

**Representative Gage Froerer** proposes the following substitute bill:

**PROCUREMENT CODE AMENDMENTS**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gage Froerer**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies provisions of the Utah Procurement Code.

**Highlighted Provisions:**

This bill:

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



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

39 **Money Appropriated in this Bill:**

40           None

41 **Other Special Clauses:**

42           This bill provides a coordination clause.

43 **Utah Code Sections Affected:**

44 AMENDS:

45           **63G-6a-102**, as last amended by Laws of Utah 2014, Chapter 196

46           **63G-6a-103**, as last amended by Laws of Utah 2016, Chapters 176, 237, 355 and last

47 amended by Coordination Clause, Laws of Utah 2016, Chapter 355

48           **63G-6a-112**, as renumbered and amended by Laws of Utah 2016, Chapter 355

49           **63G-6a-116**, as enacted by Laws of Utah 2016, Chapter 355 and last amended by

50 Coordination Clause, Laws of Utah 2016, Chapter 355

51           **63G-6a-302**, as last amended by Laws of Utah 2013, Chapter 445

52           **63G-6a-410**, as enacted by Laws of Utah 2016, Chapter 355

53           **63G-6a-506**, as last amended by Laws of Utah 2016, Chapters 237, 348 and

54 renumbered and amended by Laws of Utah 2016, Chapter 355

55           **63G-6a-507**, as enacted by Laws of Utah 2016, Chapter 355

56           **63G-6a-602**, as last amended by Laws of Utah 2013, Chapter 445

- 57 [63G-6a-603](#), as last amended by Laws of Utah 2016, Chapter 355
- 58 [63G-6a-606](#), as last amended by Laws of Utah 2016, Chapter 355
- 59 [63G-6a-607](#), as last amended by Laws of Utah 2014, Chapter 196
- 60 [63G-6a-608](#), as last amended by Laws of Utah 2013, Chapter 445
- 61 [63G-6a-612](#), as last amended by Laws of Utah 2014, Chapter 196
- 62 [63G-6a-702](#), as last amended by Laws of Utah 2014, Chapter 196
- 63 [63G-6a-703](#), as last amended by Laws of Utah 2016, Chapter 355
- 64 [63G-6a-707](#), as last amended by Laws of Utah 2016, Chapters 237 and 355
- 65 [63G-6a-709](#), as last amended by Laws of Utah 2016, Chapter 355
- 66 [63G-6a-802.7](#), as enacted by Laws of Utah 2016, Chapter 355
- 67 [63G-6a-903](#), as last amended by Laws of Utah 2013, Chapter 445
- 68 [63G-6a-904](#), as last amended by Laws of Utah 2015, Chapter 258
- 69 [63G-6a-1002](#), as last amended by Laws of Utah 2013, Chapter 445
- 70 [63G-6a-1003](#), as last amended by Laws of Utah 2013, Chapter 445
- 71 [63G-6a-1204.5](#), as renumbered and amended by Laws of Utah 2013, Chapter 445
- 72 [63G-6a-1402](#), as last amended by Laws of Utah 2014, Chapter 196
- 73 [63G-6a-1403](#), as renumbered and amended by Laws of Utah 2012, Chapter 347
- 74 [63G-6a-1601.5](#), as enacted by Laws of Utah 2016, Chapter 355
- 75 [63G-6a-1602](#), as last amended by Laws of Utah 2016, Chapter 355
- 76 [63G-6a-1603](#), as last amended by Laws of Utah 2016, Chapter 355
- 77 [63G-6a-1702](#), as last amended by Laws of Utah 2016, Chapter 355
- 78 [63G-6a-1703](#), as last amended by Laws of Utah 2016, Chapter 355
- 79 [63G-6a-1802](#), as last amended by Laws of Utah 2015, Chapter 218
- 80 [63G-6a-2403](#), as enacted by Laws of Utah 2014, Chapter 196
- 81 [63G-6a-2407](#), as last amended by Laws of Utah 2016, Chapter 355
- 82 [63G-10-403](#), as last amended by Laws of Utah 2016, Chapter 355

83 ENACTS:

- 84 [63G-6a-1701.5](#), Utah Code Annotated 1953
- 85 [63G-6a-2404.3](#), Utah Code Annotated 1953
- 86 [63G-6a-2404.7](#), Utah Code Annotated 1953

87 REPEALS AND REENACTS:

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

89 REPEALS:

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

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

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

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

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

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

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

99 The underlying purposes and policies of this chapter are:

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

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

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

103 participate in the public procurement [system] process;

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

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

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

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

108 As used in this chapter:

109 [~~(1) "Administrative law judge" means the same as that term is defined in Section~~  
110 ~~67-19e-102.;~~]

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

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

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

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

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

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

119 created in Section 63A-5-201, the building board;

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

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

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

124 (d) for a local government procurement unit:

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

126 (ii) an individual or body designated by the legislative body of the local government  
127 procurement unit;

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

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

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

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

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

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

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

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

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

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

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

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

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

148 (5) "Bias" means:

149 (a) a predisposition or a preconceived opinion that prevents an individual from

150 impartially evaluating facts; or

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

153 [~~7~~] (6) "Bidder" means a person who submits a bid or price quote in response to an  
154 invitation for bids.

155 [~~8~~] (7) "Bidding process" means the procurement process described in Part 6,  
156 Bidding.

157 [~~9~~] (8) "Board" means the Utah State Procurement Policy Board, created in Section  
158 63G-6a-202.

159 [~~10~~] (9) "Building board" means the State Building Board, created in Section  
160 63A-5-101.

161 [~~11~~] (10) "Change directive" means a written order signed by the procurement officer  
162 that directs the contractor to suspend work or make changes, as authorized by contract, without  
163 the consent of the contractor.

164 [~~12~~] (11) "Change order" means a written alteration in specifications, delivery point,  
165 rate of delivery, period of performance, price, quantity, or other provisions of a contract, upon  
166 mutual agreement of the parties to the contract.

167 [~~13~~] (12) "Chief procurement officer" means the chief procurement officer appointed  
168 under Subsection 63G-6a-302(1).

169 [~~14~~] (13) "Conducting procurement unit" means a procurement unit that conducts all  
170 aspects of a procurement:

171 (a) except:

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

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

174 (b) including:

175 (i) preparing any solicitation document;

176 (ii) appointing an evaluation committee;

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

178 63G-6a-707(6)(b) relating to scores calculated for costs of proposals;

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

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

181 procurement unit's approval; and

182 (vi) contract administration.

183 ~~[(15)]~~ (14) "Conservation district" means the same as that term is defined in Section  
184 17D-3-102.

185 ~~[(16)]~~ (15) "Construction":

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

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

190 ~~[(17)]~~ (16) "Construction manager/general contractor":

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

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

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

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

199 (17) "Construction subcontractor":

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

202 (b) includes a general contractor or specialty contractor licensed or exempt from  
203 licensing under Title 58, Chapter 55, Utah Construction Trades Licensing Act; and

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

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

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

210 (a) implementing the contract;

211 (b) ensuring compliance with the contract terms and conditions by the conducting

212 procurement unit and the contractor;

213 (c) executing change orders;

214 (d) processing contract amendments;

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

216 (f) curing contract errors and deficiencies;

217 (g) terminating a contract;

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

219 (i) computing payments under the contract; and

220 (j) closing out a contract.

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

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

223 (a) more than one procurement unit; or

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

225 (22) "Cooperative purchasing organization" means an organization, association, or

226 alliance of purchasers established to combine purchasing power in order to obtain the best

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

228 (23) "Cost-plus-a-percentage-of-cost contract" means a contract under which the

229 contractor is paid a percentage of the total actual expenses or costs in addition to the

230 contractor's actual expenses or costs.

231 (24) "Cost-reimbursement contract" means a contract under which a contractor is

232 reimbursed for costs which are allowed and allocated in accordance with the contract terms and

233 the provisions of this chapter, and a fee, if any.

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

235 (26) "Definite quantity contract" means a fixed price contract that provides for a

236 specified amount of supplies over a specified period, with deliveries scheduled according to a

237 specified schedule.

238 (27) "Design-build" means the procurement of design professional services and

239 construction by the use of a single contract.

240 (28) "Design professional" means:

241 (a) an individual licensed as an architect under Title 58, Chapter 3a, Architects

242 Licensing Act; or



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

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

248 (30) "Design professional services" means:

249 (a) professional services within the scope of the practice of architecture as defined in  
250 Section 58-3a-102;

251 (b) professional engineering as defined in Section 58-22-102; or

252 (c) master planning and programming services.

253 (31) "Director" means the director of the division.

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

256 (33) "Educational procurement unit" means:

257 (a) a school district;

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

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

260 (d) the Utah Education and Telehealth Network; [or]

261 (e) an institution of higher education of the state[-]; or

262 (f) an applied technology college within the Utah College of Applied Technology.

263 (34) "Established catalogue price" means the price included in a catalogue, price list,  
264 schedule, or other form that:

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

266 (b) is published or otherwise available for inspection by customers; and

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

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

272 (36) "Fixed price contract" means a contract that provides a price, for each  
273 procurement item obtained under the contract, that is not subject to adjustment except to the

274 extent that:

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

277 (b) an adjustment is required by law.

278 (37) "Fixed price contract with price adjustment" means a fixed price contract that  
279 provides for an upward or downward revision of price, precisely described in the contract, that:

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

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

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

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

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

289 (b) for an executive branch procurement unit:

290 (i) the director of the division; or

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

292 (c) for a judicial procurement unit:

293 (i) the Judicial Council; or

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

295 (d) for a local government procurement unit:

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

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

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

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

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

304 (h) for a conservation district, the board of supervisors of the conservation district or a

305 designee of the board of supervisors;

306 (i) for a public corporation, the board of directors of the public corporation or a  
307 designee of the board of directors;

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

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

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

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

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

318 (40) "Immaterial error":

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

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

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

323 (b) includes:

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

326 (ii) a typographical error;

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

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

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

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

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

334 (ii) provides a maximum purchase limit.

335 (42) "Independent procurement authority" means authority granted to a procurement

336 unit under Subsection 63G-6a-106(4)(a).

337 (43) "Invitation for bids":

338 (a) means a document used to solicit:

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

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

341 (b) includes all documents attached to or incorporated by reference in a document

342 described in Subsection (43)(a).

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

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

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

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

347 (45) "Judicial procurement unit" means:

348 (a) the Utah Supreme Court;

349 (b) the Utah Court of Appeals;

350 (c) the Judicial Council;

351 (d) a state judicial district; or

352 (e) an office, committee, subcommittee, or other organization within the state judicial  
353 branch.

354 (46) "Labor hour contract" is a contract under which:

355 (a) the supplies and materials are not provided by, or through, the contractor; and

356 (b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and  
357 profit for a specified number of labor hours or days.

358 (47) "Legislative procurement unit" means:

359 (a) the Legislature;

360 (b) the Senate;

361 (c) the House of Representatives;

362 (d) a staff office of the Legislature, the Senate, or the House of Representatives; or

363 (e) ~~[an office,]~~ a committee, subcommittee, commission, or other organization;

364 (i) within the state legislative branch[-]; or

365 (ii) (A) that is created by statute to advise or make recommendations to the Legislature;

366 (B) the membership of which includes legislators; and

367 (C) for which the Office of Legislative Research and General Counsel provides staff  
368 support.

369 (48) "Local building authority" means the same as that term is defined in Section  
370 17D-2-102.

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

372 (50) "Local government procurement unit" means:

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

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

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

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

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

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

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

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

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

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

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

396 ~~[(57)]~~ (56) "Preferred bidder" means a bidder that is entitled to receive a reciprocal  
397 preference under the requirements of this chapter.

