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PROCUREMENT CODE AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: _____

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



28 suspension;

- 29 ▶ modifies provisions relating to protests and appeals of protest decisions;
- 30 ▶ makes it unlawful for a person to divide a single procurement in order to avoid the

31 use of a standard procurement process and for a person to harass a public officer or

32 employee involved in the procurement process;

- 33 ▶ modifies language relating to the consequence of failing to report unlawful conduct;

34 and

- 35 ▶ makes technical changes.

36 **Money Appropriated in this Bill:**

37 None

38 **Other Special Clauses:**

39 None

40 **Utah Code Sections Affected:**

41 AMENDS:

42 **63G-6a-102**, as last amended by Laws of Utah 2014, Chapter 196

43 **63G-6a-103**, as last amended by Laws of Utah 2016, Chapters 176, 237, 355 and last
44 amended by Coordination Clause, Laws of Utah 2016, Chapter 355

45 **63G-6a-112**, as renumbered and amended by Laws of Utah 2016, Chapter 355

46 **63G-6a-116**, as enacted by Laws of Utah 2016, Chapter 355 and last amended by
47 Coordination Clause, Laws of Utah 2016, Chapter 355

48 **63G-6a-302**, as last amended by Laws of Utah 2013, Chapter 445

49 **63G-6a-410**, as enacted by Laws of Utah 2016, Chapter 355

50 **63G-6a-506**, as last amended by Laws of Utah 2016, Chapters 237, 348 and
51 renumbered and amended by Laws of Utah 2016, Chapter 355

52 **63G-6a-507**, as enacted by Laws of Utah 2016, Chapter 355

53 **63G-6a-602**, as last amended by Laws of Utah 2013, Chapter 445

54 **63G-6a-603**, as last amended by Laws of Utah 2016, Chapter 355

55 **63G-6a-606**, as last amended by Laws of Utah 2016, Chapter 355

56 **63G-6a-607**, as last amended by Laws of Utah 2014, Chapter 196

57 **63G-6a-608**, as last amended by Laws of Utah 2013, Chapter 445

58 **63G-6a-612**, as last amended by Laws of Utah 2014, Chapter 196

- 59 **63G-6a-702**, as last amended by Laws of Utah 2014, Chapter 196
- 60 **63G-6a-703**, as last amended by Laws of Utah 2016, Chapter 355
- 61 **63G-6a-707**, as last amended by Laws of Utah 2016, Chapters 237 and 355
- 62 **63G-6a-709**, as last amended by Laws of Utah 2016, Chapter 355
- 63 **63G-6a-802.7**, as enacted by Laws of Utah 2016, Chapter 355
- 64 **63G-6a-903**, as last amended by Laws of Utah 2013, Chapter 445
- 65 **63G-6a-904**, as last amended by Laws of Utah 2015, Chapter 258
- 66 **63G-6a-1002**, as last amended by Laws of Utah 2013, Chapter 445
- 67 **63G-6a-1003**, as last amended by Laws of Utah 2013, Chapter 445
- 68 **63G-6a-1204.5**, as renumbered and amended by Laws of Utah 2013, Chapter 445
- 69 **63G-6a-1402**, as last amended by Laws of Utah 2014, Chapter 196
- 70 **63G-6a-1403**, as renumbered and amended by Laws of Utah 2012, Chapter 347
- 71 **63G-6a-1601.5**, as enacted by Laws of Utah 2016, Chapter 355
- 72 **63G-6a-1602**, as last amended by Laws of Utah 2016, Chapter 355
- 73 **63G-6a-1603**, as last amended by Laws of Utah 2016, Chapter 355
- 74 **63G-6a-1702**, as last amended by Laws of Utah 2016, Chapter 355
- 75 **63G-6a-1703**, as last amended by Laws of Utah 2016, Chapter 355
- 76 **63G-6a-1802**, as last amended by Laws of Utah 2015, Chapter 218
- 77 **63G-6a-2407**, as last amended by Laws of Utah 2016, Chapter 355
- 78 **63G-10-403**, as last amended by Laws of Utah 2016, Chapter 355

79 ENACTS:

- 80 **63G-6a-1701.5**, Utah Code Annotated 1953
- 81 **63G-6a-2404.3**, Utah Code Annotated 1953
- 82 **63G-6a-2404.7**, Utah Code Annotated 1953

83 REPEALS AND REENACTS:

- 84 **63G-6a-707.5**, as last amended by Laws of Utah 2016, Chapter 355

85 REPEALS:

- 86 **63G-6a-1604**, as enacted by Laws of Utah 2012, Chapter 347 and last amended by
- 87 Coordination Clause, Laws of Utah 2012, Chapter 347
- 88 **63G-6a-1706**, as last amended by Laws of Utah 2014, Chapter 196

89

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

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

92 **63G-6a-102. Purpose of chapter.**

93 The underlying purposes and policies of this chapter are:

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

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

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

97 participate in the public procurement [system] process;

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

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

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

101 **63G-6a-103. Definitions.**

102 As used in this chapter:

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

104 ~~67-19c-102.~~]

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

106 ~~law judge.~~]

107 [~~(3)~~] (1) "Applicable rulemaking authority" means:

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

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

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

111 procurement unit by statute:

112 (A) for the building board or the Division of Facilities Construction and Management,

113 created in Section [63A-5-201](#), the building board;

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

115 (C) for the Department of Transportation created in Section [72-1-201](#), the executive

116 director of the Department of Transportation; and

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

118 (d) for a local government procurement unit:

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

120 (ii) an individual or body designated by the legislative body of the local government

121 procurement unit;

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

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

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

126 (h) for a local district other than a public transit district or for a special service district:

127 (i) before January 1, 2015, the board of trustees of the local district or the governing
128 body of the special service district; or

129 (ii) on or after January 1, 2015, the board, except to the extent that the board of trustees
130 of the local district or the governing body of the special service district makes its own rules:

131 (A) with respect to a subject addressed by board rules; or

132 (B) that are in addition to board rules; [~~or~~]

133 (i) for an applied technology college within the Utah College of Applied Technology,
134 the Utah College of Applied Technology board of trustees; or

135 [~~(i)~~] (j) for any other procurement unit, the board.

136 [~~(4)~~] (2) "Approved vendor" means a vendor who has been approved through the
137 approved vendor list process.

138 [~~(5)~~] (3) "Approved vendor list" means a list of approved vendors established under
139 Section [63G-6a-507](#).

140 [~~(6)~~] (4) "Approved vendor list process" means the procurement process described in
141 Section [63G-6a-507](#).

142 (5) "Bias" means:

143 (a) a predisposition or a preconceived opinion that prevents an individual from
144 impartially evaluating facts; or

145 (b) a prejudice in favor of or against a thing, individual, or group that usually results in
146 treatment generally considered to be unfair.

147 [~~(7)~~] (6) "Bidder" means a person who submits a bid or price quote in response to an
148 invitation for bids.

149 [~~(8)~~] (7) "Bidding process" means the procurement process described in Part 6,
150 Bidding.

151 [~~(9)~~] (8) "Board" means the Utah State Procurement Policy Board, created in Section

152 63G-6a-202.

153 [~~(10)~~] (9) "Building board" means the State Building Board, created in Section

154 63A-5-101.

155 [~~(11)~~] (10) "Change directive" means a written order signed by the procurement officer
156 that directs the contractor to suspend work or make changes, as authorized by contract, without
157 the consent of the contractor.

158 [~~(12)~~] (11) "Change order" means a written alteration in specifications, delivery point,
159 rate of delivery, period of performance, price, quantity, or other provisions of a contract, upon
160 mutual agreement of the parties to the contract.

161 [~~(13)~~] (12) "Chief procurement officer" means the chief procurement officer appointed
162 under Subsection 63G-6a-302(1).

163 [~~(14)~~] (13) "Conducting procurement unit" means a procurement unit that conducts all
164 aspects of a procurement:

165 (a) except:

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

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

168 (b) including:

169 (i) preparing any solicitation document;

170 (ii) appointing an evaluation committee;

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

172 63G-6a-707(6)(b) relating to scores calculated for costs of proposals;

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

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

175 procurement unit's approval; and

176 (vi) contract administration.

177 [~~(15)~~] (14) "Conservation district" means the same as that term is defined in Section

178 17D-3-102.

179 [~~(16)~~] (15) "Construction":

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

182 (b) does not include services and supplies for the routine, day-to-day operation, repair,

183 or maintenance of an existing public facility.

184 ~~[(17)]~~ (16) "Construction manager/general contractor":

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

186 (i) for the management of a construction project; and

187 (ii) that allows the contractor to subcontract for additional labor and materials that are
188 not included in the contractor's cost proposal submitted at the time of the procurement of the
189 contractor's services; and

190 (b) does not include a contractor whose only subcontract work not included in the
191 contractor's cost proposal submitted as part of the procurement of the contractor's services is to
192 meet subcontracted portions of change orders approved within the scope of the project.

193 (17) "Construction subcontractor":

194 (a) means a person under contract with a contractor or another subcontractor to provide
195 services or labor for construction design or construction;

196 (b) includes a trade contractor or specialty contractor; and

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

199 (18) "Contract" means an agreement for a procurement.

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

203 (a) implementing the contract;

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

206 (c) executing change orders;

207 (d) processing contract amendments;

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

209 (f) curing contract errors and deficiencies;

210 (g) terminating a contract;

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

212 (i) computing payments under the contract; and

213 (j) closing out a contract.

214 (20) "Contractor" means a person who is awarded a contract with a procurement unit.

215 (21) "Cooperative procurement" means procurement conducted by, or on behalf of:

216 (a) more than one procurement unit; or

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

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

221 (23) "Cost-plus-a-percentage-of-cost contract" means a contract under which the
222 contractor is paid a percentage of the total actual expenses or costs in addition to the
223 contractor's actual expenses or costs.

224 (24) "Cost-reimbursement contract" means a contract under which a contractor is
225 reimbursed for costs which are allowed and allocated in accordance with the contract terms and
226 the provisions of this chapter, and a fee, if any.

227 (25) "Days" means calendar days, unless expressly provided otherwise.

228 (26) "Definite quantity contract" means a fixed price contract that provides for a
229 specified amount of supplies over a specified period, with deliveries scheduled according to a
230 specified schedule.

231 (27) "Design-build" means the procurement of design professional services and
232 construction by the use of a single contract.

233 (28) "Design professional" means:

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

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

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

241 (30) "Design professional services" means:

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

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

- 245 (c) master planning and programming services.
- 246 (31) "Director" means the director of the division.
- 247 (32) "Division" means the Division of Purchasing and General Services, created in
248 Section [63A-2-101](#).
- 249 (33) "Educational procurement unit" means:
- 250 (a) a school district;
- 251 (b) a public school, including a local school board and a charter school;
- 252 (c) the Utah Schools for the Deaf and Blind;
- 253 (d) the Utah Education and Telehealth Network; [or]
- 254 (e) an institution of higher education of the state[-]; or
- 255 (f) an applied technology college within the Utah College of Applied Technology.
- 256 (34) "Established catalogue price" means the price included in a catalogue, price list,
257 schedule, or other form that:
- 258 (a) is regularly maintained by a manufacturer or contractor;
- 259 (b) is published or otherwise available for inspection by customers; and
- 260 (c) states prices at which sales are currently or were last made to a significant number
261 of any category of buyers or buyers constituting the general buying public for the supplies or
262 services involved.
- 263 (35) "Executive branch procurement unit" means a department, division, office,
264 bureau, agency, or other organization within the state executive branch.
- 265 (36) "Fixed price contract" means a contract that provides a price, for each
266 procurement item obtained under the contract, that is not subject to adjustment except to the
267 extent that:
- 268 (a) the contract provides, under circumstances specified in the contract, for an
269 adjustment in price that is not based on cost to the contractor; or
- 270 (b) an adjustment is required by law.
- 271 (37) "Fixed price contract with price adjustment" means a fixed price contract that
272 provides for an upward or downward revision of price, precisely described in the contract, that:
- 273 (a) is based on the consumer price index or another commercially acceptable index,
274 source, or formula; and
- 275 (b) is not based on a percentage of the cost to the contractor.

276 (38) "Grant" means an expenditure of public funds or other assistance, or an agreement
277 to expend public funds or other assistance, for a public purpose authorized by law, without
278 acquiring a procurement item in exchange.

279 (39) "Head of a procurement unit" means:

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

282 (b) for an executive branch procurement unit:

283 (i) the director of the division; or

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

285 (c) for a judicial procurement unit:

286 (i) the Judicial Council; or

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

288 (d) for a local government procurement unit:

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

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

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

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

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

297 (h) for a conservation district, the board of supervisors of the conservation district or a
298 designee of the board of supervisors;

299 (i) for a public corporation, the board of directors of the public corporation or a
300 designee of the board of directors;

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

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

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

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

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

311 (40) "Immaterial error":

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

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

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

316 (b) includes:

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

319 (ii) a typographical error;

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

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

323 (41) "Indefinite quantity contract" means a fixed price contract that:

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

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

327 (ii) provides a maximum purchase limit.

328 (42) "Independent procurement authority" means authority granted to a procurement
329 unit under Subsection 63G-6a-106(4)(a).

330 (43) "Invitation for bids":

331 (a) means a document used to solicit:

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

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

334 (b) includes all documents attached to or incorporated by reference in a document
335 described in Subsection (43)(a).

336 (44) "Issuing procurement unit" means a procurement unit that:

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

338 (b) causes the notice of a solicitation to be published; and
339 (c) negotiates and approves the terms and conditions of a contract.
340 (45) "Judicial procurement unit" means:
341 (a) the Utah Supreme Court;
342 (b) the Utah Court of Appeals;
343 (c) the Judicial Council;
344 (d) a state judicial district; or
345 (e) an office, committee, subcommittee, or other organization within the state judicial
346 branch.

347 (46) "Labor hour contract" is a contract under which:
348 (a) the supplies and materials are not provided by, or through, the contractor; and
349 (b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and
350 profit for a specified number of labor hours or days.

351 (47) "Legislative procurement unit" means:
352 (a) the Legislature;
353 (b) the Senate;
354 (c) the House of Representatives;
355 (d) a staff office of the Legislature, the Senate, or the House of Representatives; or
356 (e) ~~[an office;]~~ a committee, subcommittee, commission, or other organization;
357 (i) within the state legislative branch[-]; or
358 (ii) (A) that is created by statute to advise or make recommendations to the Legislature;
359 (B) the membership of which includes legislators; and
360 (C) for which the Office of Legislative Research and General Counsel provides staff
361 support.

362 (48) "Local building authority" means the same as that term is defined in Section
363 17D-2-102.

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

365 (50) "Local government procurement unit" means:
366 (a) a county or municipality, and each office or agency of the county or municipality,
367 unless the county or municipality adopts its own procurement code by ordinance;
368 (b) a county or municipality that has adopted this entire chapter by ordinance, and each

369 office or agency of that county or municipality; or

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

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

375 (52) "Multiyear contract" means a contract that extends beyond a one-year period,
 376 including a contract that permits renewal of the contract, without competition, beyond the first
 377 year of the contract.

378 (53) "Municipality" means a city, town, or metro township.

379 (54) "Nonadopting local government procurement unit" means:

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

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

384 (55) "Offeror" means a person who submits a proposal in response to a request for
 385 proposals.

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

389 ~~[(57)]~~ (56) "Preferred bidder" means a bidder that is entitled to receive a reciprocal
 390 preference under the requirements of this chapter.

391 ~~[(58)]~~ (57) "Procure" means to acquire a procurement item through a procurement.

392 ~~[(59)]~~ (58) "Procurement":

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

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

397 (i) preparing and issuing a solicitation; and

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

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

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

401 (c) does not include a grant.

402 [~~(60)~~] (59) "Procurement item" means a supply, a service, or construction.

