 officer or employee has under this chapter;

2454 (ii) influence the officer or employee to award a contract under this chapter to the  
2455 person or take other action under this chapter in favor of the person; or

2456 (iii) retaliate against the officer or employee for:

2457 (A) not awarding a contract under this chapter to the person;

2458 (B) issuing a decision or taking an action under this chapter that is adverse to the  
2459 person; or

2460 (C) performing a duty or responsibility the officer or employee has under this chapter.

2461 (b) A violation of Subsection (2)(a) is a third degree felony.

2462 Section 38. Section **63G-6a-2407** is amended to read:

2463 **63G-6a-2407. Duty to report unlawful conduct.**

2464 (1) As used in this section, "unlawful conduct" means:

2465 (a) conduct made unlawful under this part; or



2466 (b) conduct, including bid rigging, improperly steering a contract to a favored vendor,  
2467 exercising undue influence on an individual involved in the procurement process, or  
2468 participating in collusion or other anticompetitive practices, made unlawful under other  
2469 applicable law.

2470 (2) (a) A procurement professional with actual knowledge that a person has engaged in  
2471 unlawful conduct shall report the person's unlawful conduct to:

2472 (i) the state auditor; or

2473 (ii) the attorney general or other appropriate prosecuting attorney.

2474 (b) An individual not subject to the requirement of Subsection (2)(a) who has actual  
2475 knowledge that a person has engaged in unlawful conduct may report the person's unlawful  
2476 conduct to:

2477 (i) the state auditor; or

2478 (ii) the attorney general or other appropriate prosecuting attorney.

2479 (3) A procurement professional who fails to comply with the requirement of  
2480 Subsection (2)(a) is subject to any applicable disciplinary action [~~or civil penalty identified in~~  
2481 ~~Subsection 63G-6a-2404(5)~~].

2482 Section 39. Section **63G-10-403** is amended to read:

2483 **63G-10-403. Department of Transportation bid or request for proposals protest**  
2484 **settlement agreement approval and review.**

2485 (1) As used in this section:

2486 (a) "Department" means the Department of Transportation created in Section [72-1-201](#).

2487 (b) "Settlement agreement" includes stipulations, consent decrees, settlement  
2488 agreements, or other legally binding documents or representations resolving a dispute between  
2489 the department and another party when the department is required to pay money or required to  
2490 take legally binding action.

2491 (2) The department shall obtain the approval of the Transportation Commission or the  
2492 governor or review by the Legislative Management Committee of a settlement agreement that  
2493 involves a bid or request for proposal protest in accordance with this section.

2494 (3) A settlement agreement that is being settled by the department as part of a bid or  
2495 request for proposal protest, in accordance with Subsection [63G-6a-1602\[\(7\)\]\(8\)](#), that might  
2496 cost government entities more than \$100,000 to implement shall be presented to the  
2497 Transportation Commission for approval or rejection.

2498 (4) A settlement agreement that is being settled by the department as part of a bid or  
2499 request for proposal protest, in accordance with Subsection [63G-6a-1602\[\(7\)\]\(8\)](#), that might  
2500 cost government entities more than \$500,000 to implement shall be presented:

- 2501 (a) to the Transportation Commission for approval or rejection; and
- 2502 (b) to the governor for approval or rejection.

2503 (5) (a) A settlement agreement that is being settled by the department as part of a bid or  
2504 request for proposal protest, in accordance with Subsection [63G-6a-1602\[\(7\)\]\(8\)](#), that might  
2505 cost government entities more than \$1,000,000 to implement shall be presented:

- 2506 (i) to the Transportation Commission for approval or rejection;
- 2507 (ii) to the governor for approval or rejection; and
- 2508 (iii) if the settlement agreement is approved by the Transportation Commission and the  
2509 governor, to the Legislative Management Committee.

2510 (b) The Legislative Management Committee may recommend approval or rejection of  
2511 the settlement agreement.

2512 (6) (a) The department may not enter into a settlement agreement that resolves a bid or  
2513 request for proposal protest, in accordance with Subsection [63G-6a-1602\[\(7\)\]\(8\)](#), that might  
2514 cost government entities more than \$100,000 to implement until the Transportation  
2515 Commission has approved the agreement.

2516 (b) The department may not enter into a settlement agreement that resolves a bid or  
2517 request for proposal protest, in accordance with Subsection [63G-6a-1602\[\(7\)\]\(8\)](#), that might  
2518 cost government entities more than \$500,000 to implement until the Transportation  
2519 Commission and the governor have approved the agreement.

2520 (c) The department may not enter into a settlement agreement that resolves a bid or  
2521 request for proposal protest, in accordance with Subsection [63G-6a-1602\[\(7\)\]\(8\)](#), that might

2522 cost government entities more than \$1,000,000 to implement until:

2523 (i) the Transportation Commission has approved the agreement;

2524 (ii) the governor has approved the agreement; and

2525 (iii) the Legislative Management Committee has reviewed the agreement.

2526 Section 40. **Repealer.**

2527 This bill repeals:

2528 Section **63G-6a-1604, Dismissal of protest not filed in accordance with**  
 2529 **requirements.**

2530 Section **63G-6a-1706, Dismissal of an appeal not filed in compliance with**  
 2531 **requirements.**

2532 Section 41. **Coordinating H.B. 398 with S.B. 204 -- Technical amendments.**

2533 If this H.B. 398 and S.B. 204, Public-Private Partnerships, both pass and become law, it  
 2534 is the intent of the Legislature that the Office of Legislative Research and General Counsel in  
 2535 preparing the Utah Code database for publication, merge the amendments in Subsection  
 2536 63G-6a-702(2) to read:

2537 "(2) (a) The request for proposals [~~standard procurement~~] process is appropriate for a  
 2538 procurement unit to use [for] in selecting the proposal that provides the best value or is the  
 2539 most advantageous to the procurement unit, including when:

2540 [~~(a) the procurement of professional services;~~]

2541 [~~(b) a design-build procurement;~~]

2542 (i) the procurement involves a contract whose terms and conditions are to be negotiated  
 2543 in order to achieve the result that is the most advantageous to the procurement unit;

2544 [~~(c) when~~] (ii) cost is not the most important factor to be considered in making the  
 2545 selection that is most advantageous to the procurement unit; [~~or~~]

2546 [~~(d) when~~] (iii) factors, apart from or in addition to cost, are highly significant in  
 2547 making the selection that is most advantageous to the procurement unit[-]; or

2548 (iv) the procurement unit anticipates entering into a public-private partnership.

2549 (b) The types of procurements for which it is appropriate to use the request for

2550 proposals process include:

2551 (i) a procurement of professional services; and

2552 (ii) a procurement of design-build or construction manager/general contractor

2553 services."