398 [~~(58)~~] (57) "Procure" means to acquire a procurement item through a procurement.

399 [~~(59)~~] (58) "Procurement":

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

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

404 (i) preparing and issuing a solicitation; and

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

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

408 (c) does not include a grant.

409 [~~(60)~~] (59) "Procurement item" means a supply, a service, or construction.

410 [~~(61)~~] (60) "Procurement officer" means:

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

412 (i) the head of the procurement unit;

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

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

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

417 [~~(62)~~] (61) "Procurement unit":

418 (a) means:

419 (i) a legislative procurement unit;

420 (ii) an executive branch procurement unit;

421 (iii) a judicial procurement unit;

422 (iv) an educational procurement unit;

423 (v) a local government procurement unit;

424 (vi) a local district;

425 (vii) a special service district;

426 (viii) a local building authority;

427 (ix) a conservation district;

428 (x) a public corporation; or

429 (xi) a public transit district; and

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

431 Interlocal Cooperation Act.

432 ~~[(63)]~~ (62) "Professional service" means labor, effort, or work that requires an elevated  
433 degree of specialized knowledge and discretion, including labor, effort, or work in the field of:

434 (a) accounting;

435 (b) architecture;

436 (c) construction design and management;

437 (d) engineering;

438 (e) financial services;

439 (f) information technology;

440 (g) the law;

441 (h) medicine;

442 (i) psychiatry; or

443 (j) underwriting.

444 ~~[(64)]~~ (63) "Protest officer" means:

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

446 (i) the head of the procurement unit;

447 (ii) ~~[a designee of]~~ the head of the procurement unit's designee who is an employee of  
448 the procurement unit; or

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

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

453 ~~[(65)]~~ (64) "Public corporation" means the same as that term is defined in Section  
454 [63E-1-102](#).

455 ~~[(66)]~~ (65) "Public entity" means any government entity of the state or political  
456 subdivision of the state, including:

457 (a) a procurement unit;

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

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

461 [~~(67)~~] (66) "Public facility" means a building, structure, infrastructure, improvement,  
462 or other facility of a public entity.

463 [~~(68)~~] (67) "Public funds" means money, regardless of its source, including from the  
464 federal government, that is owned or held by a procurement unit.

465 [~~(69)~~] (68) "Public transit district" means a public transit district organized under Title  
466 17B, Chapter 2a, Part 8, Public Transit District Act.

467 [~~(70)~~] (69) "Qualified vendor" means a vendor who:

468 (a) is responsible; and

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

472 [~~(71)~~] (70) "Real property" means land and any building, fixture, improvement,  
473 appurtenance, structure, or other development that is permanently affixed to land.

474 [~~(72)~~] (71) "Request for information" means a nonbinding process through which a  
475 procurement unit requests information relating to a procurement item.

476 [~~(73)~~] (72) "Request for proposals" means a document used to solicit proposals to  
477 provide a procurement item to a procurement unit, including all other documents that are  
478 attached to that document or incorporated in that document by reference.

479 [~~(74)~~] (73) "Request for proposals process" means the procurement process described  
480 in Part 7, Request for Proposals.

481 [~~(75)~~] (74) "Request for statement of qualifications" means a document used to solicit  
482 information about the qualifications of a person interested in responding to a potential  
483 procurement, including all other documents attached to that document or incorporated in that  
484 document by reference.

485 [~~(76)~~] (75) "Requirements contract" means a contract:

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

488 (b) that:

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

490 (ii) provides a maximum purchase limit.



- 491            [~~(77)~~] (76) "Responsible" means being capable, in all respects, of:
- 492            (a) meeting all the requirements of a solicitation; and
- 493            (b) fully performing all the requirements of the contract resulting from the solicitation,
- 494 including being financially solvent with sufficient financial resources to perform the contract.
- 495            [~~(78)~~] (77) "Responsive" means conforming in all material respects to the requirements
- 496 of a solicitation.
- 497            [~~(79)~~] (78) "Sealed" means manually or electronically secured to prevent disclosure.
- 498            [~~(80)~~] (79) "Service":
- 499            (a) means labor, effort, or work to produce a result that is beneficial to a procurement
- 500 unit;
- 501            (b) includes a professional service; and
- 502            (c) does not include labor, effort, or work provided under an employment agreement or
- 503 a collective bargaining agreement.
- 504            [~~(81)~~] (80) "Small purchase process" means the procurement process described in
- 505 Section [63G-6a-506](#).
- 506            [~~(82)~~] (81) "Sole source contract" means a contract resulting from a sole source
- 507 procurement.
- 508            [~~(83)~~] (82) "Sole source procurement" means a procurement without competition
- 509 pursuant to a determination under Subsection [63G-6a-802\(1\)\(a\)](#) that there is only one source
- 510 for the procurement item.
- 511            [~~(84)~~] (83) "Solicitation" means an invitation for bids, request for proposals, request
- 512 for statement of qualifications, or request for information.
- 513            [~~(85)~~] (84) "Solicitation response" means:
- 514            (a) a bid submitted in response to an invitation for bids;
- 515            (b) a proposal submitted in response to a request for proposals; or
- 516            (c) a statement of qualifications submitted in response to a request for statement of
- 517 qualifications.
- 518            [~~(86)~~] (85) "Special service district" means the same as that term is defined in Section
- 519 [17D-1-102](#).
- 520            [~~(87)~~] (86) "Specification" means any description of the physical or functional
- 521 characteristics or of the nature of a procurement item included in an invitation for bids or a

522 request for proposals, or otherwise specified or agreed to by a procurement unit, including a  
523 description of:

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

525 (b) preparing a procurement item for delivery.

526 ~~[(88)]~~ (87) "Standard procurement process" means:

527 (a) the bidding process;

528 (b) the request for proposals process;

529 (c) the approved vendor list process;

530 (d) the small purchase process; or

531 (e) the design professional procurement process.

532 ~~[(89)]~~ (88) "State cooperative contract" means a contract awarded by the division for  
533 and in behalf of all public entities.

534 ~~[(90)]~~ (89) "Statement of qualifications" means a written statement submitted to a  
535 procurement unit in response to a request for statement of qualifications.

536 ~~[(91)]~~ (90) "Subcontractor":

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

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

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

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

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

548 ~~[(92)]~~ (91) "Supply" means a good, material, technology, piece of equipment, or any  
549 other item of personal property.

550 ~~[(93)]~~ (92) "Tie bid" means that the lowest responsive bids of responsible bidders are  
551 identical in price.

552 ~~[(94)]~~ (93) "Time and materials contract" means a contract under which the contractor

553 is paid:

- 554 (a) the actual cost of direct labor at specified hourly rates;
- 555 (b) the actual cost of materials and equipment usage; and
- 556 (c) an additional amount, expressly described in the contract, to cover overhead and
- 557 profit, that is not based on a percentage of the cost to the contractor.

558 [~~95~~] (94) "Transitional costs":

559 (a) means the costs of changing:

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

561 procurement item; or

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

563 (b) includes:

564 (i) training costs;

565 (ii) conversion costs;

566 (iii) compatibility costs;

567 (iv) costs associated with system downtime;

568 (v) disruption of service costs;

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

570 (vii) installation costs; and

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

572 (c) does not include:

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

574 (ii) contract negotiation or drafting costs.

575 [~~96~~] (95) "Trial use contract" means a contract for a procurement item that the

576 procurement unit acquires for a trial use or testing to determine whether the procurement item

577 will benefit the procurement unit.

578 [~~97~~] (96) "Vendor":

579 (a) means a person who is seeking to enter into a contract with a procurement unit to

580 provide a procurement item; and

581 (b) includes:

582 (i) a bidder;

583 (ii) an offeror;

584 (iii) an approved vendor; and

585 (iv) a design professional.

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

587 **63G-6a-112. Required public notice.**

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

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

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

593 [~~(c)~~ (b) information on how to contact the issuing procurement unit;

594 [~~(d)~~ (c) the date of the opening and closing of the solicitation;

595 [~~(e)~~ (d) information on how to obtain a copy of the procurement documents;

596 [~~(f)~~ (e) a general description of the procurement items that will be obtained through  
597 the standard procurement process or procurement under Section [63G-6a-802](#); and

598 [~~(g)~~ (f) for a notice of a procurement under Section [63G-6a-802](#):

599 (i) contact information and other information relating to contesting or obtaining  
600 additional information relating to the procurement; and

601 (ii) the earliest date that the procurement unit may make the procurement.

602 (2) Except as provided in Subsection (4), the issuing procurement unit shall publish the  
603 notice described in Subsection (1):

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

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

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

608 (A) directly impacted by the procurement; or

609 (B) over which the procurement unit has jurisdiction;

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

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

614 (3) Except as provided in Subsection (4), for a procurement under Section [63G-6a-802](#)

615 for which notice is required to be published in accordance with this section, the issuing  
616 procurement unit shall publish the notice described in Subsection (1):

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

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

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

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

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

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

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

645 (7) (a) It is the responsibility of a person seeking information provided by a public

646 notice under this section to seek out, find, and respond to a public notice issued by a  
647 procurement unit.

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

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

651 **63G-6a-116. Procurement of administrative law judge service.**

652 (1) As used in this section:

653 (a) "Administrative law judge" means the same as that term is defined in Section  
654 67-19e-102.

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

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

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

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

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

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

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

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

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

673 (c) the expected term of the contract.

674 (5) A procurement of administrative law judge service using a small purchase process  
675 is subject to rules made pursuant to Subsection 63G-6a-506(2)(c).

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

677           **63G-6a-302. Chief procurement officer -- Appointment -- Qualifications --**  
678 **Authority.**

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

682           (2) The chief procurement officer shall:

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

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

686           (B) negotiating contract terms and conditions; and

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

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

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

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

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

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

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

697           **63G-6a-410. Request for statement of qualifications -- Process.**

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

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

700           (A) bidding process;

701           (B) request for proposals process; or

702           (C) design professional procurement process; and

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

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

- 708 (2) A procurement unit may not:
- 709 (a) award a contract based solely on the process described in this section; or
- 710 (b) solicit costs, pricing, or rates or negotiate fees through the process described in this
- 711 section.
- 712 (3) The process of identifying qualified vendors in a multiple-stage procurement
- 713 process or of establishing an approved vendor list under Section 63G-6a-507 is initiated by a
- 714 procurement unit issuing a request for statement of qualifications.
- 715 (4) A request for statement of qualifications in a multiple-stage procurement process
- 716 shall include:
- 717 (a) a statement indicating that participation in other stages of the multiple-stage
- 718 procurement process will be limited to qualified vendors;
- 719 (b) the minimum mandatory requirements, evaluation criteria, and applicable score
- 720 thresholds that will be used to identify qualified vendors, including, as applicable:
- 721 (i) experience and work history;
- 722 (ii) management and staff requirements or standards;
- 723 (iii) licenses, certifications, and other qualifications;
- 724 (iv) performance ratings or references;
- 725 (v) financial stability; and
- 726 (vi) other information pertaining to vendor qualifications that the chief procurement
- 727 officer or the head of a procurement unit with independent procurement authority considers
- 728 relevant or important; and
- 729 (c) the deadline by which a vendor is required to submit a statement of qualifications.
- 730 (5) A request for statement of qualifications in an approved vendor list process under
- 731 Section 63G-6a-507 shall include:
- 732 (a) a general description of, as applicable:
- 733 (i) the procurement item that the procurement unit seeks to acquire;
- 734 (ii) the type of project or scope or category of work that will be the subject of a
- 735 procurement by the procurement unit;
- 736 (iii) the procurement process the procurement unit will use to acquire the procurement
- 737 item; and
- 738 (iv) the type of vendor the procurement unit seeks to provide the procurement item;