403 [~~(61)~~] (60) "Procurement officer" means:

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

405 (i) the head of the procurement unit;

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

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

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

410 [~~(62)~~] (61) "Procurement unit":

411 (a) means:

412 (i) a legislative procurement unit;

413 (ii) an executive branch procurement unit;

414 (iii) a judicial procurement unit;

415 (iv) an educational procurement unit;

416 (v) a local government procurement unit;

417 (vi) a local district;

418 (vii) a special service district;

419 (viii) a local building authority;

420 (ix) a conservation district;

421 (x) a public corporation; or

422 (xi) a public transit district; and

423 (b) does not include a political subdivision created under Title 11, Chapter 13,
424 Interlocal Cooperation Act.

425 [~~(63)~~] (62) "Professional service" means labor, effort, or work that requires an elevated
426 degree of specialized knowledge and discretion, including labor, effort, or work in the field of:

427 (a) accounting;

428 (b) architecture;

429 (c) construction design and management;

430 (d) engineering;

431 (e) financial services;

432 (f) information technology;

433 (g) the law;

434 (h) medicine;

435 (i) psychiatry; or

436 (j) underwriting.

437 [~~(64)~~] (63) "Protest officer" means:

438 (a) for the division or a procurement unit with independent procurement authority:

439 (i) the head of the procurement unit;

440 (ii) [~~a designee of~~] the head of the procurement unit's designee who is an employee of

441 the procurement unit; or

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

443 (b) for a procurement unit without independent procurement authority, the chief
444 procurement officer or the chief procurement officer's designee who is an employee of the
445 division.

446 [~~(65)~~] (64) "Public corporation" means the same as that term is defined in Section
447 63E-1-102.

448 [~~(66)~~] (65) "Public entity" means any government entity of the state or political
449 subdivision of the state, including:

450 (a) a procurement unit;

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

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

454 [~~(67)~~] (66) "Public facility" means a building, structure, infrastructure, improvement,
455 or other facility of a public entity.

456 [~~(68)~~] (67) "Public funds" means money, regardless of its source, including from the
457 federal government, that is owned or held by a procurement unit.

458 [~~(69)~~] (68) "Public transit district" means a public transit district organized under Title
459 17B, Chapter 2a, Part 8, Public Transit District Act.

460 [~~(70)~~] (69) "Qualified vendor" means a vendor who:

461 (a) is responsible; and

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

465 [~~(71)~~] (70) "Real property" means land and any building, fixture, improvement,
466 appurtenance, structure, or other development that is permanently affixed to land.

467 [~~(72)~~] (71) "Request for information" means a nonbinding process through which a
468 procurement unit requests information relating to a procurement item.

469 [~~(73)~~] (72) "Request for proposals" means a document used to solicit proposals to
470 provide a procurement item to a procurement unit, including all other documents that are
471 attached to that document or incorporated in that document by reference.

472 [~~(74)~~] (73) "Request for proposals process" means the procurement process described
473 in Part 7, Request for Proposals.

474 [~~(75)~~] (74) "Request for statement of qualifications" means a document used to solicit
475 information about the qualifications of a person interested in responding to a potential
476 procurement, including all other documents attached to that document or incorporated in that
477 document by reference.

478 [~~(76)~~] (75) "Requirements contract" means a contract:

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

481 (b) that:

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

483 (ii) provides a maximum purchase limit.

484 [~~(77)~~] (76) "Responsible" means being capable, in all respects, of:

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

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

488 [~~(78)~~] (77) "Responsive" means conforming in all material respects to the requirements
489 of a solicitation.

490 [~~(79)~~] (78) "Sealed" means manually or electronically secured to prevent disclosure.

491 [~~(80)~~] (79) "Service":

492 (a) means labor, effort, or work to produce a result that is beneficial to a procurement

493 unit;

494 (b) includes a professional service; and

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

497 ~~[(81)]~~ (80) "Small purchase process" means the procurement process described in
498 Section [63G-6a-506](#).

499 ~~[(82)]~~ (81) "Sole source contract" means a contract resulting from a sole source
500 procurement.

501 ~~[(83)]~~ (82) "Sole source procurement" means a procurement without competition
502 pursuant to a determination under Subsection [63G-6a-802\(1\)\(a\)](#) that there is only one source
503 for the procurement item.

504 ~~[(84)]~~ (83) "Solicitation" means an invitation for bids, request for proposals, request
505 for statement of qualifications, or request for information.

506 ~~[(85)]~~ (84) "Solicitation response" means:

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

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

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

511 ~~[(86)]~~ (85) "Special service district" means the same as that term is defined in Section
512 [17D-1-102](#).

513 ~~[(87)]~~ (86) "Specification" means any description of the physical or functional
514 characteristics or of the nature of a procurement item included in an invitation for bids or a
515 request for proposals, or otherwise specified or agreed to by a procurement unit, including a
516 description of:

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

518 (b) preparing a procurement item for delivery.

519 ~~[(88)]~~ (87) "Standard procurement process" means:

520 (a) the bidding process;

521 (b) the request for proposals process;

522 (c) the approved vendor list process;

523 (d) the small purchase process; or

524 (e) the design professional procurement process.

525 ~~[(89)]~~ (88) "State cooperative contract" means a contract awarded by the division for
526 and in behalf of all public entities.

527 ~~[(90)]~~ (89) "Statement of qualifications" means a written statement submitted to a
528 procurement unit in response to a request for statement of qualifications.

529 ~~[(91)]~~ (90) "Subcontractor":

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

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

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

535 (a) means a person under contract to perform part of a contractual obligation under the
536 control of the contractor, whether the person's contract is with the contractor directly or with
537 another person who is under contract to perform part of a contractual obligation under the
538 control of the contractor; and

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

541 ~~[(92)]~~ (91) "Supply" means a good, material, technology, piece of equipment, or any
542 other item of personal property.

543 ~~[(93)]~~ (92) "Tie bid" means that the lowest responsive bids of responsible bidders are
544 identical in price.

545 ~~[(94)]~~ (93) "Time and materials contract" means a contract under which the contractor
546 is paid:

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

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

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

551 ~~[(95)]~~ (94) "Transitional costs":

552 (a) means the costs of changing:

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

- 555 (ii) from an existing type of procurement item to another type;
- 556 (b) includes:
- 557 (i) training costs;
- 558 (ii) conversion costs;
- 559 (iii) compatibility costs;
- 560 (iv) costs associated with system downtime;
- 561 (v) disruption of service costs;
- 562 (vi) staff time necessary to implement the change;
- 563 (vii) installation costs; and
- 564 (viii) ancillary software, hardware, equipment, or construction costs; and
- 565 (c) does not include:
- 566 (i) the costs of preparing for or engaging in a procurement process; or
- 567 (ii) contract negotiation or drafting costs.

568 [~~96~~] (95) "Trial use contract" means a contract for a procurement item that the
 569 procurement unit acquires for a trial use or testing to determine whether the procurement item
 570 will benefit the procurement unit.

571 [~~97~~] (96) "Vendor":

- 572 (a) means a person who is seeking to enter into a contract with a procurement unit to
 573 provide a procurement item; and
- 574 (b) includes:
- 575 (i) a bidder;
- 576 (ii) an offeror;
- 577 (iii) an approved vendor; and
- 578 (iv) a design professional.

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

580 **63G-6a-112. Required public notice.**

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

584 [~~(a) the name of the conducting procurement unit;~~]

585 [~~(b)~~] (a) the name of the procurement unit acquiring the procurement item;

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

617 the division for posting a procurement notice.

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

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

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

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

628 (b) A procurement unit issuing a procurement under Section [63G-6a-802](#) shall make a
629 copy of information related to the procurement available for public inspection at the main
630 office of the procurement unit or on the website described in Subsection (3)(b) until the award
631 of the contract or the cancellation of the procurement.

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

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

638 (7) (a) It is the responsibility of a person seeking information provided by a public
639 notice under this section to seek out, find, and respond to a public notice issued by a
640 procurement unit.

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

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

644 **63G-6a-116. Procurement of administrative law judge service.**

645 (1) As used in this section:

646 (a) "Administrative law judge" means the same as that term is defined in Section
647 [67-19e-102](#).

648 (b) "Administrative law judge service" means service provided by an administrative
 649 law judge.

650 ~~[(1)]~~ (2) A procurement unit shall use a standard procurement process under this
 651 chapter for the procurement of administrative law judge service.

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

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

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

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

660 ~~[(2)]~~ (4) Within 30 days after the day on which a conducting procurement unit awards a
 661 contract for administrative law judge service, the conducting procurement unit shall give
 662 written notice to the Department of Human Resource Management that states:

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

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

666 (c) the expected term of the contract.

667 (5) A procurement of administrative law judge service using a small purchase process
 668 is subject to rules made pursuant to Subsection [63G-6a-506\(2\)\(c\)](#).

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

670 **63G-6a-302. Chief procurement officer -- Appointment -- Qualifications --**
 671 **Authority.**

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

675 (2) The chief procurement officer shall:

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

677 (i) (A) in the large-scale procurement of supplies [and], services, or [services and]
 678 construction[;]; or

- 679 (B) negotiating contract terms and conditions; and
680 (ii) at least five years of which shall have been in public or comparable private
681 procurement within 12 years preceding the date of appointment; and
682 (b) be a person with demonstrated executive and organizational ability.
- 683 (3) The chief procurement officer appointed under Subsection (1) is also the director of
684 the Division of Purchasing and General Services.
- 685 (4) The chief procurement officer has authority over a procurement by a procurement
686 unit, except:
- 687 (a) a procurement unit with independent procurement authority; or
688 (b) as otherwise expressly provided in this chapter.
- 689 Section 6. Section **63G-6a-410** is amended to read:
- 690 **63G-6a-410. Request for statement of qualifications -- Process.**
- 691 (1) (a) A procurement unit may use the process described in this section:
692 (i) as one of the stages of a multiple-stage:
693 (A) bidding process;
694 (B) request for proposals process; or
695 (C) design professional procurement process; and
696 (ii) to identify qualified vendors to participate in other stages of the multiple-stage
697 procurement process.
- 698 (b) A procurement unit shall use the process described in this section as part of the
699 approved vendor list process, if the procurement unit intends to establish an approved vendor
700 list.
- 701 (2) A procurement unit may not:
702 (a) award a contract based solely on the process described in this section; or
703 (b) solicit costs, pricing, or rates or negotiate fees through the process described in this
704 section.
- 705 (3) The process of identifying qualified vendors in a multiple-stage procurement
706 process or of establishing an approved vendor list under Section **63G-6a-507** is initiated by a
707 procurement unit issuing a request for statement of qualifications.
- 708 (4) A request for statement of qualifications in a multiple-stage procurement process
709 shall include:

- 710 (a) a statement indicating that participation in other stages of the multiple-stage
711 procurement process will be limited to qualified vendors;
- 712 (b) the minimum mandatory requirements, evaluation criteria, and applicable score
713 thresholds that will be used to identify qualified vendors, including, as applicable:
- 714 (i) experience and work history;
- 715 (ii) management and staff requirements or standards;
- 716 (iii) licenses, certifications, and other qualifications;
- 717 (iv) performance ratings or references;
- 718 (v) financial stability; and
- 719 (vi) other information pertaining to vendor qualifications that the chief procurement
720 officer or the head of a procurement unit with independent procurement authority considers
721 relevant or important; and
- 722 (c) the deadline by which a vendor is required to submit a statement of qualifications.
- 723 (5) A request for statement of qualifications in an approved vendor list process under
724 Section [63G-6a-507](#) shall include:
- 725 (a) a general description of, as applicable:
- 726 (i) the procurement item that the procurement unit seeks to acquire;
- 727 (ii) the type of project or scope or category of work that will be the subject of a
728 procurement by the procurement unit;
- 729 (iii) the procurement process the procurement unit will use to acquire the procurement
730 item; and
- 731 (iv) the type of vendor the procurement unit seeks to provide the procurement item;
- 732 (b) the minimum mandatory requirements, evaluation criteria, and applicable score
733 thresholds that vendors are required to meet to be included on the approved vendor list;
- 734 (c) a statement indicating that the approved vendor list will include only responsible
735 vendors that:
- 736 (i) submit a responsive statement of qualifications; and
- 737 (ii) meet the minimum mandatory requirements, evaluation criteria, and applicable
738 score thresholds described in the request for statement of qualifications;
- 739 (d) a statement indicating that only vendors on the approved vendor list will be able to
740 participate in the procurements identified in the request for statement of qualifications;

741 (e) a statement indicating whether the procurement unit will use a performance rating
742 system for evaluating the performance of vendors on the approved vendor list, including
743 whether a vendor on the approved vendor list may be disqualified and removed from the list;

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

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

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

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

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

761 (7) After the deadline for submitting a statement of qualifications, the chief
762 procurement officer or the head of a procurement unit with independent procurement authority
763 may allow a vendor to correct an immaterial error in a statement of qualifications, as provided
764 in Section 63G-6a-114.

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

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

768 (A) is not responsible;

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

770 (C) has engaged in unethical conduct; or

771 (D) receives a performance rating below the satisfactory performance threshold

772 specified in the request for statement of qualifications;

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

777 (iii) the statement of qualifications:

778 (A) is not responsive; or

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

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

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

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

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

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

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

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

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

803 qualifications;

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

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

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

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

811 (i) from an expert or consultant who:

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

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

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

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

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

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

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

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

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

827 (ii) may not:

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

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

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

- 834 (D) correct a failure to submit a timely statement of qualifications;
- 835 (E) substitute or alter a required form or other document specified in the statement of
836 qualifications;
- 837 (F) remedy a cause for a vendor being considered to be not responsible or a statement
838 of qualifications not responsive; or
- 839 (G) correct a defect or inadequacy resulting in a determination that a vendor does not
840 meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds
841 established in the statement of qualifications.
- 842 (e) After the evaluation committee completes its evaluation and scoring of the
843 statements of qualifications, the evaluation committee shall submit the statements of
844 qualifications and evaluation scores to the head of the procurement unit for review and final
845 determination of:
 - 846 (i) qualified vendors, if the request for statement of qualifications process is used as
847 one of the stages of a multiple-stage process; or
 - 848 (ii) vendors to be included on an approved vendor list, if the request for statement of
849 qualifications process is used as part of the approved vendor list process.
- 850 (f) The issuing procurement unit shall review the evaluation committee's scores and
851 correct any errors, scoring inconsistencies, and reported noncompliance with this chapter.
- 852 (g) (i) The deliberations of an evaluation committee under this Subsection (9) may be
853 held in private.
- 854 (ii) If the evaluation committee is a public body, as defined in Section [52-4-103](#), the
855 evaluation committee shall comply with Section [52-4-205](#) in closing a meeting for its
856 deliberations.
- 857 (10) A procurement unit may at any time request a vendor to clarify information
858 contained in a statement of qualifications, as provided in Section [63G-6a-115](#).
- 859 (11) A vendor may voluntarily withdraw a statement of qualifications at any time
860 before a contract is awarded with respect to which the statement of qualifications was
861 submitted.
- 862 (12) If only one vendor meets the minimum qualifications, evaluation criteria, and
863 applicable score thresholds set forth in the request for statement of qualifications that the
864 procurement unit is using as part of an approved vendor list process, the conducting

865 procurement unit:

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

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

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

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

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

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

883 **63G-6a-506. Small purchases.**

884 (1) As used in this section:

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

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

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

895 (2) (a) The applicable rulemaking authority may make rules governing small purchases

896 of any procurement item, including construction, job order contracting, design professional
897 services, other professional services, information technology, and goods.