- 739 (b) the minimum mandatory requirements, evaluation criteria, and applicable score  
740 thresholds that vendors are required to meet to be included on the approved vendor list;
- 741 (c) a statement indicating that the approved vendor list will include only responsible  
742 vendors that:
- 743 (i) submit a responsive statement of qualifications; and  
744 (ii) meet the minimum mandatory requirements, evaluation criteria, and applicable  
745 score thresholds described in the request for statement of qualifications;
- 746 (d) a statement indicating that only vendors on the approved vendor list will be able to  
747 participate in the procurements identified in the request for statement of qualifications;
- 748 (e) a statement indicating whether the procurement unit will use a performance rating  
749 system for evaluating the performance of vendors on the approved vendor list, including  
750 whether a vendor on the approved vendor list may be disqualified and removed from the list;
- 751 (f) (i) a statement indicating whether the procurement unit uses a closed-ended  
752 approved vendor list, as defined in Section [63G-6a-507](#), or an open-ended approved vendor  
753 list, as defined in Section [63G-6a-507](#); and
- 754 (ii) (A) if the procurement unit uses a closed-ended approved vendor list, the deadline  
755 by which a vendor is required to submit a statement of qualifications and a specified period of  
756 time after which the approved vendor list will expire; or
- 757 (B) if the procurement unit uses an open-ended approved vendor list, the deadline by  
758 which a vendor is required to submit a statement of qualifications to be considered for the  
759 initial approved vendor list, a schedule indicating when a vendor not on the initial approved  
760 vendor list may submit a statement of qualifications to be considered to be added to the  
761 approved vendor list, and the specified period of time after which a vendor is required to  
762 submit a new statement of qualifications for evaluation before the vendor's status as an  
763 approved vendor on the approved vendor list may be renewed; and
- 764 (g) a description of any other criteria or requirements specific to the procurement item  
765 or scope of work that is the subject of the procurement.
- 766 (6) A procurement unit issuing a request for statement of qualifications shall publish  
767 the request as provided in Section [63G-6a-112](#).
- 768 (7) After the deadline for submitting a statement of qualifications, the chief  
769 procurement officer or the head of a procurement unit with independent procurement authority

770 may allow a vendor to correct an immaterial error in a statement of qualifications, as provided  
771 in Section 63G-6a-114.

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

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

775 (A) is not responsible;

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

777 (C) has engaged in unethical conduct; or

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

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

784 (iii) the statement of qualifications:

785 (A) is not responsive; or

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

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

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

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

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

801 ~~evaluation committee for each other procurement shall consist of]~~ at least three individuals  
802 with at least a general familiarity with or basic understanding of:

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

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

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

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

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

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

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

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

818 (i) from an expert or consultant who:

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

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

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

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

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

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

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

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

- 832 (i) may only explain, illustrate, or interpret the contents of the vendor's original  
833 statement of qualifications; and
- 834 (ii) may not:
- 835 (A) address criteria or specifications not contained in the vendor's original statement of  
836 qualifications;
- 837 (B) correct a deficiency, inaccuracy, or mistake in a statement of qualifications that is  
838 not an immaterial error;
- 839 (C) correct an incomplete submission of documents that the request for statement of  
840 qualifications required to be submitted with the statement of qualifications;
- 841 (D) correct a failure to submit a timely statement of qualifications;
- 842 (E) substitute or alter a required form or other document specified in the statement of  
843 qualifications;
- 844 (F) remedy a cause for a vendor being considered to be not responsible or a statement  
845 of qualifications not responsive; or
- 846 (G) correct a defect or inadequacy resulting in a determination that a vendor does not  
847 meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds  
848 established in the statement of qualifications.
- 849 (e) After the evaluation committee completes its evaluation and scoring of the  
850 statements of qualifications, the evaluation committee shall submit the statements of  
851 qualifications and evaluation scores to the head of the procurement unit for review and final  
852 determination of:
- 853 (i) qualified vendors, if the request for statement of qualifications process is used as  
854 one of the stages of a multiple-stage process; or
- 855 (ii) vendors to be included on an approved vendor list, if the request for statement of  
856 qualifications process is used as part of the approved vendor list process.
- 857 (f) The issuing procurement unit shall review the evaluation committee's scores and  
858 correct any errors, scoring inconsistencies, and reported noncompliance with this chapter.
- 859 (g) (i) The deliberations of an evaluation committee under this Subsection (9) may be  
860 held in private.
- 861 (ii) If the evaluation committee is a public body, as defined in Section [52-4-103](#), the  
862 evaluation committee shall comply with Section [52-4-205](#) in closing a meeting for its

863 deliberations.

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

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

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

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

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

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

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

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

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

890 **63G-6a-506. Small purchases.**

891 (1) As used in this section:

892 (a) "Annual cumulative threshold" means the maximum total annual amount,  
893 established by the applicable rulemaking authority under Subsection (2), that a procurement

894 unit may expend to obtain procurement items from the same source under this section.

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

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

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

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

906 (i) establishing expenditure thresholds, including:

907 (A) an annual cumulative threshold;

908 (B) an individual procurement threshold; and

909 (C) a single procurement aggregate threshold;

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

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

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

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

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

- 925 (5) Subsection (4) does not apply if:
- 926 (a) the procurement item is obtained for an unanticipated, urgent, or emergency
- 927 condition, including:
- 928 (i) an item needed to avoid stopping a public construction project;
- 929 (ii) an immediate repair to a facility or equipment; or
- 930 (iii) another emergency condition; or
- 931 (b) the chief procurement officer or the head of a procurement unit that is an executive
- 932 branch procurement unit with independent procurement authority:
- 933 (i) determines in writing that it is in the best interest of the procurement unit to obtain
- 934 an individual procurement item outside of the state contract, comparing:
- 935 (A) the contract terms and conditions applicable to the procurement item under the
- 936 state contract with the contract terms and conditions applicable to the procurement item if the
- 937 procurement item is obtained outside of the state contract;
- 938 (B) the maintenance and service applicable to the procurement item under the state
- 939 contract with the maintenance and service applicable to the procurement item if the
- 940 procurement item is obtained outside of the state contract;
- 941 (C) the warranties applicable to the procurement item under the state contract with the
- 942 warranties applicable to the procurement item if the procurement item is obtained outside of
- 943 the state contract;
- 944 (D) the quality of the procurement item under the state contract with the quality of the
- 945 procurement item if the procurement item is obtained outside of the state contract; and
- 946 (E) the cost of the procurement item under the state contract with the cost of the
- 947 procurement item if the procurement item is obtained outside of the state contract;
- 948 (ii) for a procurement item that, if defective in its manufacture, installation, or
- 949 performance, may result in serious physical injury, death, or substantial property damage,
- 950 determines in writing that the terms and conditions, relating to liability for injury, death, or
- 951 property damage, available from the source other than the contractor who holds the state
- 952 contract, are similar to, or better than, the terms and conditions available under the state
- 953 contract; and
- 954 (iii) grants an exception, in writing, to the requirement described in Subsection (4).
- 955 (6) Except as otherwise expressly provided in this section, a procurement unit:

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

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

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

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

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

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

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

973 ~~[(i) a second degree felony, if the value of the procurement before being divided is~~  
974 ~~\$1,000,000 or more;]~~

975 ~~[(ii) a third degree felony, if the value of the procurement before being divided is~~  
976 ~~\$250,000 or more but less than \$1,000,000;]~~

977 ~~[(iii) a class A misdemeanor, if the value of the procurement before being divided is~~  
978 ~~\$100,000 or more but less than \$250,000; or]~~

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

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

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

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

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



987           ~~[(10)]~~ (8) The Division of Finance within the Department of Administrative Services  
988 may conduct an audit of an executive branch procurement unit to verify compliance with the  
989 requirements of this section.

990           ~~[(11)]~~ (9) An executive branch procurement unit may not make a small purchase after  
991 January 1, 2014, unless the chief procurement officer certifies that the person responsible for  
992 procurements in the procurement unit has satisfactorily completed training on this section and  
993 the rules made under this section.

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

995           **63G-6a-507. Approved vendor list procurement process.**

996           (1) As used in this section:

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

999           (i) a short period of time, specified by the procurement unit, during which vendors may  
1000 be added to the list; and

1001           (ii) a specified period of time after which the list will expire.

1002           (b) "Open-ended approved vendor list" means an approved vendor list that is subject  
1003 to:

1004           (i) an indeterminate period of time during which vendors may be added to the list;

1005           (ii) the addition of vendors to the list throughout the term of the list; and

1006           (iii) a specified period of time after which a vendor on the list is required to submit the  
1007 vendor's qualifications for evaluation before the vendor may be renewed as an approved  
1008 vendor.

1009           (2) A procurement unit may not establish an approved vendor list unless the  
1010 procurement unit has first completed the statement of qualifications process described in  
1011 Section [63G-6a-410](#).

1012           (3) (a) A procurement unit may establish an approved vendor list for:

1013           (i) a specific, fully defined procurement item; or

1014           (ii) a future procurement item that is not specifically and fully defined, if the request  
1015 for statement of qualifications contains a general description of:

1016           (A) the procurement item; and

1017           (B) the type of vendor that the procurement unit seeks to provide the procurement item.

1018 (b) A procurement unit may not award a contract to a vendor on an approved vendor  
1019 list for a procurement item that is outside the scope of the general description of the  
1020 procurement item contained in the request for statement of qualifications.

1021 (4) After receiving the statements of qualifications and evaluation scores submitted by  
1022 the evaluation committee under Subsection [63G-6a-410\(9\)\(~~d~~\)e](#), the head of the conducting  
1023 procurement unit using the request for statement of qualifications process under Section  
1024 [63G-6a-410](#) as part of an approved vendor list process shall:

1025 (a) include on an approved vendor list those vendors meeting the minimum mandatory  
1026 requirements, evaluation criteria, and applicable score thresholds; and

1027 (b) reject any vendor not meeting the minimum mandatory requirements, evaluation  
1028 criteria, and applicable score thresholds as ineligible for inclusion on the approved vendor list.

1029 (5) (a) A procurement unit shall include approved vendors on a closed-ended approved  
1030 vendor list or an open-ended approved vendor list.

1031 (b) (i) A closed-ended approved vendor list shall expire no later than 18 months after  
1032 the publication of the closed-ended approved vendor list.

1033 (ii) A procurement unit shall require a vendor on an open-ended approved vendor list,  
1034 in order to remain on the approved vendor list, to submit an updated statement of qualifications  
1035 for evaluation no later than 18 months after the vendor was added to the list as an approved  
1036 vendor.

1037 (6) A procurement unit may:

1038 (a) (i) using a bidding process, request for proposals process, small purchase process,  
1039 or design professional procurement process, award a contract to a vendor on an approved  
1040 vendor list for any procurement item or type of procurement item specified by the procurement  
1041 unit in the request for statement of qualifications, including procurement items that the  
1042 procurement unit intends to acquire in a series of future procurements described in the request  
1043 for statement of qualifications; and

1044 (ii) limit participation in a bidding process, request for proposals process, small  
1045 purchase process, or design professional procurement process to vendors on an approved  
1046 vendor list; or

1047 (b) award a contract to a vendor on an approved vendor list at a price established as  
1048 provided in Section [63G-6a-113](#).

1049 (7) After establishing an approved vendor list as provided in this section, the  
1050 conducting procurement unit shall, before using the approved vendor list, submit the approved  
1051 vendor list to the issuing procurement unit for publication by the issuing procurement unit.