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

899 (i) establishing expenditure thresholds, including:

900 (A) an annual cumulative threshold;

901 (B) an individual procurement threshold; and

902 (C) a single procurement aggregate threshold;

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

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

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

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

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

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

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

919 (a) the procurement item is obtained for an unanticipated, urgent, or emergency
920 condition, including:

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

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

923 (iii) another emergency condition; or

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

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

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

928 (A) the contract terms and conditions applicable to the procurement item under the
929 state contract with the contract terms and conditions applicable to the procurement item if the
930 procurement item is obtained outside of the state contract;

931 (B) the maintenance and service applicable to the procurement item under the state
932 contract with the maintenance and service applicable to the procurement item if the
933 procurement item is obtained outside of the state contract;

934 (C) the warranties applicable to the procurement item under the state contract with the
935 warranties applicable to the procurement item if the procurement item is obtained outside of
936 the state contract;

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

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

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

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

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

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

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

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

958 (8) (a) It is unlawful for a person to intentionally or knowingly divide a procurement
959 into smaller procurements with the intent to make a procurement:

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

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

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

966 (i) a second degree felony, if the value of the procurement before being divided is
967 \$1,000,000 or more;

968 (ii) a third degree felony, if the value of the procurement before being divided is
969 \$250,000 or more but less than \$1,000,000;

970 (iii) a class A misdemeanor, if the value of the procurement before being divided is
971 \$100,000 or more but less than \$250,000; or

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

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

976 (a) making two or more separate purchases;

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

978 or

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

980 (10) The Division of Finance within the Department of Administrative Services may
981 conduct an audit of an executive branch procurement unit to verify compliance with the
982 requirements of this section.

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

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

988 **63G-6a-507. Approved vendor list procurement process.**

989 (1) As used in this section:

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

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

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

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

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

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

999 (iii) a specified period of time after which a vendor on the list is required to submit the
1000 vendor's qualifications for evaluation before the vendor may be renewed as an approved
1001 vendor.

1002 (2) A procurement unit may not establish an approved vendor list unless the
1003 procurement unit has first completed the statement of qualifications process described in
1004 Section [63G-6a-410](#).

1005 (3) (a) A procurement unit may establish an approved vendor list for:

1006 (i) a specific, fully defined procurement item; or

1007 (ii) a future procurement item that is not specifically and fully defined, if the request
1008 for statement of qualifications contains a general description of:

1009 (A) the procurement item; and

1010 (B) the type of vendor that the procurement unit seeks to provide the procurement item.

1011 (b) A procurement unit may not award a contract to a vendor on an approved vendor
1012 list for a procurement item that is outside the scope of the general description of the
1013 procurement item contained in the request for statement of qualifications.

1014 (4) After receiving the statements of qualifications and evaluation scores submitted by
1015 the evaluation committee under Subsection [63G-6a-410\(9\)\(~~d~~\)\(e\)](#), the head of the conducting
1016 procurement unit using the request for statement of qualifications process under Section
1017 [63G-6a-410](#) as part of an approved vendor list process shall:

1018 (a) include on an approved vendor list those vendors meeting the minimum mandatory
1019 requirements, evaluation criteria, and applicable score thresholds; and

1020 (b) reject any vendor not meeting the minimum mandatory requirements, evaluation
1021 criteria, and applicable score thresholds as ineligible for inclusion on the approved vendor list.

1022 (5) (a) A procurement unit shall include approved vendors on a closed-ended approved
1023 vendor list or an open-ended approved vendor list.

1024 (b) (i) A closed-ended approved vendor list shall expire no later than 18 months after
1025 the publication of the closed-ended approved vendor list.

1026 (ii) A procurement unit shall require a vendor on an open-ended approved vendor list,
1027 in order to remain on the approved vendor list, to submit an updated statement of qualifications
1028 for evaluation no later than 18 months after the vendor was added to the list as an approved
1029 vendor.

1030 (6) A procurement unit may:

1031 (a) (i) using a bidding process, request for proposals process, small purchase process,
1032 or design professional procurement process, award a contract to a vendor on an approved
1033 vendor list for any procurement item or type of procurement item specified by the procurement
1034 unit in the request for statement of qualifications, including procurement items that the
1035 procurement unit intends to acquire in a series of future procurements described in the request
1036 for statement of qualifications; and

1037 (ii) limit participation in a bidding process, request for proposals process, small
1038 purchase process, or design professional procurement process to vendors on an approved
1039 vendor list; or

1040 (b) award a contract to a vendor on an approved vendor list at a price established as
1041 provided in Section [63G-6a-113](#).

1042 (7) After establishing an approved vendor list as provided in this section, the
1043 conducting procurement unit shall, before using the approved vendor list, submit the approved
1044 vendor list to the issuing procurement unit for publication by the issuing procurement unit.

1045 (8) A conducting procurement unit administering an open-ended approved vendor list
1046 shall:

1047 (a) require a vendor seeking inclusion on the approved vendor list to submit a
1048 statement of qualifications that complies with all requirements applicable at the time of the
1049 initial request for statement of qualifications;

1050 (b) if modifying the requirements for inclusion on the approved vendor list, apply any

1051 new or additional requirement to all vendors equally, whether a vendor is seeking inclusion on
1052 the approved vendor list for the first time or is already included on the approved vendor list;
1053 and

1054 (c) keep the request for statement of qualifications posted on a website as required
1055 under Subsection 63G-6a-112(6).

1056 (9) The applicable rulemaking authority shall make rules pertaining to an approved
1057 vendor list process, including:

1058 (a) procedures to ensure that all vendors on an approved vendor list have a fair and
1059 equitable opportunity to compete for a contract for a procurement item; and

1060 (b) requirements for using an approved vendor list with the small purchase process.

1061 Section 9. Section 63G-6a-602 is amended to read:

1062 **63G-6a-602. Contracts awarded by bidding.**

1063 (1) [~~Except as otherwise provided in this chapter, the~~] The division or a procurement
1064 unit with independent procurement authority [~~shall~~] may award a contract for a procurement
1065 item by the bidding process, in accordance with the rules of the applicable rulemaking
1066 authority.

1067 (2) The bidding standard procurement process is appropriate to use when cost is the
1068 major factor in determining the award of a procurement.

1069 Section 10. Section 63G-6a-603 is amended to read:

1070 **63G-6a-603. Invitation for bids -- Requirements -- Publication.**

1071 (1) The bidding standard procurement process begins when the issuing procurement
1072 unit issues an invitation for bids.

1073 (2) An invitation for bids shall:

1074 (a) state the period of time during which bids will be accepted;

1075 (b) describe the manner in which a bid shall be submitted;

1076 (c) state the place where a bid shall be submitted; and

1077 (d) include, or incorporate by reference:

1078 (i) to the extent practicable, a full description of the procurement items sought and the
1079 full scope of work;

1080 (ii) the objective criteria that will be used to evaluate the bids; and

1081 (iii) the required contractual terms and conditions.

1082 (3) An issuing procurement unit shall publish an invitation for bids in accordance with
1083 the requirements of Section [63G-6a-112](#).

1084 Section 11. Section **63G-6a-606** is amended to read:

1085 **63G-6a-606. Evaluation of bids -- Award -- Cancellation -- Rejecting a bid.**

1086 (1) A procurement unit that conducts a procurement using a bidding [~~standard~~
1087 ~~procurement~~] process shall evaluate each bid using the objective criteria described in the
1088 invitation for bids, which may include:

- 1089 (a) experience;
- 1090 (b) performance ratings;
- 1091 (c) inspection;
- 1092 (d) testing;
- 1093 (e) quality;
- 1094 (f) workmanship;
- 1095 (g) time and manner of delivery;
- 1096 (h) references;
- 1097 (i) financial stability;
- 1098 (j) cost;
- 1099 (k) suitability for a particular purpose;

1100 (l) the contractor's work site safety program, including any requirement that the
1101 contractor imposes on subcontractors for a work site safety program; or

1102 (m) other objective criteria specified in the invitation for bids.

1103 (2) Criteria not described in the invitation for bids may not be used to evaluate a bid.

1104 (3) The conducting procurement unit shall:

1105 (a) subject to the provisions of Section [63G-6a-1204.5](#) for multiple award contracts,

1106 award the contract as soon as practicable to:

1107 (i) the responsible bidder who submits the lowest responsive bid that meets the
1108 objective criteria described in the invitation for bids; or

1109 (ii) if, in accordance with Subsection (4), the procurement officer or the head of the
1110 conducting procurement unit rejects a bid described in Subsection (3)(a)(i), the responsible
1111 bidder who submits the next lowest responsive bid that meets the objective criteria described in
1112 the invitation for bids; or

1113 (b) cancel the invitation for bids without awarding a contract.
1114 (4) In accordance with Subsection (5), the procurement officer or the head of the
1115 conducting procurement unit may reject a bid for:
1116 (a) a violation of this chapter by the bidder who submitted the bid;
1117 (b) a violation of a requirement of the invitation for bids;
1118 (c) unlawful or unethical conduct by the bidder who submitted the bid; or
1119 (d) a change in a bidder's circumstance that, had the change been known at the time the
1120 bid was submitted, would have caused the bid to be rejected.

1121 (5) A procurement officer or head of a conducting procurement unit who rejects a bid
1122 under Subsection (4) shall:

1123 (a) make a written finding, stating the reasons for the rejection; and
1124 (b) provide a copy of the written finding to the bidder who submitted the rejected bid.
1125 (6) If a conducting procurement unit cancels an invitation for bids without awarding a
1126 contract, the conducting procurement unit shall make available for public inspection a written
1127 justification for the cancellation.

1128 Section 12. Section **63G-6a-607** is amended to read:

1129 **63G-6a-607. Action if all bids exceed available funds -- Exemption.**

1130 (1) Except as provided in Subsection (2) or (3), if the fiscal officer for the conducting
1131 procurement unit certifies that all accepted bids exceed available funds and that the lowest
1132 responsive [~~and~~] bid from a responsible bidder does not exceed the available funds by more
1133 than 5%, the procurement officer may negotiate an adjustment of the bid price and bid
1134 requirements with the responsible bidder who submitted the lowest responsive [~~and responsible~~
1135 ~~bidder~~] bid in order to bring the bid within the amount of available funds.

1136 (2) A procurement officer may not adjust the bid requirements under Subsection (1) if
1137 there is a substantial likelihood that, had the adjustment been included in the invitation for
1138 bids, a person that did not submit a bid would have submitted a responsive[~~, responsible,~~] and
1139 competitive bid.

1140 (3) The Division of Facilities Construction and Management is exempt from the
1141 requirements of this section if:

1142 (a) the building board adopts rules governing procedures when all accepted bids exceed
1143 available funds; and

1144 (b) the Division of Facilities Construction and Management complies with the rules
1145 described in Subsection (3)(a).

1146 Section 13. Section **63G-6a-608** is amended to read:

1147 **63G-6a-608. Tie bids -- Resolution -- Copies provided to attorney general.**

1148 (1) A procurement officer shall resolve a tie bid in accordance with a method
1149 established by rule made by the applicable rulemaking authority. The method may include
1150 awarding the tie bid:

1151 (a) to the tie bidder who:

1152 (i) is a provider of state products, if no other tie bidder is a [~~responsive~~] provider of
1153 state products;

1154 (ii) is closest to the point of delivery;

1155 (iii) received the previous award; or

1156 (iv) will provide the earliest delivery date;

1157 (b) by drawing lots; or

1158 (c) by any other reasonable method of resolving a tie bid.

1159 (2) The method chosen by the procurement officer to resolve a tie bid shall be at the
1160 sole discretion of the procurement officer, subject to the rules established under Subsection (1).

1161 (3) A procurement unit in the state executive branch shall provide a copy of the
1162 procurement to the attorney general if an award of a contract to a tie bidder exceeds \$100,000
1163 in expenditures.

1164 Section 14. Section **63G-6a-612** is amended to read:

1165 **63G-6a-612. Conduct of reverse auction.**

1166 (1) A procurement unit conducting a reverse auction:

1167 (a) may conduct the reverse auction at a physical location or by electronic means;

1168 (b) shall permit all prequalified bidders to participate in the reverse auction;

1169 (c) may not permit a bidder to participate in the reverse auction if the bidder did not
1170 prequalify to participate in the reverse auction;

1171 (d) may not accept a bid after the time for submission of a bid has expired;

1172 (e) shall update the bids on a real time basis; and

1173 (f) shall conduct the reverse auction in a manner that permits each bidder to:

1174 (i) bid against each other; and

- 1175 (ii) lower the bidder's price below the lowest bid before the reverse auction closes.
 1176 (2) At the end of the reverse auction, the conducting procurement unit shall:
 1177 (a) award the contract as soon as practicable to the ~~[lowest responsive and]~~ responsible
 1178 bidder who:
 1179 (i) meets the objective criteria described in the invitation for bids; ~~[or]~~ and
 1180 (ii) submitted the lowest responsive bid; or
 1181 (b) cancel the reverse auction without awarding a contract.

1182 (3) After the reverse auction is finished, the conducting procurement unit shall make
 1183 publicly available:

- 1184 (a) (i) the amount of the final bid submitted by each bidder during the reverse auction;
 1185 and
 1186 (ii) the identity of the bidder that submitted each final bid; and
 1187 (b) if practicable:
 1188 (i) the amount of each bid submitted during the reverse auction; and
 1189 (ii) the identity of the bidder that submitted each bid.

1190 Section 15. Section **63G-6a-702** is amended to read:

1191 **63G-6a-702. Contracts awarded by request for proposals.**

1192 ~~[(1) A request for proposals standard procurement process may be used instead of~~
 1193 ~~bidding if the procurement officer determines, in writing, that the request for proposals~~
 1194 ~~standard procurement process will provide the best value to the procurement unit.]~~

1195 (1) The division or a procurement unit with independent procurement authority may
 1196 award a contract for a procurement item by the request for proposals process, in accordance
 1197 with the rules of the applicable rulemaking authority.

1198 (2) (a) The request for proposals ~~[standard procurement]~~ process is appropriate for a
 1199 procurement unit to use ~~[for]~~ in selecting the proposal that provides the best value or is the
 1200 most advantageous to the procurement unit, including when:

1201 ~~[(a) the procurement of professional services;]~~

1202 ~~[(b) a design-build procurement;]~~

1203 (i) the procurement involves a contract whose terms and conditions are to be negotiated
 1204 in order to achieve the result that is the most advantageous to the procurement unit;

1205 ~~[(c) when]~~ (ii) cost is not the most important factor to be considered in making the

1206 selection that is most advantageous to the procurement unit; or
1207 ~~[(d) when]~~ (iii) factors, apart from or in addition to cost, are highly significant in
1208 making the selection that is most advantageous to the procurement unit.

1209 (b) The types of procurements for which it is appropriate to use the request for
1210 proposals process include:

1211 (i) a procurement of professional services; and

1212 (ii) a procurement of design-build or construction manager/general contractor services.

1213 (3) The procurement of architect-engineer services is governed by Part 15,

1214 [~~Architect-Engineer Services~~] Design Professional Services.

1215 Section 16. Section **63G-6a-703** is amended to read:

1216 **63G-6a-703. Request for proposals -- Requirements -- Publication of request.**

1217 (1) The request for proposals standard procurement process begins when the division
1218 or a procurement unit with independent procurement authority issues a request for proposals.