1052 (8) A conducting procurement unit administering an open-ended approved vendor list  
1053 shall:

1054 (a) require a vendor seeking inclusion on the approved vendor list to submit a  
1055 statement of qualifications that complies with all requirements applicable at the time of the  
1056 initial request for statement of qualifications;

1057 (b) if modifying the requirements for inclusion on the approved vendor list, apply any  
1058 new or additional requirement to all vendors equally, whether a vendor is seeking inclusion on  
1059 the approved vendor list for the first time or is already included on the approved vendor list;  
1060 and

1061 (c) keep the request for statement of qualifications posted on a website as required  
1062 under Subsection 63G-6a-112(6).

1063 (9) The applicable rulemaking authority shall make rules pertaining to an approved  
1064 vendor list process, including:

1065 (a) procedures to ensure that all vendors on an approved vendor list have a fair and  
1066 equitable opportunity to compete for a contract for a procurement item; and

1067 (b) requirements for using an approved vendor list with the small purchase process.

1068 Section 9. Section 63G-6a-602 is amended to read:

1069 **63G-6a-602. Contracts awarded by bidding.**

1070 (1) [~~Except as otherwise provided in this chapter, the~~] The division or a procurement  
1071 unit with independent procurement authority [~~shall~~] may award a contract for a procurement  
1072 item by the bidding process, in accordance with the rules of the applicable rulemaking  
1073 authority.

1074 (2) The bidding standard procurement process is appropriate to use when cost is the  
1075 major factor in determining the award of a procurement.

1076 Section 10. Section 63G-6a-603 is amended to read:

1077 **63G-6a-603. Invitation for bids -- Requirements -- Publication.**

1078 (1) The bidding standard procurement process begins when the issuing procurement  
1079 unit issues an invitation for bids.

- 1080 (2) An invitation for bids shall:
- 1081 (a) state the period of time during which bids will be accepted;
- 1082 (b) describe the manner in which a bid shall be submitted;
- 1083 (c) state the place where a bid shall be submitted; and
- 1084 (d) include, or incorporate by reference:
- 1085 (i) to the extent practicable, a full description of the procurement items sought and the
- 1086 full scope of work;
- 1087 (ii) the objective criteria that will be used to evaluate the bids; and
- 1088 (iii) the required contractual terms and conditions.
- 1089 (3) An issuing procurement unit shall publish an invitation for bids in accordance with
- 1090 the requirements of Section [63G-6a-112](#).

1091 Section 11. Section **63G-6a-606** is amended to read:

1092 **63G-6a-606. Evaluation of bids -- Award -- Cancellation -- Rejecting a bid.**

- 1093 (1) A procurement unit that conducts a procurement using a bidding [~~standard~~
- 1094 ~~procurement~~] process shall evaluate each bid using the objective criteria described in the
- 1095 invitation for bids, which may include:
- 1096 (a) experience;
- 1097 (b) performance ratings;
- 1098 (c) inspection;
- 1099 (d) testing;
- 1100 (e) quality;
- 1101 (f) workmanship;
- 1102 (g) time and manner of delivery;
- 1103 (h) references;
- 1104 (i) financial stability;
- 1105 (j) cost;
- 1106 (k) suitability for a particular purpose;
- 1107 (l) the contractor's work site safety program, including any requirement that the
- 1108 contractor imposes on subcontractors for a work site safety program; or
- 1109 (m) other objective criteria specified in the invitation for bids.
- 1110 (2) Criteria not described in the invitation for bids may not be used to evaluate a bid.

- 1111 (3) The conducting procurement unit shall:
- 1112 (a) subject to the provisions of Section 63G-6a-1204.5 for multiple award contracts,
- 1113 award the contract as soon as practicable to:
- 1114 (i) the responsible bidder who submits the lowest responsive bid that meets the
- 1115 objective criteria described in the invitation for bids; or
- 1116 (ii) if, in accordance with Subsection (4), the procurement officer or the head of the
- 1117 conducting procurement unit rejects a bid described in Subsection (3)(a)(i), the responsible
- 1118 bidder who submits the next lowest responsive bid that meets the objective criteria described in
- 1119 the invitation for bids; or
- 1120 (b) cancel the invitation for bids without awarding a contract.
- 1121 (4) In accordance with Subsection (5), the procurement officer or the head of the
- 1122 conducting procurement unit may reject a bid for:
- 1123 (a) a violation of this chapter by the bidder who submitted the bid;
- 1124 (b) a violation of a requirement of the invitation for bids;
- 1125 (c) unlawful or unethical conduct by the bidder who submitted the bid; or
- 1126 (d) a change in a bidder's circumstance that, had the change been known at the time the
- 1127 bid was submitted, would have caused the bid to be rejected.
- 1128 (5) A procurement officer or head of a conducting procurement unit who rejects a bid
- 1129 under Subsection (4) shall:
- 1130 (a) make a written finding, stating the reasons for the rejection; and
- 1131 (b) provide a copy of the written finding to the bidder who submitted the rejected bid.
- 1132 (6) If a conducting procurement unit cancels an invitation for bids without awarding a
- 1133 contract, the conducting procurement unit shall make available for public inspection a written
- 1134 justification for the cancellation.
- 1135 Section 12. Section **63G-6a-607** is amended to read:
- 1136 **63G-6a-607. Action if all bids exceed available funds -- Exemption.**
- 1137 (1) Except as provided in Subsection (2) or (3), if the fiscal officer for the conducting
- 1138 procurement unit certifies that all accepted bids exceed available funds and that the lowest
- 1139 responsive [~~and~~] bid from a responsible bidder does not exceed the available funds by more
- 1140 than 5%, the procurement officer may negotiate an adjustment of the bid price and bid
- 1141 requirements with the responsible bidder who submitted the lowest responsive [~~and responsible~~

1142 bidder] bid in order to bring the bid within the amount of available funds.

1143 (2) A procurement officer may not adjust the bid requirements under Subsection (1) if  
1144 there is a substantial likelihood that, had the adjustment been included in the invitation for  
1145 bids, a person that did not submit a bid would have submitted a responsive[, responsible,] and  
1146 competitive bid.

1147 (3) The Division of Facilities Construction and Management is exempt from the  
1148 requirements of this section if:

1149 (a) the building board adopts rules governing procedures when all accepted bids exceed  
1150 available funds; and

1151 (b) the Division of Facilities Construction and Management complies with the rules  
1152 described in Subsection (3)(a).

1153 Section 13. Section **63G-6a-608** is amended to read:

1154 **63G-6a-608. Tie bids -- Resolution -- Copies provided to attorney general.**

1155 (1) A procurement officer shall resolve a tie bid in accordance with a method  
1156 established by rule made by the applicable rulemaking authority. The method may include  
1157 awarding the tie bid:

1158 (a) to the tie bidder who:

1159 (i) is a provider of state products, if no other tie bidder is a [responsive] provider of  
1160 state products;

1161 (ii) is closest to the point of delivery;

1162 (iii) received the previous award; or

1163 (iv) will provide the earliest delivery date;

1164 (b) by drawing lots; or

1165 (c) by any other reasonable method of resolving a tie bid.

1166 (2) The method chosen by the procurement officer to resolve a tie bid shall be at the  
1167 sole discretion of the procurement officer, subject to the rules established under Subsection (1).

1168 (3) A procurement unit in the state executive branch shall provide a copy of the  
1169 procurement to the attorney general if an award of a contract to a tie bidder exceeds \$100,000  
1170 in expenditures.

1171 Section 14. Section **63G-6a-612** is amended to read:

1172 **63G-6a-612. Conduct of reverse auction.**

- 1173 (1) A procurement unit conducting a reverse auction:
- 1174 (a) may conduct the reverse auction at a physical location or by electronic means;
- 1175 (b) shall permit all prequalified bidders to participate in the reverse auction;
- 1176 (c) may not permit a bidder to participate in the reverse auction if the bidder did not
- 1177 prequalify to participate in the reverse auction;
- 1178 (d) may not accept a bid after the time for submission of a bid has expired;
- 1179 (e) shall update the bids on a real time basis; and
- 1180 (f) shall conduct the reverse auction in a manner that permits each bidder to:
- 1181 (i) bid against each other; and
- 1182 (ii) lower the bidder's price below the lowest bid before the reverse auction closes.
- 1183 (2) At the end of the reverse auction, the conducting procurement unit shall:
- 1184 (a) award the contract as soon as practicable to the ~~[lowest responsive and]~~ responsible
- 1185 bidder who:
- 1186 (i) meets the objective criteria described in the invitation for bids; [or] and
- 1187 (ii) submitted the lowest responsive bid; or
- 1188 (b) cancel the reverse auction without awarding a contract.
- 1189 (3) After the reverse auction is finished, the conducting procurement unit shall make
- 1190 publicly available:
- 1191 (a) (i) the amount of the final bid submitted by each bidder during the reverse auction;
- 1192 and
- 1193 (ii) the identity of the bidder that submitted each final bid; and
- 1194 (b) if practicable:
- 1195 (i) the amount of each bid submitted during the reverse auction; and
- 1196 (ii) the identity of the bidder that submitted each bid.
- 1197 Section 15. Section **63G-6a-702** is amended to read:
- 1198 **63G-6a-702. Contracts awarded by request for proposals.**
- 1199 ~~[(1) A request for proposals standard procurement process may be used instead of~~
- 1200 ~~bidding if the procurement officer determines, in writing, that the request for proposals~~
- 1201 ~~standard procurement process will provide the best value to the procurement unit.]~~
- 1202 (1) The division or a procurement unit with independent procurement authority may
- 1203 award a contract for a procurement item by the request for proposals process, in accordance

1204 with the rules of the applicable rulemaking authority.

1205 (2) (a) The request for proposals [~~standard procurement~~] process is appropriate for a  
1206 procurement unit to use [for] in selecting the proposal that provides the best value or is the  
1207 most advantageous to the procurement unit, including when:

1208 [~~(a) the procurement of professional services;~~]

1209 [~~(b) a design-build procurement;~~]

1210 (i) the procurement involves a contract whose terms and conditions are to be negotiated  
1211 in order to achieve the result that is the most advantageous to the procurement unit;

1212 [~~(c) when~~] (ii) cost is not the most important factor to be considered in making the  
1213 selection that is most advantageous to the procurement unit; or

1214 [~~(d) when~~] (iii) factors, apart from or in addition to cost, are highly significant in  
1215 making the selection that is most advantageous to the procurement unit.

1216 (b) The types of procurements for which it is appropriate to use the request for  
1217 proposals process include:

1218 (i) a procurement of professional services; and

1219 (ii) a procurement of design-build or construction manager/general contractor services.

1220 (3) The procurement of architect-engineer services is governed by Part 15,  
1221 [~~Architect-Engineer Services~~] Design Professional Services.

1222 Section 16. Section **63G-6a-703** is amended to read:

1223 **63G-6a-703. Request for proposals -- Requirements -- Publication of request.**

1224 (1) The request for proposals standard procurement process begins when the division  
1225 or a procurement unit with independent procurement authority issues a request for proposals.

1226 (2) A request for proposals shall:

1227 (a) state the period of time during which a proposal will be accepted;

1228 (b) describe the manner in which a proposal shall be submitted;

1229 (c) state the place where a proposal shall be submitted;

1230 (d) include, or incorporate by reference:

1231 (i) to the extent practicable, a full description of the procurement items sought and the  
1232 full scope of work;

1233 (ii) a description of the subjective and objective criteria that will be used to evaluate  
1234 the proposal; and



- 1235 (iii) the standard contractual terms and conditions required by the authorized  
1236 purchasing entity;
- 1237 (e) state the relative weight that will be given to each score for the criteria described in  
1238 Subsection (2)(d)(ii), including cost;
- 1239 (f) state the formula that will be used to determine the score awarded for the cost of  
1240 each proposal;
- 1241 (g) if the request for proposals will be conducted in multiple stages, as described in  
1242 Section 63G-6a-710, include a description of the stages and the criteria and scoring that will be  
1243 used to screen offerors at each stage; and
- 1244 (h) state that best and final offers may be allowed, as provided in Section  
1245 63G-6a-707.5, from responsible offerors who submit responsive proposals that meet minimum  
1246 qualifications, evaluation criteria, or applicable score thresholds identified in the request for  
1247 proposals.
- 1248 (3) The division or a procurement unit with independent procurement authority shall  
1249 publish a request for proposals in accordance with the requirements of Section 63G-6a-112.
- 1250 Section 17. Section 63G-6a-707 is amended to read:
- 1251 **63G-6a-707. Evaluation of proposals -- Evaluation committee.**
- 1252 (1) To determine which proposal provides the best value to the procurement unit, the  
1253 evaluation committee shall evaluate each responsible offeror's responsive [~~and responsible~~]  
1254 proposal that has not been disqualified from consideration under the provisions of this chapter,  
1255 using the criteria described in the request for proposals, which may include:
- 1256 (a) experience;
- 1257 (b) performance ratings;
- 1258 (c) inspection;
- 1259 (d) testing;
- 1260 (e) quality;
- 1261 (f) workmanship;
- 1262 (g) time, manner, or schedule of delivery;
- 1263 (h) references;
- 1264 (i) financial solvency;
- 1265 (j) suitability for a particular purpose;

1266 (k) management plans;

1267 (l) the presence and quality of a work site safety program, including any requirement

1268 that the offeror imposes on subcontractors for a work site safety program;

1269 (m) cost; or

1270 (n) other subjective or objective criteria specified in the request for proposals.

1271 (2) Criteria not described in the request for proposals may not be used to evaluate a

1272 proposal.

1273 ~~[(3)(a) For a procurement of administrative law judge service, an evaluation~~

1274 ~~committee shall consist of:]~~

1275 ~~[(i) the head of the conducting procurement unit, or the head's designee;]~~

1276 ~~[(ii) the head of an executive branch procurement unit other than the conducting~~

1277 ~~procurement unit, appointed by the executive director of the Department of Human Resource~~

1278 ~~Management, or the head's designee; and]~~

1279 ~~[(iii) the executive director of the Department of Human Resource Management, or the~~

1280 ~~executive director's designee.]~~

1281 ~~[(b) For every other procurement requiring an evaluation by an evaluation committee,~~

1282 ~~the]~~

1283 (3) The conducting procurement unit shall:

1284 ~~[(†)]~~ (a) appoint an evaluation committee consisting of at least three individuals with at

1285 least a general familiarity with or basic understanding of:

1286 ~~[(A)]~~ (i) the technical requirements relating to the type of procurement item that is the

1287 subject of the procurement; or

1288 ~~[(B)]~~ (ii) the need that the procurement item is intended to address; and

1289 ~~[(††)]~~ (b) ensure that the evaluation committee and each individual participating in the

1290 evaluation committee process:

1291 ~~[(A)]~~ (i) does not have a conflict of interest with any of the offerors;

1292 ~~[(B)]~~ (ii) can fairly evaluate each proposal;

1293 ~~[(C)]~~ (iii) does not contact or communicate with an offeror concerning the procurement

1294 outside the official evaluation committee process; and

1295 ~~[(D)]~~ (iv) conducts or participates in the evaluation in a manner that ensures a fair and

1296 competitive process and avoids the appearance of impropriety.

1297 (4) A conducting procurement unit may authorize an evaluation committee to receive  
1298 assistance:

1299 (a) from an expert or consultant who:

1300 (i) is not a member of the evaluation committee; and

1301 (ii) does not participate in the evaluation scoring; and

1302 (b) to better understand a technical issue involved in the procurement.

1303 (5) (a) An evaluation committee may, with the approval of the head of the conducting  
1304 procurement unit, enter into discussions or conduct interviews with, or attend presentations by,  
1305 the offerors, for the purpose of clarifying information contained in proposals.

1306 (b) In a discussion, interview, or presentation under Subsection (5)(a), an offeror:

1307 (i) may only explain, illustrate, or interpret the contents of the offeror's original  
1308 proposal; and

1309 (ii) may not:

1310 (A) address criteria or specifications not contained in the offeror's original proposal;

1311 (B) correct a deficiency, inaccuracy, or mistake in a proposal that is not an immaterial  
1312 error;

1313 (C) correct an incomplete submission of documents that the solicitation required to be  
1314 submitted with the proposal;

1315 (D) correct a failure to submit a timely proposal;

1316 (E) substitute or alter a required form or other document specified in the solicitation;

1317 (F) remedy a cause for an offeror being considered to be not responsible or a proposal  
1318 not responsive; or

1319 (G) correct a defect or inadequacy resulting in a determination that an offeror does not  
1320 meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds  
1321 established in the solicitation.

1322 (6) (a) Except as provided in Subsection (7)(b) relating to access to management fee  
1323 information, and except as provided in Subsection (9), each member of the evaluation  
1324 committee is prohibited from knowing, or having access to, any information relating to the  
1325 cost, or the scoring of the cost, of a proposal until after the evaluation committee submits its  
1326 final recommended scores on all other criteria to the issuing procurement unit.

1327 (b) The issuing procurement unit shall:

1328 (i) if applicable, assign an individual who is not a member of the evaluation committee  
1329 to calculate scores for cost based on the applicable scoring formula, weighting, and other  
1330 scoring procedures contained in the request for proposals;

1331 (ii) review the evaluation committee's scores and correct any errors, scoring  
1332 inconsistencies, and reported noncompliance with this chapter;

1333 (iii) add the scores calculated for cost, if applicable, to the evaluation committee's final  
1334 recommended scores on criteria other than cost to derive the total combined score for each  
1335 responsive [~~and responsible~~] proposal from a responsible offeror; and

1336 (iv) provide to the evaluation committee the total combined score calculated for each  
1337 responsive [~~and responsible~~] proposal from a responsible offeror, including any applicable cost  
1338 formula, weighting, and scoring procedures used to calculate the total combined scores.

1339 (c) The evaluation committee may not:

1340 (i) change its final recommended scores described in Subsection (6)(a) after the  
1341 evaluation committee has submitted those scores to the issuing procurement unit; or

1342 (ii) change cost scores calculated by the issuing procurement unit.

1343 (7) (a) As used in this Subsection (7), "management fee" includes only the following  
1344 fees of the construction manager/general contractor:

1345 (i) preconstruction phase services;

1346 (ii) monthly supervision fees for the construction phase; and

1347 (iii) overhead and profit for the construction phase.

1348 (b) When selecting a construction manager/general contractor for a construction  
1349 project, the evaluation committee:

1350 (i) may score a construction manager/general contractor based upon criteria contained  
1351 in the solicitation, including qualifications, performance ratings, references, management plan,  
1352 certifications, and other project specific criteria described in the solicitation;

1353 (ii) may, as described in the solicitation, weight and score the management fee as a  
1354 fixed rate or as a fixed percentage of the estimated contract value;

1355 (iii) may, at any time after the opening of the responses to the request for proposals,  
1356 have access to, and consider, the management fee proposed by the offerors; and

1357 (iv) except as provided in Subsection (9), may not know or have access to any other  
1358 information relating to the cost of construction submitted by the offerors, until after the

1359 evaluation committee submits its final recommended scores on all other criteria to the issuing  
1360 procurement unit.

1361 (8) (a) The deliberations of an evaluation committee may be held in private.

1362 (b) If the evaluation committee is a public body, as defined in Section 52-4-103, the  
1363 evaluation committee shall comply with Section 52-4-205 in closing a meeting for its  
1364 deliberations.

1365 (9) An issuing procurement unit is not required to comply with Subsection (6) or  
1366 (7)(b)(iv), as applicable, if the head of the issuing procurement unit or a person designated by  
1367 rule made by the applicable rulemaking authority:

1368 (a) signs a written statement:

1369 (i) indicating that, due to the nature of the proposal or other circumstances, it is in the  
1370 best interest of the procurement unit to waive compliance with Subsection (6) or (7)(b)(iv), as  
1371 the case may be; and

1372 (ii) describing the nature of the proposal and the other circumstances relied upon to  
1373 waive compliance with Subsection (6) or (7)(b)(iv); and

1374 (b) makes the written statement available to the public, upon request.

1375 Section 18. Section 63G-6a-707.5 is repealed and reenacted to read:

1376 **63G-6a-707.5. Best and final offers.**

1377 (1) The best and final offer process described in this section:

1378 (a) may be used only in a request for proposals process, whether the request for  
1379 proposals process is used independently or after the establishment of an approved vendor list  
1380 through the approved vendor list process; and

1381 (b) may not be used in any other standard procurement process, whether the other  
1382 standard procurement process is used independently or after the establishment of an approved  
1383 vendor list through the approved vendor list process.

1384 (2) Subject to Subsection (3), a conducting procurement unit may request best and final  
1385 offers from responsible offerors:

1386 (a) only with the approval of the chief procurement officer or the head of the issuing  
1387 procurement unit; and

1388 (b) if:

1389 (i) no single proposal adequately addresses all the specifications stated in the request

- 1390 for proposals;
- 1391 (ii) all proposals are unclear or deficient in one or more respects;
- 1392 (iii) all cost proposals exceed the identified budget or the procurement unit's available
- 1393 funding;
- 1394 (iv) two or more proposals receive an identical evaluation score that is the highest
- 1395 score; or
- 1396 (v) there exist other circumstances that the applicable rulemaking authority has
- 1397 determined in rule justify the conducting procurement unit requesting best and final offers.
- 1398 (3) A conducting procurement unit may request a best and final offer from, and a best
- 1399 and final offer may be submitted to the conducting procurement unit by, only a responsible
- 1400 offeror that has submitted a responsive proposal that meets the minimum mandatory criteria
- 1401 stated in the request for proposals required to be considered in the stage of the procurement
- 1402 process at which best and final offers are being requested.
- 1403 (4) The best and final offer process may not be used to change:
- 1404 (a) a determination that an offeror is not responsible to a determination that the offeror
- 1405 is responsible; or
- 1406 (b) a determination that a proposal is not responsive to a determination that the
- 1407 proposal is responsive.
- 1408 (5) (a) This Subsection (5) applies if a request for best and final offers is issued
- 1409 because all cost proposals exceed the identified budget or the procurement unit's available
- 1410 funding.
- 1411 (b) (i) The conducting procurement unit may, in the request for best and final offers:
- 1412 (A) specify the scope of work reductions the procurement unit is making in order to
- 1413 generate proposals that are within the identified budget or the procurement unit's available
- 1414 funding; or
- 1415 (B) invite offerors submitting best and final offers to specify the scope of work
- 1416 reductions being made so that the reduced cost proposal is within the identified budget or the
- 1417 procurement unit's available funding.
- 1418 (ii) The conducting procurement unit is not required to accept a scope of work
- 1419 reduction that an offeror has specified in the offeror's best and final offer.
- 1420 (c) A best and final offer submitted with a reduced cost proposal shall include an

1421 itemized list identifying specific reductions in the offeror's proposed scope of work that  
1422 correspond to the offeror's reduced cost proposal.

1423 (d) A reduction in the scope of work may not:

1424 (i) eliminate a component identified in the request for proposals as a minimum  
1425 mandatory requirement; or

1426 (ii) alter the nature of the original request for proposals to the extent that a request for  
1427 proposals for the reduced scope of work would have likely attracted a significantly different set  
1428 of offerors submitting proposals in response to the request for proposals.