1219 (2) A request for proposals shall:

1220 (a) state the period of time during which a proposal will be accepted;

1221 (b) describe the manner in which a proposal shall be submitted;

1222 (c) state the place where a proposal shall be submitted;

1223 (d) include, or incorporate by reference:

1224 (i) to the extent practicable, a full description of the procurement items sought and the
1225 full scope of work;

1226 (ii) a description of the subjective and objective criteria that will be used to evaluate
1227 the proposal; and

1228 (iii) the standard contractual terms and conditions required by the authorized
1229 purchasing entity;

1230 (e) state the relative weight that will be given to each score for the criteria described in
1231 Subsection (2)(d)(ii), including cost;

1232 (f) state the formula that will be used to determine the score awarded for the cost of
1233 each proposal;

1234 (g) if the request for proposals will be conducted in multiple stages, as described in
1235 Section **63G-6a-710**, include a description of the stages and the criteria and scoring that will be
1236 used to screen offerors at each stage; and

1237 (h) state that best and final offers may be allowed, as provided in Section
1238 63G-6a-707.5, from responsible offerors who submit responsive proposals that meet minimum
1239 qualifications, evaluation criteria, or applicable score thresholds identified in the request for
1240 proposals.

1241 (3) The division or a procurement unit with independent procurement authority shall
1242 publish a request for proposals in accordance with the requirements of Section 63G-6a-112.

1243 Section 17. Section 63G-6a-707 is amended to read:

1244 **63G-6a-707. Evaluation of proposals -- Evaluation committee.**

1245 (1) To determine which proposal provides the best value to the procurement unit, the
1246 evaluation committee shall evaluate each responsible offeror's responsive [~~and responsible~~]
1247 proposal that has not been disqualified from consideration under the provisions of this chapter,
1248 using the criteria described in the request for proposals, which may include:

1249 (a) experience;

1250 (b) performance ratings;

1251 (c) inspection;

1252 (d) testing;

1253 (e) quality;

1254 (f) workmanship;

1255 (g) time, manner, or schedule of delivery;

1256 (h) references;

1257 (i) financial solvency;

1258 (j) suitability for a particular purpose;

1259 (k) management plans;

1260 (l) the presence and quality of a work site safety program, including any requirement
1261 that the offeror imposes on subcontractors for a work site safety program;

1262 (m) cost; or

1263 (n) other subjective or objective criteria specified in the request for proposals.

1264 (2) Criteria not described in the request for proposals may not be used to evaluate a
1265 proposal.

1266 [~~(3) (a) For a procurement of administrative law judge service, an evaluation~~
1267 ~~committee shall consist of:]~~

1268 ~~[(i) the head of the conducting procurement unit, or the head's designee;]~~
1269 ~~[(ii) the head of an executive branch procurement unit other than the conducting~~
1270 ~~procurement unit, appointed by the executive director of the Department of Human Resource~~
1271 ~~Management, or the head's designee; and]~~
1272 ~~[(iii) the executive director of the Department of Human Resource Management, or the~~
1273 ~~executive director's designee.]~~
1274 ~~[(b) For every other procurement requiring an evaluation by an evaluation committee,~~
1275 ~~the]~~
1276 (3) The conducting procurement unit shall:
1277 ~~[(†)]~~ (a) appoint an evaluation committee consisting of at least three individuals with at
1278 least a general familiarity with or basic understanding of:
1279 ~~[(A)]~~ (i) the technical requirements relating to the type of procurement item that is the
1280 subject of the procurement; or
1281 ~~[(B)]~~ (ii) the need that the procurement item is intended to address; and
1282 ~~[(†)]~~ (b) ensure that the evaluation committee and each individual participating in the
1283 evaluation committee process:
1284 ~~[(A)]~~ (i) does not have a conflict of interest with any of the offerors;
1285 ~~[(B)]~~ (ii) can fairly evaluate each proposal;
1286 ~~[(C)]~~ (iii) does not contact or communicate with an offeror concerning the procurement
1287 outside the official evaluation committee process; and
1288 ~~[(D)]~~ (iv) conducts or participates in the evaluation in a manner that ensures a fair and
1289 competitive process and avoids the appearance of impropriety.
1290 (4) A conducting procurement unit may authorize an evaluation committee to receive
1291 assistance:
1292 (a) from an expert or consultant who:
1293 (i) is not a member of the evaluation committee; and
1294 (ii) does not participate in the evaluation scoring; and
1295 (b) to better understand a technical issue involved in the procurement.
1296 (5) (a) An evaluation committee may, with the approval of the head of the conducting
1297 procurement unit, enter into discussions or conduct interviews with, or attend presentations by,
1298 the offerors, for the purpose of clarifying information contained in proposals.

- 1299 (b) In a discussion, interview, or presentation under Subsection (5)(a), an offeror:
1300 (i) may only explain, illustrate, or interpret the contents of the offeror's original
1301 proposal; and
1302 (ii) may not:
1303 (A) address criteria or specifications not contained in the offeror's original proposal;
1304 (B) correct a deficiency, inaccuracy, or mistake in a proposal that is not an immaterial
1305 error;
1306 (C) correct an incomplete submission of documents that the solicitation required to be
1307 submitted with the proposal;
1308 (D) correct a failure to submit a timely proposal;
1309 (E) substitute or alter a required form or other document specified in the solicitation;
1310 (F) remedy a cause for an offeror being considered to be not responsible or a proposal
1311 not responsive; or
1312 (G) correct a defect or inadequacy resulting in a determination that an offeror does not
1313 meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds
1314 established in the solicitation.
- 1315 (6) (a) Except as provided in Subsection (7)(b) relating to access to management fee
1316 information, and except as provided in Subsection (9), each member of the evaluation
1317 committee is prohibited from knowing, or having access to, any information relating to the
1318 cost, or the scoring of the cost, of a proposal until after the evaluation committee submits its
1319 final recommended scores on all other criteria to the issuing procurement unit.
- 1320 (b) The issuing procurement unit shall:
1321 (i) if applicable, assign an individual who is not a member of the evaluation committee
1322 to calculate scores for cost based on the applicable scoring formula, weighting, and other
1323 scoring procedures contained in the request for proposals;
1324 (ii) review the evaluation committee's scores and correct any errors, scoring
1325 inconsistencies, and reported noncompliance with this chapter;
1326 (iii) add the scores calculated for cost, if applicable, to the evaluation committee's final
1327 recommended scores on criteria other than cost to derive the total combined score for each
1328 responsive [~~and responsible~~] proposal from a responsible offeror; and
1329 (iv) provide to the evaluation committee the total combined score calculated for each

1330 responsive [~~and responsible~~] proposal from a responsible offeror, including any applicable cost
1331 formula, weighting, and scoring procedures used to calculate the total combined scores.

1332 (c) The evaluation committee may not:

- 1333 (i) change its final recommended scores described in Subsection (6)(a) after the
1334 evaluation committee has submitted those scores to the issuing procurement unit; or
- 1335 (ii) change cost scores calculated by the issuing procurement unit.

1336 (7) (a) As used in this Subsection (7), "management fee" includes only the following
1337 fees of the construction manager/general contractor:

- 1338 (i) preconstruction phase services;
- 1339 (ii) monthly supervision fees for the construction phase; and
- 1340 (iii) overhead and profit for the construction phase.

1341 (b) When selecting a construction manager/general contractor for a construction
1342 project, the evaluation committee:

- 1343 (i) may score a construction manager/general contractor based upon criteria contained
1344 in the solicitation, including qualifications, performance ratings, references, management plan,
1345 certifications, and other project specific criteria described in the solicitation;
- 1346 (ii) may, as described in the solicitation, weight and score the management fee as a
1347 fixed rate or as a fixed percentage of the estimated contract value;
- 1348 (iii) may, at any time after the opening of the responses to the request for proposals,
1349 have access to, and consider, the management fee proposed by the offerors; and
- 1350 (iv) except as provided in Subsection (9), may not know or have access to any other
1351 information relating to the cost of construction submitted by the offerors, until after the
1352 evaluation committee submits its final recommended scores on all other criteria to the issuing
1353 procurement unit.

1354 (8) (a) The deliberations of an evaluation committee may be held in private.

1355 (b) If the evaluation committee is a public body, as defined in Section [52-4-103](#), the
1356 evaluation committee shall comply with Section [52-4-205](#) in closing a meeting for its
1357 deliberations.

1358 (9) An issuing procurement unit is not required to comply with Subsection (6) or
1359 (7)(b)(iv), as applicable, if the head of the issuing procurement unit or a person designated by
1360 rule made by the applicable rulemaking authority:

1361 (a) signs a written statement:

1362 (i) indicating that, due to the nature of the proposal or other circumstances, it is in the
1363 best interest of the procurement unit to waive compliance with Subsection (6) or (7)(b)(iv), as
1364 the case may be; and

1365 (ii) describing the nature of the proposal and the other circumstances relied upon to
1366 waive compliance with Subsection (6) or (7)(b)(iv); and

1367 (b) makes the written statement available to the public, upon request.

1368 Section 18. Section **63G-6a-707.5** is repealed and reenacted to read:

1369 **63G-6a-707.5. Best and final offers.**

1370 (1) The best and final offer process described in this section:

1371 (a) may be used only in a request for proposals process, whether the request for
1372 proposals process is used independently or after the establishment of an approved vendor list
1373 through the approved vendor list process; and

1374 (b) may not be used in any other standard procurement process, whether the other
1375 standard procurement process is used independently or after the establishment of an approved
1376 vendor list through the approved vendor list process.

1377 (2) Subject to Subsection (3), a conducting procurement unit may request best and final
1378 offers from responsible offerors:

1379 (a) only with the approval of the chief procurement officer or the head of the issuing
1380 procurement unit; and

1381 (b) if:

1382 (i) no single proposal adequately addresses all the specifications stated in the request
1383 for proposals;

1384 (ii) all proposals are unclear or deficient in one or more respects;

1385 (iii) all cost proposals exceed the identified budget or the procurement unit's available
1386 funding;

1387 (iv) two or more proposals receive an identical evaluation score that is the highest
1388 score; or

1389 (v) there exist other circumstances that the applicable rulemaking authority has
1390 determined in rule justify the conducting procurement unit requesting best and final offers.

1391 (3) A conducting procurement unit may request a best and final offer from, and a best

1392 and final offer may be submitted to the conducting procurement unit by, only a responsible
1393 offeror that has submitted a responsive proposal that meets the minimum mandatory criteria
1394 stated in the request for proposals required to be considered in the stage of the procurement
1395 process at which best and final offers are being requested.

1396 (4) The best and final offer process may not be used to change:

1397 (a) a determination that an offeror is not responsible to a determination that the offeror
1398 is responsible; or

1399 (b) a determination that a proposal is not responsive to a determination that the
1400 proposal is responsive.

1401 (5) (a) This Subsection (5) applies if a request for best and final offers is issued
1402 because all cost proposals exceed the identified budget or the procurement unit's available
1403 funding.

1404 (b) (i) The conducting procurement unit may, in the request for best and final offers:

1405 (A) specify the scope of work reductions the procurement unit is making in order to
1406 generate proposals that are within the identified budget or the procurement unit's available
1407 funding; or

1408 (B) invite offerors submitting best and final offers to specify the scope of work
1409 reductions being made so that the reduced cost proposal is within the identified budget or the
1410 procurement unit's available funding.

1411 (ii) The conducting procurement unit is not required to accept a scope of work
1412 reduction that an offeror has specified in the offeror's best and final offer.

1413 (c) A best and final offer submitted with a reduced cost proposal shall include an
1414 itemized list identifying specific reductions in the offeror's proposed scope of work that
1415 correspond to the offeror's reduced cost proposal.

1416 (d) A reduction in the scope of work may not:

1417 (i) eliminate a component identified in the request for proposals as a minimum
1418 mandatory requirement; or

1419 (ii) alter the nature of the original request for proposals to the extent that a request for
1420 proposals for the reduced scope of work would have likely attracted a significantly different set
1421 of offerors submitting proposals in response to the request for proposals.

1422 (6) If a request for best and final offers is issued because two or more proposals

- 1423 received an identical evaluation score that is the highest score:
- 1424 (a) the request may be issued only to offerors who submitted a proposal receiving the
- 1425 highest score; and
- 1426 (b) an offeror submitting a best and final offer may revise:
- 1427 (i) the technical aspects of the offeror's proposal;
- 1428 (ii) the offeror's cost proposal, as provided in Subsection (5); or
- 1429 (iii) both the technical aspects of the offeror's proposal and, as provided in Subsection
- 1430 (5), the offeror's cost proposal.
- 1431 (7) In a request for best and final offers, the conducting procurement unit shall:
- 1432 (a) clearly specify:
- 1433 (i) the issues that the procurement unit requests the offerors to address in their best and
- 1434 final offers; and
- 1435 (ii) how best and final offers will be evaluated and scored in accordance with Section
- 1436 [63G-6a-707](#);
- 1437 (b) establish a deadline for an offeror to submit a best and final offer; and
- 1438 (c) if applicable, establish a schedule and procedure for conducting discussions with
- 1439 offerors concerning the best and final offers.
- 1440 (8) In conducting a best and final offer process under this section, a conducting
- 1441 procurement unit shall:
- 1442 (a) maintain confidential the information the procurement unit receives from an
- 1443 offeror, including any cost information, until a contract has been awarded or the request for
- 1444 proposals canceled;
- 1445 (b) ensure that each offeror receives fair and equal treatment; and
- 1446 (c) safeguard the integrity of the scope of the original request for proposals, except as
- 1447 specifically provided otherwise in this section.
- 1448 (9) In a best and final offer, an offeror:
- 1449 (a) may address only the issues described in the request for best and final offers; and
- 1450 (b) may not correct a material error or deficiency in the offeror's proposal or address
- 1451 any issue not described in the request for best and final offers.
- 1452 (10) If an offeror fails to submit a best and final offer, the conducting procurement unit
- 1453 shall treat the offeror's original proposal as the offeror's best and final offer.

1454 (11) After the deadline for submitting best and final offers has passed, the evaluation
1455 committee shall evaluate the best and final offers submitted using the criteria described in the
1456 request for proposals.

1457 (12) An offeror may not make and a conducting procurement unit may not consider a
1458 best and final offer that the conducting procurement unit has not requested under this section.

1459 (13) To implement the best and final offer process described in this section, an
1460 applicable rulemaking authority may make rules consistent with this section and the other
1461 provisions of this chapter.

1462 Section 19. Section **63G-6a-709** is amended to read:

1463 **63G-6a-709. Award of contract -- Cancellation -- Rejection of proposal.**

1464 (1) After the completion of the evaluation and scoring of proposals and the justification
1465 statement, including any required cost-benefit analysis, the evaluation committee shall submit
1466 the proposals, evaluation scores, and justification statement to the head of the procurement unit
1467 or designee for review and final determination of a contract award or an award of multiple
1468 contracts as provided in Section [63G-6a-1204.5](#).

1469 (2) After reviewing the proposals, evaluation scores, and justification statement,
1470 including any required cost-benefit analysis, the head of the issuing procurement unit shall:

1471 (a) (i) award the contract as soon as practicable to the responsible offeror with the
1472 responsive proposal receiving the highest total score; or

1473 (ii) (A) if the head of the issuing procurement unit [~~disqualifies an offeror~~] rejects a
1474 proposal under Subsection (3) of an offeror who would otherwise have been awarded a
1475 contract, award the contract to the responsible offeror with the responsive proposal receiving
1476 the next highest total score; and

1477 (B) if the head of the issuing procurement unit [~~disqualifies an offeror~~] rejects a
1478 proposal under Subsection (3) of an offeror who would otherwise have been awarded a contract
1479 under Subsection (2)(a)(ii)(A), repeat the process described in Subsection (2)(a)(ii)(A) as many
1480 times as necessary until a contract is awarded to a responsible offeror [~~who is not disqualified~~]
1481 whose proposal is not rejected; or

1482 (b) cancel the request for proposals without awarding a contract.

1483 (3) The head of an issuing procurement unit may reject a proposal if:

1484 (a) the offeror who submitted the proposal:

- 1485 (i) is not responsible;
- 1486 (ii) is in violation of a provision of this chapter;
- 1487 (iii) has engaged in unethical conduct; or
- 1488 (iv) fails to sign a contract within:
 - 1489 (A) 90 days after the contract award, if no time is specified in the solicitation; or
 - 1490 (B) a time authorized in writing by the head of the issuing procurement unit;
- 1491 (b) there is a change in the offeror's circumstances that, if the change had been known
- 1492 at the time the offeror's proposal was evaluated, would have caused the proposal not to have
- 1493 received the highest score; or
- 1494 (c) the proposal:
 - 1495 (i) is not responsive; or
 - 1496 (ii) does not meet the mandatory minimum requirements, evaluation criteria, or
 - 1497 applicable score thresholds stated in the solicitation.
- 1498 (4) A head of an issuing procurement unit who rejects a proposal under Subsection (3)
- 1499 shall:
 - 1500 (a) make a written finding, stating the reasons for the rejection; and
 - 1501 (b) provide a copy of the written finding to the offeror whose proposal is rejected.
- 1502 (5) If an issuing procurement unit cancels a request for proposals without awarding a
- 1503 contract, the issuing procurement unit shall make available for public inspection a written
- 1504 justification for the cancellation.
- 1505 Section 20. Section **63G-6a-802.7** is amended to read:
- 1506 **63G-6a-802.7. Extension of a contract without engaging in a standard**
- 1507 **procurement process.**
- 1508 The chief procurement officer or the head of a procurement unit with independent
- 1509 procurement authority may extend an existing contract without engaging in a standard
- 1510 procurement process:
 - 1511 (1) for a period of time not to exceed 120 days, if:
 - 1512 (a) an extension of the contract is necessary to:
 - 1513 (i) avoid a lapse in a critical government service; or
 - 1514 (ii) to mitigate a circumstance that is likely to have a negative impact on public health,
 - 1515 safety, welfare, or property; and

- 1516 (b) (i) (A) the procurement unit is engaged in a standard procurement process for a
1517 procurement item that is the subject of the contract being extended; and
1518 (B) the standard procurement process is delayed due to an unintentional error;
1519 (ii) a change in an industry standard requires one or more significant changes to
1520 specifications for the procurement item; or
1521 (iii) an extension is necessary:
1522 (A) to prevent the loss of federal funds;
1523 (B) to mitigate the effects of a delay of a state or federal appropriation;
1524 (C) to enable the procurement unit to continue to receive a procurement item during a
1525 delay in the implementation of a contract awarded pursuant to a procurement that has already
1526 been conducted; or
1527 (D) to enable the procurement unit to continue to receive a procurement item during a
1528 period of time during which negotiations with a vendor under a new contract for the
1529 procurement item are being conducted;
- 1530 (2) for the period of a protest, appeal, or court action, if the protest, appeal, or court
1531 action is the reason for delaying the award of a new contract; or
1532 (3) for a period of time exceeding 120 days, if, after consulting with the attorney
1533 general or the procurement unit's attorney, the chief procurement officer or head of a
1534 procurement unit with independent procurement authority determines in writing that the
1535 contract extension does not violate state or federal antitrust laws and is consistent with the
1536 purpose of ensuring the fair and equitable treatment of all persons who deal with the
1537 procurement system.
- 1538 Section 21. Section **63G-6a-903** is amended to read:
1539 **63G-6a-903. Determination of nonresponsibility.**
1540 (1) A determination of nonresponsibility of a [~~bidder or offeror~~] person made by an
1541 issuing procurement unit shall be made in writing, in accordance with the rules of the
1542 applicable rulemaking authority.
1543 (2) [~~The~~] A person's unreasonable failure [~~of a bidder or offeror~~] to promptly supply
1544 information in connection with an inquiry with respect to responsibility may be grounds for a
1545 determination of nonresponsibility with respect to the [~~bidder or offeror~~] person.
1546 (3) Subject to Title 63G, Chapter 2, Government Records Access and Management

1547 Act, information furnished by a [~~bidder or offeror~~] person pursuant to this section may not be
1548 disclosed outside of a procurement unit without the person's prior written consent [~~by the~~
1549 ~~bidder or offeror~~].

1550 Section 22. Section **63G-6a-904** is amended to read:

1551 **63G-6a-904. Debarment or suspension from consideration for award of contracts**
1552 **-- Process -- Causes for debarment -- Appeal.**

1553 (1) (a) Subject to Subsection (1)(b), the chief procurement officer or the head of a
1554 procurement unit with independent procurement authority may:

1555 (i) debar a person for cause from consideration for award of contracts for a period not
1556 to exceed three years; or

1557 (ii) suspend a person from consideration for award of contracts if there is probable
1558 cause to believe that the person has engaged in any activity that might lead to debarment.

1559 (b) Before debarring or suspending a person under Subsection (1)(a), the chief
1560 procurement officer or head of a procurement unit with independent procurement authority
1561 shall:

1562 (i) consult with:

1563 (A) the procurement unit involved in the matter for which debarment or suspension is
1564 sought; and

1565 (B) the attorney general, if the procurement unit is in the state executive branch, or the
1566 procurement unit's attorney, if the procurement unit is not in the state executive branch;

1567 (ii) give the person at least 10 days' prior written notice of:

1568 (A) the reasons for which debarment or suspension is being considered; and

1569 (B) the hearing under Subsection (1)(b)(iii); and

1570 (iii) hold a hearing in accordance with Subsection (1)(c).

1571 (c) (i) At a hearing under Subsection (1)(b)(iii), the chief procurement officer or head
1572 of a procurement unit with independent procurement authority may:

1573 (A) subpoena witnesses and compel their attendance at the hearing;

1574 (B) subpoena documents for production at the hearing;

1575 (C) obtain additional factual information; and

1576 (D) obtain testimony from experts, the person who is the subject of the proposed
1577 debarment or suspension, representatives of the procurement unit, or others to assist the chief

1578 procurement officer or head of a procurement unit with independent procurement authority to
1579 make a decision on the proposed debarment or suspension.

1580 (ii) The Rules of Evidence do not apply to a hearing under Subsection (1)(b)(iii).

1581 (iii) The chief procurement officer or head of a procurement unit with independent
1582 procurement authority shall:

1583 (A) record a hearing under Subsection (1)(b)(iii);

1584 (B) preserve all records and other evidence relied upon in reaching a decision until the
1585 decision becomes final; and

1586 ~~[(C) for an appeal of a debarment or suspension by a procurement unit other than a~~
1587 ~~legislative procurement unit, a judicial procurement unit, a local government procurement unit,~~
1588 ~~or a public transit district, submit to the procurement policy board chair a copy of the written~~
1589 ~~decision and all records and other evidence relied upon in reaching the decision, within seven~~
1590 ~~days after receiving a notice that an appeal of a debarment or suspension has been filed under~~
1591 ~~Section 63G-6a-1702 or after receiving a request from the procurement policy board chair;~~
1592 ~~and]~~

1593 ~~[(D) for an appeal of a debarment or suspension by a legislative procurement unit, a~~
1594 ~~judicial procurement unit, a local government procurement unit, or a public transit district,]~~

1595 (C) submit to the Utah Court of Appeals a copy of the written decision and all records
1596 and other evidence relied upon in reaching the decision, within seven days after receiving a
1597 notice that an appeal of a debarment or suspension has been filed under Section 63G-6a-1802.

1598 (iv) The holding of a hearing under Subsection (1)(b)(iii) or the issuing of a decision
1599 under Subsection (1)(c)(v) does not affect a person's right to later question or challenge the
1600 jurisdiction of the chief procurement officer or head of a procurement unit with independent
1601 procurement authority to hold a hearing or issue a decision.

1602 (v) The chief procurement officer or head of a procurement unit with independent
1603 procurement authority shall:

1604 (A) promptly issue a written decision regarding a proposed debarment or suspension,
1605 unless the matter is settled by mutual agreement; and

1606 (B) mail, email, or otherwise immediately furnish a copy of the decision to the person
1607 who is the subject of the decision.

1608 (vi) A written decision under Subsection (1)(c)(v) shall:

1609 (A) state the reasons for the debarment or suspension, if debarment or suspension is
 1610 ordered; and

1611 (B) inform the person who is debarred or suspended of the right to judicial [~~or~~
 1612 ~~administrative~~] review as provided in this chapter[~~; and~~].

1613 [~~(C) indicate the amount of the security deposit or bond required under Section~~
 1614 ~~63G-6a-1703 and how that amount was calculated.~~]

1615 [~~(vii) (A) A decision of debarment or suspension issued by a procurement unit other~~
 1616 ~~than a legislative procurement unit, a judicial procurement unit, a local government~~
 1617 ~~procurement unit, or a public transit district is final and conclusive unless the person who is~~
 1618 ~~debarred or suspended files an appeal of the decision under Section 63G-6a-1702.~~]

1619 [~~(B)~~] (vii) A decision of debarment or suspension [issued by a legislative procurement
 1620 unit, a judicial procurement unit, a local government procurement unit, or a public transit
 1621 district] is final and conclusive unless [the person who is debarred or suspended files an appeal
 1622 of] the decision is overturned under Section 63G-6a-1802.

1623 (2) A suspension under this section may not be for a period exceeding three months,
 1624 unless an indictment has been issued for an offense which would be a cause for debarment
 1625 under Subsection (3), in which case the suspension shall, at the request of the attorney general,
 1626 if the procurement unit is in the state executive branch, or the procurement unit's attorney, if
 1627 the procurement unit is not in the state executive branch, remain in effect until after the trial of
 1628 the suspended person.

1629 (3) The causes for debarment include the following:

1630 (a) conviction of a criminal offense as an incident to obtaining or attempting to obtain a
 1631 public or private contract or subcontract or in the performance of a public or private contract or
 1632 subcontract;

1633 (b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery,
 1634 falsification or destruction of records, receiving stolen property, or any other offense indicating
 1635 a lack of business integrity or business honesty which currently, seriously, and directly affects
 1636 responsibility as a contractor for the procurement unit;

1637 (c) conviction under state or federal antitrust statutes;

1638 (d) failure without good cause to perform in accordance with the terms of the contract;

1639 (e) a violation of this chapter; or

1640 (f) any other cause that the chief procurement officer or the head of a procurement unit
1641 with independent procurement authority determines to be so serious and compelling as to affect
1642 responsibility as a contractor for the procurement unit, including debarment by another
1643 governmental entity.

1644 (4) A person who is debarred or suspended under this section may appeal the
1645 debarment or suspension[~~:(a) as provided in Section 63G-6a-1702, if the debarment or~~
1646 ~~suspension is by a procurement unit other than a legislative procurement unit, a judicial~~
1647 ~~procurement unit, a local government procurement unit, or a public transit district; or (b)] to
1648 the Utah Court of Appeals as provided in Section 63G-6a-1802[~~, if the debarment or~~
1649 ~~suspension is by a legislative procurement unit, a judicial procurement unit, a local government~~
1650 ~~procurement unit, or a public transit district].~~~~

1651 (5) A procurement unit may consider a cause for debarment under Subsection (3) as the
1652 basis for determining that a person responding to a solicitation is not responsible:

1653 (a) independent of any effort or proceeding under this section to debar or suspend the
1654 person; and

1655 (b) even if the procurement unit does not choose to seek debarment or suspension.

1656 Section 23. Section 63G-6a-1002 is amended to read:

1657 **63G-6a-1002. Reciprocal preference for providers of state products.**

1658 (1) (a) An issuing procurement unit shall, for all procurements, give a reciprocal
1659 preference to those bidders offering procurement items that are produced, manufactured,
1660 mined, grown, or performed in Utah over those bidders offering procurement items that are
1661 produced, manufactured, mined, grown, or performed in any state that gives or requires a
1662 preference to procurement items that are produced, manufactured, mined, grown, or performed
1663 in that state.

1664 (b) The amount of reciprocal preference shall be equal to the amount of the preference
1665 applied by the other state for that particular procurement item.

1666 (c) In order to receive a reciprocal preference under this section, the bidder shall certify
1667 on the bid that the procurement items offered are produced, manufactured, mined, grown, or
1668 performed in Utah.

1669 (d) The reciprocal preference is waived if the certification described in Subsection
1670 (1)(c) does not appear on the bid.

1671 (2) (a) If the responsible bidder submitting the lowest responsive [~~and responsible~~] bid
1672 offers procurement items that are produced, manufactured, mined, grown, or performed in a
1673 state that gives or requires a preference, and if another responsible bidder has submitted a
1674 responsive [~~and responsible~~] bid offering procurement items that are produced, manufactured,
1675 mined, grown, or performed in Utah, and with the benefit of the reciprocal preference, the bid
1676 of the other bidder is equal to or less than the original lowest bid, the issuing procurement unit
1677 shall:

1678 (i) give notice to the bidder offering procurement items that are produced,
1679 manufactured, mined, grown, or performed in Utah that the bidder qualifies as a preferred
1680 bidder; and

1681 (ii) make the purchase from the preferred bidder if the bidder agrees, in writing, to
1682 meet the low bid within 72 hours after notification that the bidder is a preferred bidder.

1683 (b) The issuing procurement unit shall include the exact price submitted by the lowest
1684 bidder in the notice the issuing procurement unit submits to the preferred bidder.

1685 (c) The issuing procurement unit may not enter into a contract with any other bidder for
1686 the purchase until 72 hours have elapsed after notification to the preferred bidder.

1687 (3) (a) If there is more than one preferred bidder, the issuing procurement unit shall
1688 award the contract to the willing preferred bidder who was the lowest preferred bidder
1689 originally.

1690 (b) If there were two or more equally low preferred bidders, the issuing procurement
1691 unit shall comply with the rules of the applicable rulemaking authority to determine which
1692 bidder should be awarded the contract.

1693 (4) The provisions of this section do not apply if application of this section might
1694 jeopardize the receipt of federal funds.

1695 Section 24. Section **63G-6a-1003** is amended to read:

1696 **63G-6a-1003. Preference for resident contractors.**

1697 (1) As used in this section, "resident contractor" means a person, partnership,
1698 corporation, or other business entity that:

1699 (a) either has its principal place of business in Utah or that employs workers who are
1700 residents of this state when available; and

1701 (b) was transacting business on the date when bids for the public contract were first

1702 solicited.

1703 (2) (a) When awarding contracts for construction, an issuing procurement unit shall
1704 grant a resident contractor a reciprocal preference over a nonresident contractor from any state
1705 that gives or requires a preference to contractors from that state.

1706 (b) The amount of the reciprocal preference shall be equal to the amount of the
1707 preference applied by the state of the nonresident contractor.

1708 (3) (a) In order to receive the reciprocal preference under this section, the bidder shall
1709 certify on the bid that the bidder qualifies as a resident contractor.

1710 (b) The reciprocal preference is waived if the certification described in Subsection
1711 (2)(a) does not appear on the bid.

1712 (4) (a) If the responsible contractor submitting the lowest responsive [~~and responsible~~]
1713 bid is not a resident contractor whose principal place of business is in a state that gives or
1714 requires a preference to contractors from that state, and if a resident responsible contractor has
1715 also submitted a responsive [~~and responsible~~] bid, and, with the benefit of the reciprocal
1716 preference, the resident contractor's bid is equal to or less than the original lowest bid, the
1717 issuing procurement unit shall:

1718 (i) give notice to the resident contractor that the resident contractor qualifies as a
1719 preferred resident contractor; and

1720 (ii) issue the contract to the resident contractor if the resident contractor agrees, in
1721 writing, to meet the low bid within 72 hours after notification that the resident contractor is a
1722 preferred resident contractor.

1723 (b) The issuing procurement unit shall include the exact price submitted by the lowest
1724 bidder in the notice that the issuing procurement unit submits to the preferred resident
1725 contractor.

1726 (c) The issuing procurement unit may not enter into a contract with any other bidder for
1727 the construction until 72 hours have elapsed after notification to the preferred resident
1728 contractor.