1429 (6) If a request for best and final offers is issued because two or more proposals  
1430 received an identical evaluation score that is the highest score:

1431 (a) the request may be issued only to offerors who submitted a proposal receiving the  
1432 highest score; and

1433 (b) an offeror submitting a best and final offer may revise:

1434 (i) the technical aspects of the offeror's proposal;

1435 (ii) the offeror's cost proposal, as provided in Subsection (5); or

1436 (iii) both the technical aspects of the offeror's proposal and, as provided in Subsection  
1437 (5), the offeror's cost proposal.

1438 (7) In a request for best and final offers, the conducting procurement unit shall:

1439 (a) clearly specify:

1440 (i) the issues that the procurement unit requests the offerors to address in their best and  
1441 final offers; and

1442 (ii) how best and final offers will be evaluated and scored in accordance with Section  
1443 [63G-6a-707](#);

1444 (b) establish a deadline for an offeror to submit a best and final offer; and

1445 (c) if applicable, establish a schedule and procedure for conducting discussions with  
1446 offerors concerning the best and final offers.

1447 (8) In conducting a best and final offer process under this section, a conducting  
1448 procurement unit shall:

1449 (a) maintain confidential the information the procurement unit receives from an  
1450 offeror, including any cost information, until a contract has been awarded or the request for  
1451 proposals canceled;

1452 (b) ensure that each offeror receives fair and equal treatment; and  
1453 (c) safeguard the integrity of the scope of the original request for proposals, except as  
1454 specifically provided otherwise in this section.

1455 (9) In a best and final offer, an offeror:

1456 (a) may address only the issues described in the request for best and final offers; and

1457 (b) may not correct a material error or deficiency in the offeror's proposal or address  
1458 any issue not described in the request for best and final offers.

1459 (10) If an offeror fails to submit a best and final offer, the conducting procurement unit  
1460 shall treat the offeror's original proposal as the offeror's best and final offer.

1461 (11) After the deadline for submitting best and final offers has passed, the evaluation  
1462 committee shall evaluate the best and final offers submitted using the criteria described in the  
1463 request for proposals.

1464 (12) An offeror may not make and a conducting procurement unit may not consider a  
1465 best and final offer that the conducting procurement unit has not requested under this section.

1466 (13) To implement the best and final offer process described in this section, an  
1467 applicable rulemaking authority may make rules consistent with this section and the other  
1468 provisions of this chapter.

1469 Section 19. Section **63G-6a-709** is amended to read:

1470 **63G-6a-709. Award of contract -- Cancellation -- Rejection of proposal.**

1471 (1) After the completion of the evaluation and scoring of proposals and the justification  
1472 statement, including any required cost-benefit analysis, the evaluation committee shall submit  
1473 the proposals, evaluation scores, and justification statement to the head of the procurement unit  
1474 or designee for review and final determination of a contract award or an award of multiple  
1475 contracts as provided in Section [63G-6a-1204.5](#).

1476 (2) After reviewing the proposals, evaluation scores, and justification statement,  
1477 including any required cost-benefit analysis, the head of the issuing procurement unit shall:

1478 (a) (i) award the contract as soon as practicable to the responsible offeror with the  
1479 responsive proposal receiving the highest total score; or

1480 (ii) (A) if the head of the issuing procurement unit [~~disqualifies an offeror~~] rejects a  
1481 proposal under Subsection (3) of an offeror who would otherwise have been awarded a  
1482 contract, award the contract to the responsible offeror with the responsive proposal receiving



1483 the next highest total score; and

1484 (B) if the head of the issuing procurement unit [~~disqualifies an offeror~~] rejects a  
1485 proposal under Subsection (3) of an offeror who would otherwise have been awarded a contract  
1486 under Subsection (2)(a)(ii)(A), repeat the process described in Subsection (2)(a)(ii)(A) as many  
1487 times as necessary until a contract is awarded to a responsible offeror [~~who is not disqualified~~]  
1488 whose proposal is not rejected; or

1489 (b) cancel the request for proposals without awarding a contract.

1490 (3) The head of an issuing procurement unit may reject a proposal if:

1491 (a) the offeror who submitted the proposal:

1492 (i) is not responsible;

1493 (ii) is in violation of a provision of this chapter;

1494 (iii) has engaged in unethical conduct; or

1495 (iv) fails to sign a contract within:

1496 (A) 90 days after the contract award, if no time is specified in the solicitation; or

1497 (B) a time authorized in writing by the head of the issuing procurement unit;

1498 (b) there is a change in the offeror's circumstances that, if the change had been known  
1499 at the time the offeror's proposal was evaluated, would have caused the proposal not to have  
1500 received the highest score; or

1501 (c) the proposal:

1502 (i) is not responsive; or

1503 (ii) does not meet the mandatory minimum requirements, evaluation criteria, or  
1504 applicable score thresholds stated in the solicitation.

1505 (4) A head of an issuing procurement unit who rejects a proposal under Subsection (3)  
1506 shall:

1507 (a) make a written finding, stating the reasons for the rejection; and

1508 (b) provide a copy of the written finding to the offeror whose proposal is rejected.

1509 (5) If an issuing procurement unit cancels a request for proposals without awarding a  
1510 contract, the issuing procurement unit shall make available for public inspection a written  
1511 justification for the cancellation.

1512 Section 20. Section **63G-6a-802.7** is amended to read:

1513 **63G-6a-802.7. Extension of a contract without engaging in a standard**

1514 **procurement process.**

1515           The chief procurement officer or the head of a procurement unit with independent  
1516 procurement authority may extend an existing contract without engaging in a standard  
1517 procurement process:

1518           (1) for a period of time not to exceed 120 days, if:

1519           (a) an extension of the contract is necessary to:

1520           (i) avoid a lapse in a critical government service; or

1521           (ii) to mitigate a circumstance that is likely to have a negative impact on public health,  
1522 safety, welfare, or property; and

1523           (b) (i) (A) the procurement unit is engaged in a standard procurement process for a  
1524 procurement item that is the subject of the contract being extended; and

1525           (B) the standard procurement process is delayed due to an unintentional error;

1526           (ii) a change in an industry standard requires one or more significant changes to  
1527 specifications for the procurement item; or

1528           (iii) an extension is necessary:

1529           (A) to prevent the loss of federal funds;

1530           (B) to mitigate the effects of a delay of a state or federal appropriation;

1531           (C) to enable the procurement unit to continue to receive a procurement item during a  
1532 delay in the implementation of a contract awarded pursuant to a procurement that has already  
1533 been conducted; or

1534           (D) to enable the procurement unit to continue to receive a procurement item during a  
1535 period of time during which negotiations with a vendor under a new contract for the  
1536 procurement item are being conducted;

1537           (2) for the period of a protest, appeal, or court action, if the protest, appeal, or court  
1538 action is the reason for delaying the award of a new contract; or

1539           (3) for a period of time exceeding 120 days, if, after consulting with the attorney

1540 general or the procurement unit's attorney, the chief procurement officer or head of a

1541 procurement unit with independent procurement authority determines in writing that the

1542 contract extension does not violate state or federal antitrust laws and is consistent with the

1543 purpose of ensuring the fair and equitable treatment of all persons who deal with the

1544 procurement system.

1545 Section 21. Section **63G-6a-903** is amended to read:

1546 **63G-6a-903. Determination of nonresponsibility.**

1547 (1) A determination of nonresponsibility of a [~~bidder or offeror~~] person made by an  
1548 issuing procurement unit shall be made in writing, in accordance with the rules of the  
1549 applicable rulemaking authority.

1550 (2) [~~The~~] A person's unreasonable failure [~~of a bidder or offeror~~] to promptly supply  
1551 information in connection with an inquiry with respect to responsibility may be grounds for a  
1552 determination of nonresponsibility with respect to the [~~bidder or offeror~~] person.

1553 (3) Subject to Title 63G, Chapter 2, Government Records Access and Management  
1554 Act, information furnished by a [~~bidder or offeror~~] person pursuant to this section may not be  
1555 disclosed outside of a procurement unit without the person's prior written consent [~~by the~~  
1556 ~~bidder or offeror~~].

1557 Section 22. Section **63G-6a-904** is amended to read:

1558 **63G-6a-904. Debarment or suspension from consideration for award of contracts**

1559 **-- Process -- Causes for debarment -- Appeal.**

1560 (1) (a) Subject to Subsection (1)(b), the chief procurement officer or the head of a  
1561 procurement unit with independent procurement authority may:

1562 (i) debar a person for cause from consideration for award of contracts for a period not  
1563 to exceed three years; or

1564 (ii) suspend a person from consideration for award of contracts if there is [~~probable~~]  
1565 cause to believe that the person has engaged in any activity that might lead to debarment.

1566 (b) Before debarring or suspending a person under Subsection (1)(a), the chief  
1567 procurement officer or head of a procurement unit with independent procurement authority  
1568 shall:

1569 (i) consult with:

1570 (A) the procurement unit involved in the matter for which debarment or suspension is  
1571 sought; and

1572 (B) the attorney general, if the procurement unit is in the state executive branch, or the  
1573 procurement unit's attorney, if the procurement unit is not in the state executive branch;

1574 (ii) give the person at least 10 days' prior written notice of:

1575 (A) the reasons for which debarment or suspension is being considered; and

1576 (B) the hearing under Subsection (1)(b)(iii); and  
1577 (iii) hold [a] an informal hearing in accordance with Subsection (1)(c).

1578 (c) (i) At [a] an informal hearing under Subsection (1)(b)(iii), the chief procurement  
1579 officer or head of a procurement unit with independent procurement authority may:

- 1580 (A) subpoena witnesses and compel their attendance at the hearing;
- 1581 (B) subpoena documents for production at the hearing;
- 1582 (C) obtain additional factual information; and
- 1583 (D) obtain testimony from experts, the person who is the subject of the proposed  
1584 debarment or suspension, representatives of the procurement unit, or others to assist the chief  
1585 procurement officer or head of a procurement unit with independent procurement authority to  
1586 make a decision on the proposed debarment or suspension.

1587 (ii) The Rules of Evidence do not apply to [a] an informal hearing under Subsection  
1588 (1)(b)(iii).

1589 (iii) The chief procurement officer or head of a procurement unit with independent  
1590 procurement authority shall:

- 1591 (A) record a hearing under Subsection (1)(b)(iii); and
- 1592 (B) preserve all records and other evidence relied upon in reaching a decision until the  
1593 decision becomes final[;].

1594 [~~(C) for an appeal of a debarment or suspension by a procurement unit other than a  
1595 legislative procurement unit, a judicial procurement unit, a local government procurement unit,  
1596 or a public transit district, submit to the procurement policy board chair a copy of the written  
1597 decision and all records and other evidence relied upon in reaching the decision, within seven  
1598 days after receiving a notice that an appeal of a debarment or suspension has been filed under  
1599 Section [63G-6a-1702](#) or after receiving a request from the procurement policy board chair;  
1600 and]~~

1601 [~~(D) for an appeal of a debarment or suspension by a legislative procurement unit, a  
1602 judicial procurement unit, a local government procurement unit, or a public transit district,  
1603 submit to the Utah Court of Appeals a copy of the written decision and all records and other  
1604 evidence relied upon in reaching the decision, within seven days after receiving a notice that an  
1605 appeal of a debarment or suspension has been filed under Section [63G-6a-1802](#).]~~

1606 (iv) The holding of [a] an informal hearing under Subsection (1)(b)(iii) or the issuing

1607 of a decision under Subsection (1)(c)(v) does not affect a person's right to later question or  
1608 challenge the jurisdiction of the chief procurement officer or head of a procurement unit with  
1609 independent procurement authority to hold a hearing or issue a decision.

1610 (v) The chief procurement officer or head of a procurement unit with independent  
1611 procurement authority shall:

1612 (A) promptly issue a written decision regarding a proposed debarment or suspension,  
1613 unless the matter is settled by mutual agreement; and

1614 (B) mail, email, or otherwise immediately furnish a copy of the decision to the person  
1615 who is the subject of the decision.

1616 (vi) A written decision under Subsection (1)(c)(v) shall:

1617 (A) state the reasons for the debarment or suspension, if debarment or suspension is  
1618 ordered; and

1619 (B) inform the person who is debarred or suspended of the right to judicial [~~or~~  
1620 ~~administrative~~] review as provided in this chapter[~~; and~~].

1621 [~~(C) indicate the amount of the security deposit or bond required under Section~~  
1622 ~~63G-6a-1703 and how that amount was calculated.~~]

1623 [~~(vii) (A) A decision of debarment or suspension issued by a procurement unit other~~  
1624 ~~than a legislative procurement unit, a judicial procurement unit, a local government~~  
1625 ~~procurement unit, or a public transit district is final and conclusive unless the person who is~~  
1626 ~~debarred or suspended files an appeal of the decision under Section 63G-6a-1702.~~]

1627 [~~(B) (vii) A decision of debarment or suspension [issued by a legislative procurement~~  
1628 ~~unit, a judicial procurement unit, a local government procurement unit, or a public transit~~  
1629 ~~district] is final and conclusive unless [the person who is debarred or suspended files an appeal~~  
1630 ~~of] the decision is overturned by a court under [Section 63G-6a-1802] Subsection (4).~~

1631 (2) A suspension under this section may not be for a period exceeding three months,  
1632 unless an indictment has been issued for an offense which would be a cause for debarment  
1633 under Subsection (3), in which case the suspension shall, at the request of the attorney general,  
1634 if the procurement unit is in the state executive branch, or the procurement unit's attorney, if  
1635 the procurement unit is not in the state executive branch, remain in effect until after the trial of  
1636 the suspended person.

1637 (3) The causes for debarment include the following:

1638 (a) conviction of a criminal offense as an incident to obtaining or attempting to obtain a  
1639 public or private contract or subcontract or in the performance of a public or private contract or  
1640 subcontract;

1641 (b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery,  
1642 falsification or destruction of records, receiving stolen property, or any other offense indicating  
1643 a lack of business integrity or business honesty which currently, seriously, and directly affects  
1644 responsibility as a contractor for the procurement unit;

1645 (c) conviction under state or federal antitrust statutes;

1646 (d) failure without good cause to perform in accordance with the terms of the contract;

1647 (e) a violation of this chapter; or

1648 (f) any other cause that the chief procurement officer or the head of a procurement unit  
1649 with independent procurement authority determines to be so serious and compelling as to affect  
1650 responsibility as a contractor for the procurement unit, including debarment by another  
1651 governmental entity.

1652 (4) (a) A person who is debarred or suspended under this section may ~~[appeal]~~ seek  
1653 judicial review of the debarment or suspension[:] by filing a petition for judicial review in  
1654 district court.

1655 ~~[(a) as provided in Section 63G-6a-1702, if the debarment or suspension is by a~~  
1656 ~~procurement unit other than a legislative procurement unit, a judicial procurement unit, a local~~  
1657 ~~government procurement unit, or a public transit district; or (b) as provided in Section~~  
1658 ~~63G-6a-1802, if the debarment or suspension is by a legislative procurement unit, a judicial~~  
1659 ~~procurement unit, a local government procurement unit, or a public transit district.]~~

1660 (b) A petition under Subsection (4)(a):

1661 (i) is a complaint governed by the Utah Rules of Civil Procedure;

1662 (ii) shall name the procurement unit as respondent;

1663 (iii) shall be accompanied by a copy of the written decision as to which judicial review  
1664 is sought; and

1665 (iv) is barred unless filed in district court within 30 days after the date of the issuance  
1666 of the written decision of suspension or debarment under Subsection (1)(c)(v).

1667 (c) A district court's review of a petition under Subsection (4)(a) shall be de novo.

1668 (d) A district court shall, without a jury, determine all questions of fact and law,

1669 including any constitutional issue, presented in the pleadings.

1670 (5) A procurement unit may consider a cause for debarment under Subsection (3) as the  
1671 basis for determining that a person responding to a solicitation is not responsible:

1672 (a) independent of any effort or proceeding under this section to debar or suspend the  
1673 person; and

1674 (b) even if the procurement unit does not choose to seek debarment or suspension.

1675 (6) An applicable rulemaking authority may make rules pertaining to the suspension  
1676 and debarment process under this section, including rules governing an informal hearing under  
1677 Subsection (1)(b)(iii).

1678 Section 23. Section **63G-6a-1002** is amended to read:

1679 **63G-6a-1002. Reciprocal preference for providers of state products.**

1680 (1) (a) An issuing procurement unit shall, for all procurements, give a reciprocal  
1681 preference to those bidders offering procurement items that are produced, manufactured,  
1682 mined, grown, or performed in Utah over those bidders offering procurement items that are  
1683 produced, manufactured, mined, grown, or performed in any state that gives or requires a  
1684 preference to procurement items that are produced, manufactured, mined, grown, or performed  
1685 in that state.

1686 (b) The amount of reciprocal preference shall be equal to the amount of the preference  
1687 applied by the other state for that particular procurement item.

1688 (c) In order to receive a reciprocal preference under this section, the bidder shall certify  
1689 on the bid that the procurement items offered are produced, manufactured, mined, grown, or  
1690 performed in Utah.

1691 (d) The reciprocal preference is waived if the certification described in Subsection  
1692 (1)(c) does not appear on the bid.

1693 (2) (a) If the responsible bidder submitting the lowest responsive [~~and responsible~~] bid  
1694 offers procurement items that are produced, manufactured, mined, grown, or performed in a  
1695 state that gives or requires a preference, and if another responsible bidder has submitted a  
1696 responsive [~~and responsible~~] bid offering procurement items that are produced, manufactured,  
1697 mined, grown, or performed in Utah, and with the benefit of the reciprocal preference, the bid  
1698 of the other bidder is equal to or less than the original lowest bid, the issuing procurement unit  
1699 shall:

1700 (i) give notice to the bidder offering procurement items that are produced,  
1701 manufactured, mined, grown, or performed in Utah that the bidder qualifies as a preferred  
1702 bidder; and

1703 (ii) make the purchase from the preferred bidder if the bidder agrees, in writing, to  
1704 meet the low bid within 72 hours after notification that the bidder is a preferred bidder.

1705 (b) The issuing procurement unit shall include the exact price submitted by the lowest  
1706 bidder in the notice the issuing procurement unit submits to the preferred bidder.

1707 (c) The issuing procurement unit may not enter into a contract with any other bidder for  
1708 the purchase until 72 hours have elapsed after notification to the preferred bidder.

1709 (3) (a) If there is more than one preferred bidder, the issuing procurement unit shall  
1710 award the contract to the willing preferred bidder who was the lowest preferred bidder  
1711 originally.

1712 (b) If there were two or more equally low preferred bidders, the issuing procurement  
1713 unit shall comply with the rules of the applicable rulemaking authority to determine which  
1714 bidder should be awarded the contract.

1715 (4) The provisions of this section do not apply if application of this section might  
1716 jeopardize the receipt of federal funds.

1717 Section 24. Section **63G-6a-1003** is amended to read:

1718 **63G-6a-1003. Preference for resident contractors.**

1719 (1) As used in this section, "resident contractor" means a person, partnership,  
1720 corporation, or other business entity that:

1721 (a) either has its principal place of business in Utah or that employs workers who are  
1722 residents of this state when available; and

1723 (b) was transacting business on the date when bids for the public contract were first  
1724 solicited.

1725 (2) (a) When awarding contracts for construction, an issuing procurement unit shall  
1726 grant a resident contractor a reciprocal preference over a nonresident contractor from any state  
1727 that gives or requires a preference to contractors from that state.

1728 (b) The amount of the reciprocal preference shall be equal to the amount of the  
1729 preference applied by the state of the nonresident contractor.

1730 (3) (a) In order to receive the reciprocal preference under this section, the bidder shall



1731 certify on the bid that the bidder qualifies as a resident contractor.

1732 (b) The reciprocal preference is waived if the certification described in Subsection  
1733 (2)(a) does not appear on the bid.

1734 (4) (a) If the responsible contractor submitting the lowest responsive [~~and responsible~~]  
1735 bid is not a resident contractor whose principal place of business is in a state that gives or  
1736 requires a preference to contractors from that state, and if a resident responsible contractor has  
1737 also submitted a responsive [~~and responsible~~] bid, and, with the benefit of the reciprocal  
1738 preference, the resident contractor's bid is equal to or less than the original lowest bid, the  
1739 issuing procurement unit shall:

1740 (i) give notice to the resident contractor that the resident contractor qualifies as a  
1741 preferred resident contractor; and

1742 (ii) issue the contract to the resident contractor if the resident contractor agrees, in  
1743 writing, to meet the low bid within 72 hours after notification that the resident contractor is a  
1744 preferred resident contractor.

1745 (b) The issuing procurement unit shall include the exact price submitted by the lowest  
1746 bidder in the notice that the issuing procurement unit submits to the preferred resident  
1747 contractor.

1748 (c) The issuing procurement unit may not enter into a contract with any other bidder for  
1749 the construction until 72 hours have elapsed after notification to the preferred resident  
1750 contractor.

1751 (5) (a) If there is more than one preferred resident contractor, the issuing procurement  
1752 unit shall award the contract to the willing preferred resident contractor who was the lowest  
1753 preferred resident contractor originally.

1754 (b) If there were two or more equally low preferred resident contractors, the issuing  
1755 procurement unit shall comply with the rules of the applicable rulemaking authority to  
1756 determine which bidder should be awarded the contract.

1757 (6) The provisions of this section do not apply if application of this section might  
1758 jeopardize the receipt of federal funds.

1759 Section 25. Section **63G-6a-1204.5** is amended to read:

1760 **63G-6a-1204.5. Multiple award contracts.**

1761 (1) (a) [~~The~~] Through a standard procurement process, the division or a procurement

1762 unit with independent procurement authority may enter into multiple award contracts with  
1763 [~~bidders or offerors~~] multiple persons.

1764 (b) The applicable rulemaking authority may make rules, consistent with this section,  
1765 regulating the use of multiple award contracts.

1766 (2) Multiple award contracts may be in a procurement unit's best interest if award to  
1767 two or more bidders or offerors for similar procurement items is needed or desired for adequate  
1768 delivery, service, availability, or product compatibility.

1769 (3) A procurement unit that enters into multiple award contracts under this section  
1770 shall:

1771 (a) exercise care to protect and promote competition among bidders or offerors when  
1772 seeking to enter into multiple award contracts;

1773 (b) name all eligible users of the multiple award contracts in the invitation for bids or  
1774 request for proposals; and

1775 (c) if the procurement unit anticipates entering into multiple award contracts before  
1776 issuing the invitation for bids or request for proposals, state in the invitation for bids or request  
1777 for proposals that the procurement unit may enter into multiple award contracts at the end of  
1778 the procurement process.