1729 (5) (a) If there is more than one preferred resident contractor, the issuing procurement
1730 unit shall award the contract to the willing preferred resident contractor who was the lowest
1731 preferred resident contractor originally.

1732 (b) If there were two or more equally low preferred resident contractors, the issuing

1733 procurement unit shall comply with the rules of the applicable rulemaking authority to
1734 determine which bidder should be awarded the contract.

1735 (6) The provisions of this section do not apply if application of this section might
1736 jeopardize the receipt of federal funds.

1737 Section 25. Section **63G-6a-1204.5** is amended to read:

1738 **63G-6a-1204.5. Multiple award contracts.**

1739 (1) (a) [~~The~~] Through a standard procurement process, the division or a procurement
1740 unit with independent procurement authority may enter into multiple award contracts with
1741 [~~bidders or offerors~~] multiple persons.

1742 (b) The applicable rulemaking authority may make rules, consistent with this section,
1743 regulating the use of multiple award contracts.

1744 (2) Multiple award contracts may be in a procurement unit's best interest if award to
1745 two or more bidders or offerors for similar procurement items is needed or desired for adequate
1746 delivery, service, availability, or product compatibility.

1747 (3) A procurement unit that enters into multiple award contracts under this section
1748 shall:

1749 (a) exercise care to protect and promote competition among bidders or offerors when
1750 seeking to enter into multiple award contracts;

1751 (b) name all eligible users of the multiple award contracts in the invitation for bids or
1752 request for proposals; and

1753 (c) if the procurement unit anticipates entering into multiple award contracts before
1754 issuing the invitation for bids or request for proposals, state in the invitation for bids or request
1755 for proposals that the procurement unit may enter into multiple award contracts at the end of
1756 the procurement process.

1757 (4) A procurement unit that enters into multiple award contracts under this section
1758 shall:

1759 (a) obtain, under the multiple award contracts, all of its normal, recurring requirements
1760 for the procurement items that are the subject of the contracts until the contracts terminate; and

1761 (b) reserve the right to obtain the procurement items described in Subsection (4)(a)
1762 separately from the contracts if:

1763 (i) there is a need to obtain a quantity of the procurement items that exceeds the

1764 amount specified in the contracts; or

1765 (ii) the procurement officer makes a written finding that the procurement items
1766 available under the contract will not effectively or efficiently meet a nonrecurring special need
1767 of a procurement unit.

1768 (5) An applicable rulemaking authority may make rules to further regulate a
1769 procurement under this section.

1770 Section 26. Section **63G-6a-1402** is amended to read:

1771 **63G-6a-1402. Procurement of design-build transportation project contracts.**

1772 (1) As used in this section:

1773 (a) "Design-build transportation project contract" means the procurement of both the
1774 design and construction of a transportation project in a single contract with a company or
1775 combination of companies capable of providing the necessary engineering services and
1776 construction.

1777 (b) "Transportation agency" means:

1778 (i) the Department of Transportation;

1779 (ii) a county of the first or second class, as defined in Section [17-50-501](#);

1780 (iii) a municipality of the first class, as defined in Section [10-2-301](#);

1781 (iv) a public transit district that has more than 200,000 people residing within its
1782 boundaries; and

1783 (v) a public airport authority.

1784 (2) Except as provided in Subsection (3), a transportation agency may award a
1785 design-build transportation project contract for any transportation project that has an estimated
1786 cost of at least \$50,000,000 by following the requirements of this section.

1787 (3) (a) The Department of Transportation:

1788 (i) may award a design-build transportation project contract for any transportation
1789 project by following the requirements of this section; and

1790 (ii) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative
1791 Rulemaking Act, establishing requirements for the procurement of its design-build
1792 transportation project contracts in addition to those required by this section.

1793 (b) A public transit district that has more than 200,000 people residing within its
1794 boundaries:

- 1795 (i) may award a design-build transportation project contract for any transportation
1796 project by following the requirements of this section; and
- 1797 (ii) shall pass ordinances or a resolution establishing requirements for the procurement
1798 of its design-build transportation project contracts in addition to those required by this section.
- 1799 (c) A design-build transportation project contract authorized under this Subsection (3)
1800 is not subject to the estimated cost threshold described in Subsection (2).
- 1801 (d) A design-build transportation project contract may include provision by the
1802 contractor of operations, maintenance, or financing.
- 1803 (4) (a) Before entering into a design-build transportation project contract, a
1804 transportation agency may issue a request for qualifications to prequalify potential contractors.
- 1805 (b) Public notice of the request for qualifications shall be given in accordance with
1806 board rules.
- 1807 (c) A transportation agency shall require, as part of the qualifications specified in the
1808 request for qualifications, that potential contractors at least demonstrate their:
- 1809 (i) construction experience;
- 1810 (ii) design experience;
- 1811 (iii) financial, manpower, and equipment resources available for the project; and
- 1812 (iv) experience in other design-build transportation projects with attributes similar to
1813 the project being procured.
- 1814 (d) The request for qualifications shall identify the number of eligible competing
1815 proposers that the transportation agency will select to submit a proposal, which may not be less
1816 than two.
- 1817 (5) The transportation agency shall:
- 1818 (a) evaluate the responses received from the request for qualifications;
- 1819 (b) select from their number those qualified to submit proposals; and
- 1820 (c) invite those respondents to submit proposals based upon the transportation agency's
1821 request for proposals.
- 1822 (6) If the transportation agency fails to receive at least two qualified eligible competing
1823 proposals, the transportation agency shall readvertise the project.
- 1824 (7) The transportation agency shall issue a request for proposals to those qualified
1825 respondents that:

1826 (a) includes a scope of work statement constituting an information for proposal that
1827 may include:

- 1828 (i) preliminary design concepts;
- 1829 (ii) design criteria, needs, and objectives;
- 1830 (iii) warranty and quality control requirements;
- 1831 (iv) applicable standards;
- 1832 (v) environmental documents;
- 1833 (vi) constraints;
- 1834 (vii) time expectations or limitations;
- 1835 (viii) incentives or disincentives; and

1836 (ix) other special considerations;

1837 (b) requires submitters to provide:

- 1838 (i) a sealed cost proposal;
- 1839 (ii) a critical path matrix schedule, including cash flow requirements;
- 1840 (iii) proposal security; and
- 1841 (iv) other items required by the department for the project; and

1842 (c) may include award of a stipulated fee to be paid to offerors who submit
1843 unsuccessful proposals.

1844 (8) The transportation agency shall:

1845 (a) evaluate the submissions received in response to the request for proposals from the
1846 prequalified offerors;

1847 (b) comply with rules relating to discussion of proposals, best and final offers, and
1848 evaluations of the proposals submitted; and

1849 (c) after considering price and other identified factors, award the contract to the
1850 [~~responsive and~~] responsible offeror whose responsive proposal is most advantageous to the
1851 transportation agency or the state.

1852 Section 27. Section **63G-6a-1403** is amended to read:

1853 **63G-6a-1403. Procurement of tollway development agreements.**

1854 (1) As used in this section, "tollway development agreement" is as defined in Section
1855 [72-6-202](#).

1856 (2) The Department of Transportation and the Transportation Commission:

- 1857 (a) may solicit a tollway development agreement proposal by following the
1858 requirements of this section;
- 1859 (b) may award a solicited tollway development agreement contract for any tollway
1860 project by following the requirements of this section; and
- 1861 (c) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative
1862 Rulemaking Act, establishing requirements for the procurement of tollway development
1863 agreement proposals in addition to those required by this section.
- 1864 (3) (a) Before entering into a tollway development agreement, the Department of
1865 Transportation may issue a request for qualifications to prequalify potential contractors.
- 1866 (b) Public notice of the request for qualifications shall be given in accordance with
1867 board rules.
- 1868 (c) The Department of Transportation shall require, as part of the qualifications
1869 specified in the request for qualifications, that potential contractors at least provide:
- 1870 (i) a demonstration of their experience with other transportation concession projects
1871 with attributes similar to the project being procured;
- 1872 (ii) a financial statement of the firm or consortium of firms making the proposal;
- 1873 (iii) a conceptual project development plan and financing plan;
- 1874 (iv) the legal structure of the firm or consortium of firms making the proposal;
- 1875 (v) the organizational structure for the project; and
- 1876 (vi) a statement describing why the firm or consortium of firms is best qualified for the
1877 project.
- 1878 (d) The request for qualifications shall identify the number of eligible competing
1879 offerors that the Department of Transportation will select to submit a proposal.
- 1880 (4) The Department of Transportation shall:
- 1881 (a) evaluate the responses received from the request for qualifications;
- 1882 (b) select from their number those qualified to submit proposals; and
- 1883 (c) invite those respondents to submit proposals based upon the Department of
1884 Transportation's request for proposals.
- 1885 (5) The Department of Transportation shall issue a request for proposals to those
1886 qualified respondents that may require, as appropriate for the procurement:
- 1887 (a) a description of the proposed project or projects;

- 1888 (b) a financial plan for the project, including:
- 1889 (i) the anticipated financial commitment of all parties;
- 1890 (ii) equity, debt, and other financing mechanisms;
- 1891 (iii) an analysis of the projected return, rate of return, or both; and
- 1892 (iv) the monetary benefit and other value to a government entity;
- 1893 (c) assumptions about user fees or toll rates;
- 1894 (d) a project development and management plan, including:
- 1895 (i) the contracting structure;
- 1896 (ii) the plan for quality management;
- 1897 (iii) the proposed toll enforcement plan; and
- 1898 (iv) the plan for safety management; and
- 1899 (e) that the proposal to comply with the minimum guidelines for tollway development
- 1900 agreement proposals under Section [72-6-204](#).
- 1901 (6) The Department of Transportation and the Transportation Commission:
- 1902 (a) shall evaluate the submissions received in response to the request for proposals
- 1903 from the prequalified offerors;
- 1904 (b) shall comply with rules relating to discussion of proposals, best and final offers,
- 1905 and evaluations of the proposals submitted; and
- 1906 (c) may, after considering price and other identified factors and complying with the
- 1907 requirements of Section [72-6-206](#), award the contract to the [~~responsive and~~] responsible
- 1908 offeror whose responsive proposal is most advantageous to the state.
- 1909 Section 28. Section **63G-6a-1601.5** is amended to read:
- 1910 **63G-6a-1601.5. Definitions.**
- 1911 As used in this part:
- 1912 (1) "Constructive knowledge":
- 1913 (a) means knowledge or information that a protestor would have if the protestor had
- 1914 exercised reasonable care or diligence, regardless of whether the protestor actually has the
- 1915 knowledge or information; and
- 1916 (b) includes knowledge of:
- 1917 (i) applicable provisions of this chapter and other law and administrative rule;
- 1918 (ii) instructions, criteria, deadlines, and requirements contained in the solicitation or in

- 1919 other documents made available to persons interested in the solicitation or provided in a
1920 mandatory pre-solicitation meeting;
- 1921 (iii) relevant facts and evidence supporting the protest or leading the protestor to
1922 contend that the protestor has been aggrieved in connection with a procurement;
- 1923 (iv) communications or actions, pertaining to the procurement, of all persons within the
1924 protestor's organization or under the supervision of the protestor; and
- 1925 (v) any other applicable information discoverable by the exercise of reasonable care or
1926 diligence.
- 1927 (2) "Hearing" means a proceeding in which evidence relevant to a protest is presented
1928 to a protest officer in connection with the protest officer's determination of an issue of fact or
1929 law or both.
- 1930 (3) "Protest appeal record" means:
- 1931 (a) a copy of the protest officer's written decision;
- 1932 (b) all documentation and other evidence the protest officer relied upon in reaching the
1933 protest officer's decision;
- 1934 (c) the recording of the hearing, if the protest officer held a hearing;
- 1935 (d) a copy of the protestor's written protest; and
- 1936 (e) all documentation and other evidence submitted by the protestor supporting the
1937 protest or the protestor's claim of standing.
- 1938 [~~2~~] (4) "Protestor" means a person who files a protest under this part.
- 1939 [~~3~~] (5) "Standing" means to have suffered an injury or harm or to be about to suffer
1940 imminent injury or harm, if:
- 1941 (a) the cause of the injury or harm is:
- 1942 (i) an infringement of the protestor's own right and not the right of another person who
1943 is not a party to the procurement;
- 1944 (ii) reasonably connected to the procurement unit's conduct; and
- 1945 (iii) the sole reason the protestor is not considered, or is no longer considered, for an
1946 award of a contract under the procurement that is the subject of the protest;
- 1947 (b) a decision on the protest in favor of the protestor:
- 1948 (i) is likely to redress the injury or harm; and
- 1949 (ii) would give the protestor a reasonable likelihood of being awarded a contract; and

1950 (c) the protestor has the legal authority to file the protest on behalf of the actual or
1951 prospective bidder or offeror or prospective contractor involved in the procurement that is the
1952 subject of the protest.

1953 Section 29. Section **63G-6a-1602** is amended to read:

1954 **63G-6a-1602. Protest -- Time for filing -- Basis of protest -- Authority to resolve**
1955 **protest.**

1956 (1) A protest may be filed with the protest officer by a person who:

1957 (a) has standing; and

1958 (b) is aggrieved in connection with a procurement or an award of a contract.

1959 (2) A protest may not be filed after:

1960 (a) (i) (A) the opening of bids, for a protest relating to a procurement under a bidding
1961 process; or

1962 (B) the deadline for submitting responses to the solicitation, for a protest relating to
1963 another standard procurement process; or

1964 (ii) the closing of the procurement stage that is the subject of the protest:

1965 (A) if the protest relates to a multiple-stage procurement; and

1966 (B) notwithstanding Subsections (2)(a)(i)(A) and (B); or

1967 (b) the day that is seven days after the day on which the person knows or first has
1968 constructive knowledge of the facts giving rise to the protest, if:

1969 (i) the protestor did not know and did not have constructive knowledge of the facts
1970 giving rise to the protest before:

1971 (A) the opening of bids, for a protest relating to a procurement under a bidding process;

1972 (B) the deadline for submitting responses to the solicitation, for a protest relating to
1973 another standard procurement process; or

1974 (C) the closing of the procurement stage that is the subject of the protest, if the protest
1975 relates to a multiple-stage procurement; or

1976 (ii) the protest relates to a procurement process not described in Subsection (2)(a).

1977 (3) A deadline under Subsection (2) for filing a protest may not be modified.

1978 [~~3~~] (4) (a) A protestor shall include in a protest:

1979 (i) the protestor's mailing address and email address; and

1980 (ii) a concise statement of the facts and evidence:

- 1981 (A) leading the protestor to claim that the protestor has been aggrieved in connection
 1982 with a procurement and providing the grounds for the protestor's protest; and
 1983 (B) supporting the protestor's claim of standing.
- 1984 (b) A protest may not be considered unless it contains facts and evidence that, if true,
 1985 would establish:
- 1986 (i) a violation of this chapter or other applicable law or rule;
 1987 (ii) the procurement unit's failure to follow a provision of a solicitation;
 1988 (iii) an error made by an evaluation committee or conducting procurement unit;
 1989 (iv) a bias exercised by an evaluation committee or an individual committee member,
 1990 excluding a bias that is a preference arising during the evaluation process because of how well
 1991 a solicitation response meets criteria in the solicitation;
 1992 (v) a failure to correctly apply or calculate a scoring criterion; or
 1993 (vi) that specifications in a solicitation are unduly restrictive or unduly anticompetitive.
- 1994 ~~[(4)]~~ (5) A protest may not be based on:
- 1995 (a) the rejection of a solicitation response due to a protestor's failure to attend or
 1996 participate in a mandatory conference, meeting, or site visit held before the deadline for
 1997 submitting a solicitation response; ~~[or]~~
- 1998 (b) a vague or unsubstantiated allegation~~[-];~~ or
- 1999 (c) a person's claim that:
- 2000 (i) a procurement unit that complied with Section 63G-6a-112 did not provide
 2001 individual notice of a solicitation to the person; or
- 2002 (ii) the person received late notice of a solicitation for which notice was provided in
 2003 accordance with Section 63G-6a-112.
- 2004 ~~[(5)]~~ (6) A protest may not include a request for:
- 2005 (a) an explanation of the rationale or scoring of evaluation committee members;
 2006 (b) the disclosure of a protected record or protected information in addition to the
 2007 information provided under the disclosure provisions of this chapter; or
- 2008 (c) other information, documents, or explanations not explicitly provided for in this
 2009 chapter.
- 2010 ~~[(6)]~~ (7) A person who fails to file a protest within the time prescribed in Subsection
 2011 (2) may not:

- 2012 (a) protest to the protest officer a solicitation or award of a contract; or
- 2013 (b) file an action or appeal challenging a solicitation or award of a contract before an
- 2014 appeals panel, a court, or any other forum.

2015 [~~7~~] (8) Subject to the applicable requirements of Section 63G-10-403, a protest

2016 officer or the head of a procurement unit may enter into a settlement agreement to resolve a

2017 protest.

2018 Section 30. Section 63G-6a-1603 is amended to read:

2019 **63G-6a-1603. Protest officer responsibilities and authority -- Proceedings on**

2020 **protest -- Effect of decision.**

2021 (1) After a protest is filed, the protest officer shall determine whether the protest is

2022 timely filed and complies fully with the requirements of Section 63G-6a-1602.

2023 (2) If the protest officer determines that the protest is not timely filed or that the protest

2024 does not fully comply with Section 63G-6a-1602, the protest officer shall dismiss the protest

2025 without holding a hearing.

2026 (3) If the protest officer determines that the protest is timely filed and complies fully

2027 with Section 63G-6a-1602, the protest officer shall:

2028 (a) dismiss the protest without holding a hearing if the protest officer determines that

2029 the protest alleges facts that, if true, do not provide an adequate basis for the protest;

2030 (b) uphold the protest without holding a hearing if the protest officer determines that

2031 the undisputed facts of the protest indicate that the protest should be upheld; or

2032 (c) hold a hearing on the protest if there is a genuine issue of material fact or law that

2033 needs to be resolved in order to determine whether the protest should be upheld.

2034 (4) (a) If a hearing is held on a protest, the protest officer may:

2035 (i) subpoena witnesses and compel their attendance at the protest hearing;

2036 (ii) subpoena documents for production at the protest hearing;

2037 (iii) obtain additional factual information; and

2038 (iv) obtain testimony from experts, the person filing the protest, representatives of the

2039 procurement unit, or others to assist the protest officer to make a decision on the protest.

2040 (b) The Rules of Evidence do not apply to a protest hearing.

2041 (c) The applicable rulemaking authority shall make rules relating to intervention in a

2042 protest, including designating:

- 2043 (i) who may intervene; and
- 2044 (ii) the time and manner of intervention.
- 2045 (d) A protest officer shall:
- 2046 (i) record each hearing held on a protest under this section;
- 2047 (ii) regardless of whether a hearing on a protest is held under this section, preserve all
- 2048 records and other evidence relied upon in reaching the protest officer's written decision until
- 2049 the decision, and any appeal of the decision, becomes final; and
- 2050 ~~[(iii) submit to the procurement policy board chair a copy of the protest officer's~~
- 2051 ~~written decision and all records and other evidence relied upon in reaching the decision, within~~
- 2052 ~~seven days after receiving;]~~
- 2053 ~~[(A) notice that an appeal of the protest officer's decision has been filed under Section~~
- 2054 ~~63G-6a-1702; or]~~
- 2055 ~~[(B) a request from the chair of the procurement policy board.]~~
- 2056 (iii) if the protestor appeals the protest officer's decision, submit the protest appeal
- 2057 record to the procurement policy board chair within seven days after receiving:
- 2058 (A) notice that an appeal of the protest officer's decision has been filed under Section
- 2059 63G-6a-1702; or
- 2060 (B) a request for the protest appeal record from the chair of the procurement policy
- 2061 board.
- 2062 (e) A protest officer's holding a hearing, considering a protest, or issuing a written
- 2063 decision under this section does not affect a person's right to later question or challenge the
- 2064 protest officer's jurisdiction to hold the hearing, consider the protest, or issue the decision.
- 2065 (5) (a) The deliberations of a protest officer may be held in private.
- 2066 (b) If the protest officer is a public body, as defined in Section 52-4-103, the protest
- 2067 officer shall comply with Section 52-4-205 in closing a meeting for its deliberations.
- 2068 (6) (a) A protest officer~~[- or the protest officer's designee,]~~ shall promptly issue a
- 2069 written decision regarding any protest, unless the protest is settled by mutual agreement.
- 2070 (b) The decision shall:
- 2071 (i) state the reasons for the action taken;
- 2072 (ii) inform the protestor of the right to judicial or administrative review as provided in
- 2073 this chapter; and

2074 (iii) indicate the amount of the security deposit or bond required under Section
2075 63G-6a-1703.

2076 (c) A person who issues a decision under Subsection (6)(a) shall mail, email, or
2077 otherwise immediately furnish a copy of the decision to the protestor.

2078 (7) A decision described in this section is effective until stayed or reversed on appeal,
2079 except to the extent provided in Section 63G-6a-1903.

2080 (8) (a) A decision described in Subsection (6)(a) that is issued in relation to a
2081 procurement unit other than a legislative procurement unit, a judicial procurement unit, a
2082 nonadopting local government procurement unit, or a public transit district is final and
2083 conclusive unless the protestor files an appeal under Section 63G-6a-1702.

2084 (b) A decision described in Subsection (6)(a) that is issued in relation to a legislative
2085 procurement unit, a judicial procurement unit, a nonadopting local government procurement
2086 unit, or a public transit district is final and conclusive unless the protestor files an appeal under
2087 Section 63G-6a-1802.

2088 (9) If the protest officer does not issue the written decision regarding a protest within
2089 30 calendar days after the day on which the protest was filed with the protest officer, or within
2090 a longer period as may be agreed upon by the parties, the protestor may proceed as if an adverse
2091 decision had been received.

2092 (10) A determination under this section by the protest officer regarding an issue of fact
2093 may not be overturned on appeal unless the decision is arbitrary and capricious or clearly
2094 erroneous.

2095 (11) An individual is not precluded from acting, and may not be disqualified or
2096 required to be recused from acting, as a protest officer because the individual also acted in
2097 another capacity during the procurement process, as required or allowed in this chapter.

2098 Section 31. Section 63G-6a-1701.5 is enacted to read:

2099 **63G-6a-1701.5. Definitions.**

2100 As used in this part:

2101 (1) "Appointing officer" means:

2102 (a) the chair of the board; or

2103 (b) a designee of the chair who is not employed by the procurement unit responsible for
2104 the solicitation, contract award, or other action that is the subject of the protestor's protest.

2105 (2) "Protest appeal record" means the same as that term is defined in Section
 2106 63G-6a-1601.5.

2107 (3) "Protestor" means the same as that term is defined in Section 63G-6a-1601.5.

2108 Section 32. Section **63G-6a-1702** is amended to read:

2109 **63G-6a-1702. Appeal to Utah State Procurement Policy Board -- Appointment of**
 2110 **procurement appeals panel -- Proceedings.**

2111 (1) This part applies to all procurement units other than:

2112 (a) a legislative procurement unit;

2113 (b) a judicial procurement unit;

2114 (c) a nonadopting local government procurement unit; or

2115 (d) a public transit district.

2116 (2) (a) Subject to Section 63G-6a-1703, a [~~party to a protest involving a procurement~~
 2117 ~~unit other than a procurement unit listed in Subsection (1)(a), (b), (c), or (d)] protestor may
 2118 appeal [~~the protest decision~~] to the board a protest decision of a procurement unit that is subject
 2119 to this part by filing a written notice of appeal with the chair of the board within seven days
 2120 after:~~

2121 (i) the day on which the written decision described in Section 63G-6a-1603 is:

2122 (A) personally served on the party or the party's representative; or

2123 (B) emailed or mailed to the address or email address provided by the party under
 2124 Subsection 63G-6a-1602~~[(3)]~~(4); or

2125 (ii) the day on which the 30-day period described in Subsection 63G-6a-1603(9) ends,
 2126 if a written decision is not issued before the end of the 30-day period.

2127 [~~(b) A person appealing a debarment or suspension of a procurement unit other than a~~
 2128 ~~procurement unit listed in Subsection (1)(a), (b), (c), or (d) shall file a written notice of appeal~~
 2129 ~~with the chair of the board no later than seven days after the debarment or suspension.]~~

2130 [~~(c)~~] (b) A notice of appeal under Subsection (2)(a) [~~or (b)~~] shall:

2131 (i) include the address of record and email address of record of the party filing the
 2132 notice of appeal; and

2133 (ii) be accompanied by a copy of any written protest decision [~~or debarment or~~
 2134 ~~suspension order~~].

2135 (c) The deadline for appealing a protest decision may not be modified.

2136 (3) A person may not base an appeal of a protest under this section on:
2137 (a) a ground not specified in the person's protest under Section 63G-6a-1602[-]; or
2138 (b) new or additional evidence not considered by the protest officer.
2139 (4) (a) A person may not appeal from a protest described in Section 63G-6a-1602,
2140 unless:
2141 ~~[(a)]~~ (i) a decision on the protest has been issued; or
2142 ~~[(b)]~~ (ii) a decision is not issued and the 30-day period described in Subsection
2143 63G-6a-1603(9), or a longer period agreed to by the parties, has passed.
2144 ~~[(5) The chair of the board or a designee of the chair who is not employed by the~~
2145 ~~procurement unit responsible for the solicitation, contract award, or other action complained~~
2146 ~~of:]~~
2147 ~~[(a) shall, within seven days after the day on which the chair receives a timely written~~
2148 ~~notice of appeal under Subsection (2), and if all the requirements of Subsection (2) and Section~~
2149 ~~63G-6a-1703 have been met, appoint:]~~
2150 ~~[(i) a procurement appeals panel to hear and decide the appeal, consisting of at least~~
2151 ~~three individuals, each of whom is:]~~
2152 (b) A procurement unit may not appeal a protest decision or other determination made
2153 by the procurement unit's protest officer.
2154 (5) (a) Within seven days after the chair of the board receives a written notice of an
2155 appeal under this section, the chair shall submit a written request to the protest officer for the
2156 protest appeal record.
2157 (b) Within seven days after the chair receives the protest appeal record from the protest
2158 officer, the appointing officer shall, in consultation with the attorney general's office:
2159 (i) review the appeal to determine whether the appeal complies with the requirements
2160 of Subsections (2), (3), and (4) and Section 63G-6a-1703; and
2161 (ii) (A) dismiss any claim asserted in the appeal, or dismiss the appeal, without holding
2162 a hearing if the appointing officer determines that the claim or appeal, respectively, fails to
2163 comply with any of the requirements listed in Subsection (5)(b)(i); or
2164 (B) appoint a procurement appeals panel to conduct an administrative review of any
2165 claim in the appeal that has not been dismissed under Subsection (5)(b)(ii)(A), if the appointing
2166 officer determines that one or more claims asserted in the appeal comply with the requirements

2167 listed in Subsection (5)(b)(i).

2168 (c) A procurement appeals panel appointed under Subsection (5)(a) shall consist of an
 2169 odd number of at least three individuals, each of whom is:

2170 ~~[(A)]~~ (i) a member of the board; or

2171 ~~[(B)]~~ (ii) a designee of a member appointed under Subsection (5)~~[(a)(i)(A)]~~(c)(i), if the
 2172 designee is approved by the chair~~[-and]~~ of the board.

2173 ~~[(ii)]~~ (d) The appointing officer shall appoint one of the members of the procurement
 2174 appeals panel to ~~[be the chair]~~ serve as the coordinator of the panel~~[-]~~.

2175 ~~[(b)]~~ (e) The appointing officer may:

2176 (i) appoint the same procurement appeals panel to hear more than one appeal; or

2177 (ii) appoint a separate procurement appeals panel for each appeal~~[-]~~.

2178 ~~[(c)]~~ (f) The appointing officer may not appoint a person to a procurement appeals
 2179 panel if the person is employed by the procurement unit responsible for the solicitation,
 2180 contract award, or other action ~~[complained of, and]~~ that is the subject of the protestor's protest.

2181 ~~[(d)]~~ (g) The appointing officer shall, at the time the procurement appeals panel is
 2182 appointed, provide appeals panel members with ~~[a copy of the protest officer's written decision~~
 2183 ~~and all other records and other evidence that the protest officer relied on in reaching the~~
 2184 ~~decision]~~ the protest decision record.

2185 (6) (a) A procurement appeals panel described in Subsection (5) ~~[shall]:~~

2186 ~~[(a) consist of an odd number of members;]~~

2187 ~~[(b)]~~ (i) shall conduct an ~~[informal proceeding on]~~ administrative review of the appeal
 2188 within ~~[60]~~ 30 days after the day on which the procurement appeals panel is appointed~~[-]~~, or
 2189 before a later date that all parties agree upon, unless the appeal is dismissed under Subsection
 2190 (8)(a); and

2191 ~~[(i) unless all parties stipulate to a later date; and]~~

2192 ~~[(ii) subject to Subsection (8);]~~

2193 (ii) (A) may, as part of the administrative review and at the sole discretion of the
 2194 procurement appeals panel, conduct an informal hearing, if the procurement appeals panel
 2195 considers a hearing to be necessary; and

2196 ~~[(c)]~~ (B) if the procurement appeals panel conducts an informal hearing, shall, at least
 2197 seven days before the ~~[proceeding]~~ hearing, mail, email, or hand-deliver a written notice of the

2198 [~~proceeding~~] hearing to the parties to the appeal[~~; and~~].

2199 (b) A procurement appeals panel may, during an informal hearing, ask questions and
2200 receive responses regarding the appeal and the protest appeal record to assist the procurement
2201 appeals panel to understand the basis of the appeal and information contained in the protest
2202 appeal record, but may not otherwise take any additional evidence or consider any additional
2203 ground for the appeal.

2204 (7) A procurement appeals panel shall consider and decide the appeal based solely on:

2205 (a) the protest appeal record; and

2206 (b) responses received during an informal hearing, if an informal hearing is held and to
2207 the extent allowed under Subsection (6)(b).

2208 (8) A procurement appeals panel:

2209 (a) may dismiss an appeal if the appeal does not comply with the requirements of this
2210 chapter; and

2211 (b) shall uphold the protest decision unless the protest decision is arbitrary and
2212 capricious or clearly erroneous.

2213 ~~[(d)]~~ (9) The procurement appeals panel shall, within seven days after the day on which
2214 the [~~proceeding ends~~] procurement appeals panel concludes the administrative review:

2215 ~~[(i)]~~ (a) issue a written decision on the appeal; and

2216 ~~[(ii)]~~ (b) mail, email, or hand-deliver the written decision on the appeal to the parties to
2217 the appeal and to the protest officer.

2218 ~~[(7)]~~ (10) (a) The deliberations of a procurement appeals panel may be held in private.

2219 (b) If the procurement appeals panel is a public body, as defined in Section 52-4-103,
2220 the procurement appeals panel shall comply with Section 52-4-205 in closing a meeting for its
2221 deliberations.

2222 ~~[(8)]~~ (11) A procurement appeals panel may continue [a procurement appeals
2223 proceeding] an administrative review under this section beyond the [60-day] 30-day period
2224 described in Subsection (6)[~~(b)~~](a)(i) if the procurement appeals panel determines that the
2225 continuance is in the interests of justice.

2226 ~~[(9) A procurement appeals panel:]~~

2227 ~~[(a) shall, subject to Subsection (9)(c), consider the appeal based solely on:]~~

2228 ~~[(i) the protest decision;]~~

2229 ~~[(ii) the record considered by the person who issued the protest decision; and]~~
 2230 ~~[(iii) if a protest hearing was held, the record of the protest hearing;]~~
 2231 ~~[(b) may not take additional evidence;]~~
 2232 ~~[(c) notwithstanding Subsection (9)(b), may, during an informal hearing, ask questions~~
 2233 ~~and receive responses regarding the appeal, the protest decision, or the record in order to assist~~
 2234 ~~the panel to understand the appeal, the protest decision, and the record; and]~~

2235 ~~[(d) shall uphold the decision of the protest officer, unless the decision is arbitrary and~~
 2236 ~~capricious or clearly erroneous.]~~

2237 ~~[(10)]~~ (12) If a procurement appeals panel determines that the decision of the protest
 2238 officer is arbitrary and capricious or clearly erroneous, the procurement appeals panel:

2239 (a) shall remand the matter to the protest officer, to cure the problem or render a new
 2240 decision;

2241 (b) may recommend action that the protest officer should take; and

2242 (c) may not order that:

2243 (i) a contract be awarded to a certain person;

2244 (ii) a contract or solicitation be cancelled; or

2245 (iii) any other action be taken other than the action described in Subsection ~~[(10)]~~

2246 (12)(a).

2247 ~~[(11)]~~ (13) The board shall make rules relating to the conduct of an appeals proceeding,
 2248 including rules that provide for:

2249 (a) expedited proceedings; and

2250 (b) electronic participation in the proceedings by panel members and participants.

2251 ~~[(12)]~~ (14) The Rules of Evidence do not apply to ~~[an appeals proceeding]~~ a hearing
 2252 held by a procurement appeals panel.

2253 (15) Part 20, Records, applies to the records involved in the process described in this
 2254 section, including the decision issued by a procurement appeals panel.

2255 Section 33. Section **63G-6a-1703** is amended to read:

2256 **63G-6a-1703. Requirement to pay a security deposit or post a bond -- Exceptions**
 2257 **-- Amount -- Forfeiture of security deposit or bond.**

2258 (1) A person who files a notice of appeal under Section **63G-6a-1702** shall, before the
 2259 expiration of the time provided under Subsection **63G-6a-1702(2)** for filing a notice of appeal,

2260 pay a security deposit or post a bond with the office of the protest officer.

2261 (2) The amount of a security deposit or bond required under Subsection (1) is:

2262 (a) for an appeal relating to an invitation for bids or request for proposals and except as
2263 provided in Subsection (2)(b)(ii):

2264 (i) \$20,000, if the total contract value is under \$500,000;

2265 (ii) \$25,000, if the total contract value is \$500,000 or more but less than \$1,000,000;

2266 (iii) \$50,000, if the total contract value is \$1,000,000 or more but less than \$2,000,000;

2267 (iv) \$95,000, if the total contract value is \$2,000,000 or more but less than \$4,000,000;

2268 (v) \$180,000, if the total contract value is \$4,000,000 or more but less than \$8,000,000;

2269 (vi) \$320,000, if the total contract value is \$8,000,000 or more but less than

2270 \$16,000,000;

2271 (vii) \$600,000, if the total contract value is \$16,000,000 or more but less than

2272 \$32,000,000;

2273 (viii) \$1,100,000, if the total contract value is \$32,000,000 or more but less than

2274 \$64,000,000;

2275 (ix) \$1,900,000, if the total contract value is \$64,000,000 or more but less than

2276 \$128,000,000;

2277 (x) \$3,500,000, if the total contract value is \$128,000,000 or more but less than

2278 \$256,000,000;

2279 (xi) \$6,400,000, if the total contract value is \$256,000,000 or more but less than

2280 \$512,000,000; and

2281 (xii) \$10,200,000, if the total contract value is \$512,000,000 or more; or

2282 (b) \$20,000, for an appeal:

2283 (i) relating to any type of procurement process other than an invitation for bids or
2284 request for proposals;

2285 (ii) relating to an invitation for bids or request for proposals, if the estimated total
2286 contract value cannot be determined; or

2287 (iii) of a debarment or suspension.

2288 (3) (a) For an appeal relating to an invitation for bids, the estimated total contract value
2289 shall be based on:

2290 (i) the lowest [~~responsible and~~] responsive bid amount for the entire term of the

- 2291 contract, excluding any renewal period, if the bid opening has occurred;
- 2292 (ii) the total budget for the procurement item for the entire term of the contract,
- 2293 excluding any renewal period, if bids are based on unit or rate pricing; or
- 2294 (iii) if the contract is being rebid, the historical usage and amount spent on the contract
- 2295 over the life of the contract.
- 2296 (b) For an appeal relating to a request for proposals, the estimated total contract value
- 2297 shall be based on:
- 2298 (i) the lowest cost proposed in a response to a request for proposals, considering the
- 2299 entire term of the contract, excluding any renewal period, if the opening of proposals has
- 2300 occurred;
- 2301 (ii) the total budget for the procurement item over the entire term of the contract,
- 2302 excluding any renewal period, if opened cost proposals are based on unit or rate pricing; or
- 2303 (iii) if the contract is being reissued, the historical usage and amount spent on the
- 2304 contract over the life of the contract that is being reissued.
- 2305 (4) The protest officer shall:
- 2306 (a) retain the security deposit or bond until the protest and any appeal of the protest
- 2307 decision is final;
- 2308 (b) as it relates to a security deposit:
- 2309 (i) deposit the security deposit into an interest-bearing account; and
- 2310 (ii) after any appeal of the protest decision becomes final, return the security deposit
- 2311 and the interest it accrues to the person who paid the security deposit, unless the security
- 2312 deposit is forfeited to the general fund of the procurement unit under Subsection (5); and
- 2313 (c) as it relates to a bond:
- 2314 (i) retain the bond until the protest and any appeal of the protest decision becomes
- 2315 final; and
- 2316 (ii) after the protest and any appeal of the protest decision becomes final, return the
- 2317 bond to the person who posted the bond, unless the bond is forfeited to the general fund of the
- 2318 procurement unit under Subsection (5).
- 2319 (5) A security deposit that is paid, or a bond that is posted, under this section shall
- 2320 forfeit to the general fund of the procurement unit if:
- 2321 (a) the person who paid the security deposit or posted the bond fails to ultimately

2322 prevail on appeal; and

2323 (b) the procurement appeals panel finds that the protest or appeal is frivolous or that its
2324 primary purpose is to harass or cause a delay.

2325 Section 34. Section **63G-6a-1802** is amended to read:

2326 **63G-6a-1802. Appeal to Utah Court of Appeals.**

2327 (1) (a) As provided in this part:

2328 (i) a person may appeal a dismissal of an appeal by the board chair under Subsection
2329 [~~63G-6a-1706(1)~~] 63G-6a-1702(5)(b)(ii)(A);

2330 (ii) a person who receives an adverse decision by a procurement appeals panel may
2331 appeal that decision;

2332 (iii) subject to Subsection (2), a procurement unit, other than a legislative procurement
2333 unit, a judicial procurement unit, a nonadopting local government procurement unit, or a public
2334 transit district, may appeal an adverse decision by a procurement appeals panel;

2335 (iv) a person who receives an adverse decision in a protest relating to a legislative
2336 procurement unit, a judicial procurement unit, a nonadopting local government procurement
2337 unit, or a public transit district may appeal that decision; and

2338 (v) a person who is debarred or suspended under Section 63G-6a-904 [~~by a legislative
2339 procurement unit, a judicial procurement unit, a nonadopting local government procurement
2340 unit, or a public transit district~~] may appeal the debarment or suspension.

2341 (b) A person seeking to appeal a dismissal, decision, or debarment or suspension under
2342 Subsection (1)(a) shall file a notice of appeal with the Utah Court of Appeals within seven days
2343 after the dismissal, decision, or debarment or suspension.

2344 (2) A procurement unit may not appeal the decision of a procurement appeals panel,
2345 unless the appeal is:

2346 (a) recommended by the protest officer involved; and

2347 (b) except for a procurement unit that is not represented by the attorney general's
2348 office, approved by the attorney general.

2349 (3) A person appealing a dismissal, decision, protest, debarment, or suspension under
2350 this section may not base the appeal on a ground not specified in the proceeding from which
2351 the appeal is taken.

2352 (4) The Utah Court of Appeals:

2353 (a) shall consider the appeal as an appellate court;
 2354 (b) may not hear the matter as a trial de novo; and
 2355 (c) may not overturn a finding, dismissal, decision, or debarment or suspension, unless
 2356 the finding, dismissal, decision, or debarment or suspension is arbitrary and capricious or
 2357 clearly erroneous.

2358 (5) The Utah Court of Appeals is encouraged to:
 2359 (a) give an appeal made under this section priority; and
 2360 (b) consider the appeal and render a decision in an expeditious manner.

2361 Section 35. Section **63G-6a-2404.3** is enacted to read:

2362 **63G-6a-2404.3. Dividing a procurement to avoid using a standard procurement**
 2363 **process.**

2364 (1) It is unlawful for a person knowingly to divide a single procurement into multiple
 2365 smaller procurements if dividing the single procurement:

2366 (a) is done with the intent to avoid the use of a standard procurement process that
 2367 would have otherwise been required if the procurement had not been divided; or

2368 (b) is otherwise prohibited by this chapter.

2369 (2) A violation of Subsection (1) is:

2370 (a) a second degree felony, if the value of the procurement before being divided is
 2371 \$1,000,000 or more;

2372 (b) a third degree felony, if the value of the procurement before being divided is
 2373 \$250,000 or more but less than \$1,000,000;

2374 (c) a class A misdemeanor, if the value of the procurement before being divided is
 2375 \$100,000 or more but less than \$250,000; or

2376 (d) a class B misdemeanor, if the value of the procurement before being divided is less
 2377 than \$100,000.

2378 Section 36. Section **63G-6a-2404.7** is enacted to read:

2379 **63G-6a-2404.7. Harassment of a public officer or employee involved in the**
 2380 **procurement process.**

2381 (1) As used in this section, "harass" means to use or threaten to use force, violence, a
 2382 false allegation, or other action intended to menace, threaten, or intimidate.

2383 (2) It is unlawful for a person knowingly to harass a public officer or employee with

2384 the intent to:

2385 (a) prevent the officer or employee from performing a duty or responsibility that the
2386 officer or employee has under this chapter or under a rule made under this chapter;

2387 (b) influence the officer or employee to award a contract to the person or take other
2388 action in favor of the person; or

2389 (c) retaliate against the officer or employee for:

2390 (i) not awarding a contract to the person;

2391 (ii) issuing a decision or taking an action that is adverse to the person; or

2392 (iii) performing a duty or responsibility the officer or employee has under this chapter
2393 or under a rule made under this chapter.

2394 (3) A violation of Subsection (2) is:

2395 (a) a second degree felony, if the harassment relates to a procurement with a value of
2396 \$1,000,000 or more;

2397 (b) a third degree felony, if the harassment relates to a procurement with a value of
2398 \$250,000 or more but less than \$1,000,000; or

2399 (c) a class A misdemeanor, if the harassment relates to a procurement with a value of
2400 less than \$250,000.

2401 Section 37. Section **63G-6a-2407** is amended to read:

2402 **63G-6a-2407. Duty to report unlawful conduct.**

2403 (1) As used in this section, "unlawful conduct" means:

2404 (a) conduct made unlawful under this part; or

2405 (b) conduct, including bid rigging, improperly steering a contract to a favored vendor,
2406 exercising undue influence on an individual involved in the procurement process, or
2407 participating in collusion or other anticompetitive practices, made unlawful under other
2408 applicable law.

2409 (2) (a) A procurement professional with actual knowledge that a person has engaged in
2410 unlawful conduct shall report the person's unlawful conduct to:

2411 (i) the state auditor; or

2412 (ii) the attorney general or other appropriate prosecuting attorney.

2413 (b) An individual not subject to the requirement of Subsection (2)(a) who has actual
2414 knowledge that a person has engaged in unlawful conduct may report the person's unlawful

2415 conduct to:

2416 (i) the state auditor; or

2417 (ii) the attorney general or other appropriate prosecuting attorney.

2418 (3) A procurement professional who fails to comply with the requirement of

2419 Subsection (2)(a) is subject to any applicable disciplinary action [~~or civil penalty identified in~~

2420 ~~Subsection 63G-6a-2404(5)~~].

2421 Section 38. Section **63G-10-403** is amended to read:

2422 **63G-10-403. Department of Transportation bid or request for proposals protest**

2423 **settlement agreement approval and review.**

2424 (1) As used in this section:

2425 (a) "Department" means the Department of Transportation created in Section [72-1-201](#).

2426 (b) "Settlement agreement" includes stipulations, consent decrees, settlement
2427 agreements, or other legally binding documents or representations resolving a dispute between
2428 the department and another party when the department is required to pay money or required to
2429 take legally binding action.

2430 (2) The department shall obtain the approval of the Transportation Commission or the
2431 governor or review by the Legislative Management Committee of a settlement agreement that
2432 involves a bid or request for proposal protest in accordance with this section.

2433 (3) A settlement agreement that is being settled by the department as part of a bid or
2434 request for proposal protest, in accordance with Subsection [63G-6a-1602\[\(7\)\]\(8\)](#), that might
2435 cost government entities more than \$100,000 to implement shall be presented to the
2436 Transportation Commission for approval or rejection.

2437 (4) A settlement agreement that is being settled by the department as part of a bid or
2438 request for proposal protest, in accordance with Subsection [63G-6a-1602\[\(7\)\]\(8\)](#), that might
2439 cost government entities more than \$500,000 to implement shall be presented:

2440 (a) to the Transportation Commission for approval or rejection; and

2441 (b) to the governor for approval or rejection.

2442 (5) (a) A settlement agreement that is being settled by the department as part of a bid or
2443 request for proposal protest, in accordance with Subsection [63G-6a-1602\[\(7\)\]\(8\)](#), that might
2444 cost government entities more than \$1,000,000 to implement shall be presented:

2445 (i) to the Transportation Commission for approval or rejection;

2446 (ii) to the governor for approval or rejection; and
2447 (iii) if the settlement agreement is approved by the Transportation Commission and the
2448 governor, to the Legislative Management Committee.

2449 (b) The Legislative Management Committee may recommend approval or rejection of
2450 the settlement agreement.

2451 (6) (a) The department may not enter into a settlement agreement that resolves a bid or
2452 request for proposal protest, in accordance with Subsection 63G-6a-1602[(7)](8), that might
2453 cost government entities more than \$100,000 to implement until the Transportation
2454 Commission has approved the agreement.

2455 (b) The department may not enter into a settlement agreement that resolves a bid or
2456 request for proposal protest, in accordance with Subsection 63G-6a-1602[(7)](8), that might
2457 cost government entities more than \$500,000 to implement until the Transportation
2458 Commission and the governor have approved the agreement.

2459 (c) The department may not enter into a settlement agreement that resolves a bid or
2460 request for proposal protest, in accordance with Subsection 63G-6a-1602[(7)](8), that might
2461 cost government entities more than \$1,000,000 to implement until:

- 2462 (i) the Transportation Commission has approved the agreement;
- 2463 (ii) the governor has approved the agreement; and
- 2464 (iii) the Legislative Management Committee has reviewed the agreement.

2465 Section 39. **Repealer.**

2466 This bill repeals:

2467 Section 63G-6a-1604, **Dismissal of protest not filed in accordance with**
2468 **requirements.**

2469 Section 63G-6a-1706, **Dismissal of an appeal not filed in compliance with**
2470 **requirements.**