1779 (4) A procurement unit that enters into multiple award contracts under this section  
1780 shall:

1781 (a) obtain, under the multiple award contracts, all of its normal, recurring requirements  
1782 for the procurement items that are the subject of the contracts until the contracts terminate; and

1783 (b) reserve the right to obtain the procurement items described in Subsection (4)(a)  
1784 separately from the contracts if:

1785 (i) there is a need to obtain a quantity of the procurement items that exceeds the  
1786 amount specified in the contracts; or

1787 (ii) the procurement officer makes a written finding that the procurement items  
1788 available under the contract will not effectively or efficiently meet a nonrecurring special need  
1789 of a procurement unit.

1790 (5) An applicable rulemaking authority may make rules to further regulate a  
1791 procurement under this section.

1792 Section 26. Section **63G-6a-1402** is amended to read:

1793 **63G-6a-1402. Procurement of design-build transportation project contracts.**

1794 (1) As used in this section:

1795 (a) "Design-build transportation project contract" means the procurement of both the  
1796 design and construction of a transportation project in a single contract with a company or  
1797 combination of companies capable of providing the necessary engineering services and  
1798 construction.

1799 (b) "Transportation agency" means:

1800 (i) the Department of Transportation;

1801 (ii) a county of the first or second class, as defined in Section [17-50-501](#);

1802 (iii) a municipality of the first class, as defined in Section [10-2-301](#);

1803 (iv) a public transit district that has more than 200,000 people residing within its  
1804 boundaries; and

1805 (v) a public airport authority.

1806 (2) Except as provided in Subsection (3), a transportation agency may award a  
1807 design-build transportation project contract for any transportation project that has an estimated  
1808 cost of at least \$50,000,000 by following the requirements of this section.

1809 (3) (a) The Department of Transportation:

1810 (i) may award a design-build transportation project contract for any transportation  
1811 project by following the requirements of this section; and

1812 (ii) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative  
1813 Rulemaking Act, establishing requirements for the procurement of its design-build  
1814 transportation project contracts in addition to those required by this section.

1815 (b) A public transit district that has more than 200,000 people residing within its  
1816 boundaries:

1817 (i) may award a design-build transportation project contract for any transportation  
1818 project by following the requirements of this section; and

1819 (ii) shall pass ordinances or a resolution establishing requirements for the procurement  
1820 of its design-build transportation project contracts in addition to those required by this section.

1821 (c) A design-build transportation project contract authorized under this Subsection (3)  
1822 is not subject to the estimated cost threshold described in Subsection (2).

1823 (d) A design-build transportation project contract may include provision by the

1824 contractor of operations, maintenance, or financing.

1825 (4) (a) Before entering into a design-build transportation project contract, a  
1826 transportation agency may issue a request for qualifications to prequalify potential contractors.

1827 (b) Public notice of the request for qualifications shall be given in accordance with  
1828 board rules.

1829 (c) A transportation agency shall require, as part of the qualifications specified in the  
1830 request for qualifications, that potential contractors at least demonstrate their:

1831 (i) construction experience;

1832 (ii) design experience;

1833 (iii) financial, manpower, and equipment resources available for the project; and

1834 (iv) experience in other design-build transportation projects with attributes similar to  
1835 the project being procured.

1836 (d) The request for qualifications shall identify the number of eligible competing  
1837 proposers that the transportation agency will select to submit a proposal, which may not be less  
1838 than two.

1839 (5) The transportation agency shall:

1840 (a) evaluate the responses received from the request for qualifications;

1841 (b) select from their number those qualified to submit proposals; and

1842 (c) invite those respondents to submit proposals based upon the transportation agency's  
1843 request for proposals.

1844 (6) If the transportation agency fails to receive at least two qualified eligible competing  
1845 proposals, the transportation agency shall readvertise the project.

1846 (7) The transportation agency shall issue a request for proposals to those qualified  
1847 respondents that:

1848 (a) includes a scope of work statement constituting an information for proposal that  
1849 may include:

1850 (i) preliminary design concepts;

1851 (ii) design criteria, needs, and objectives;

1852 (iii) warranty and quality control requirements;

1853 (iv) applicable standards;

1854 (v) environmental documents;

1855 (vi) constraints;  
1856 (vii) time expectations or limitations;  
1857 (viii) incentives or disincentives; and  
1858 (ix) other special considerations;  
1859 (b) requires submitters to provide:  
1860 (i) a sealed cost proposal;  
1861 (ii) a critical path matrix schedule, including cash flow requirements;  
1862 (iii) proposal security; and  
1863 (iv) other items required by the department for the project; and  
1864 (c) may include award of a stipulated fee to be paid to offerors who submit  
1865 unsuccessful proposals.  
1866 (8) The transportation agency shall:  
1867 (a) evaluate the submissions received in response to the request for proposals from the  
1868 prequalified offerors;  
1869 (b) comply with rules relating to discussion of proposals, best and final offers, and  
1870 evaluations of the proposals submitted; and  
1871 (c) after considering price and other identified factors, award the contract to the  
1872 [~~responsive and~~] responsible offeror whose responsive proposal is most advantageous to the  
1873 transportation agency or the state.  
1874 Section 27. Section **63G-6a-1403** is amended to read:  
1875 **63G-6a-1403. Procurement of tollway development agreements.**  
1876 (1) As used in this section, "tollway development agreement" is as defined in Section  
1877 [72-6-202](#).  
1878 (2) The Department of Transportation and the Transportation Commission:  
1879 (a) may solicit a tollway development agreement proposal by following the  
1880 requirements of this section;  
1881 (b) may award a solicited tollway development agreement contract for any tollway  
1882 project by following the requirements of this section; and  
1883 (c) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative  
1884 Rulemaking Act, establishing requirements for the procurement of tollway development  
1885 agreement proposals in addition to those required by this section.

1886 (3) (a) Before entering into a tollway development agreement, the Department of  
1887 Transportation may issue a request for qualifications to prequalify potential contractors.

1888 (b) Public notice of the request for qualifications shall be given in accordance with  
1889 board rules.

1890 (c) The Department of Transportation shall require, as part of the qualifications  
1891 specified in the request for qualifications, that potential contractors at least provide:

1892 (i) a demonstration of their experience with other transportation concession projects  
1893 with attributes similar to the project being procured;

1894 (ii) a financial statement of the firm or consortium of firms making the proposal;

1895 (iii) a conceptual project development plan and financing plan;

1896 (iv) the legal structure of the firm or consortium of firms making the proposal;

1897 (v) the organizational structure for the project; and

1898 (vi) a statement describing why the firm or consortium of firms is best qualified for the  
1899 project.

1900 (d) The request for qualifications shall identify the number of eligible competing  
1901 offerors that the Department of Transportation will select to submit a proposal.

1902 (4) The Department of Transportation shall:

1903 (a) evaluate the responses received from the request for qualifications;

1904 (b) select from their number those qualified to submit proposals; and

1905 (c) invite those respondents to submit proposals based upon the Department of  
1906 Transportation's request for proposals.

1907 (5) The Department of Transportation shall issue a request for proposals to those  
1908 qualified respondents that may require, as appropriate for the procurement:

1909 (a) a description of the proposed project or projects;

1910 (b) a financial plan for the project, including:

1911 (i) the anticipated financial commitment of all parties;

1912 (ii) equity, debt, and other financing mechanisms;

1913 (iii) an analysis of the projected return, rate of return, or both; and

1914 (iv) the monetary benefit and other value to a government entity;

1915 (c) assumptions about user fees or toll rates;

1916 (d) a project development and management plan, including:

- 1917 (i) the contracting structure;
- 1918 (ii) the plan for quality management;
- 1919 (iii) the proposed toll enforcement plan; and
- 1920 (iv) the plan for safety management; and
- 1921 (e) that the proposal to comply with the minimum guidelines for tollway development
- 1922 agreement proposals under Section [72-6-204](#).

1923 (6) The Department of Transportation and the Transportation Commission:

1924 (a) shall evaluate the submissions received in response to the request for proposals

1925 from the prequalified offerors;

1926 (b) shall comply with rules relating to discussion of proposals, best and final offers,

1927 and evaluations of the proposals submitted; and

1928 (c) may, after considering price and other identified factors and complying with the

1929 requirements of Section [72-6-206](#), award the contract to the [~~responsive and~~] responsible

1930 offeror whose responsive proposal is most advantageous to the state.

1931 Section 28. Section **63G-6a-1601.5** is amended to read:

1932 **63G-6a-1601.5. Definitions.**

1933 As used in this part:

1934 (1) "Constructive knowledge":

1935 (a) means knowledge or information that a protestor would have if the protestor had

1936 exercised reasonable care or diligence, regardless of whether the protestor actually has the

1937 knowledge or information; and

1938 (b) includes knowledge of:

1939 (i) applicable provisions of this chapter and other law and administrative rule;

1940 (ii) instructions, criteria, deadlines, and requirements contained in the solicitation or in

1941 other documents made available to persons interested in the solicitation or provided in a

1942 mandatory pre-solicitation meeting;

1943 (iii) relevant facts and evidence supporting the protest or leading the protestor to

1944 contend that the protestor has been aggrieved in connection with a procurement;

1945 (iv) communications or actions, pertaining to the procurement, of all persons within the

1946 protestor's organization or under the supervision of the protestor; and

1947 (v) any other applicable information discoverable by the exercise of reasonable care or

1948 diligence.

1949 (2) "Hearing" means a proceeding in which evidence relevant to a protest is presented  
1950 to a protest officer in connection with the protest officer's determination of an issue of fact or  
1951 law or both.

1952 (3) "Protest appeal record" means:

1953 (a) a copy of the protest officer's written decision;

1954 (b) all documentation and other evidence the protest officer relied upon in reaching the  
1955 protest officer's decision;

1956 (c) the recording of the hearing, if the protest officer held a hearing;

1957 (d) a copy of the protestor's written protest; and

1958 (e) all documentation and other evidence submitted by the protestor supporting the  
1959 protest or the protestor's claim of standing.

1960 [~~(2)~~] (4) "Protestor" means a person who files a protest under this part.

1961 [~~(3)~~] (5) "Standing" means to have suffered an injury or harm or to be about to suffer  
1962 imminent injury or harm, if:

1963 (a) the cause of the injury or harm is:

1964 (i) an infringement of the protestor's own right and not the right of another person who  
1965 is not a party to the procurement;

1966 (ii) reasonably connected to the procurement unit's conduct; and

1967 (iii) the sole reason the protestor is not considered, or is no longer considered, for an  
1968 award of a contract under the procurement that is the subject of the protest;

1969 (b) a decision on the protest in favor of the protestor:

1970 (i) is likely to redress the injury or harm; and

1971 (ii) would give the protestor a reasonable likelihood of being awarded a contract; and

1972 (c) the protestor has the legal authority to file the protest on behalf of the actual or  
1973 prospective bidder or offeror or prospective contractor involved in the procurement that is the  
1974 subject of the protest.

1975 Section 29. Section **63G-6a-1602** is amended to read:

1976 **63G-6a-1602. Protest -- Time for filing -- Basis of protest -- Authority to resolve**  
1977 **protest.**

1978 (1) A protest may be filed with the protest officer by a person who:



- 1979 (a) has standing; and
- 1980 (b) is aggrieved in connection with a procurement or an award of a contract.
- 1981 (2) A protest may not be filed after:
- 1982 (a) (i) (A) the opening of bids, for a protest relating to a procurement under a bidding
- 1983 process; or
- 1984 (B) the deadline for submitting responses to the solicitation, for a protest relating to
- 1985 another standard procurement process; or
- 1986 (ii) the closing of the procurement stage that is the subject of the protest:
- 1987 (A) if the protest relates to a multiple-stage procurement; and
- 1988 (B) notwithstanding Subsections (2)(a)(i)(A) and (B); or
- 1989 (b) the day that is seven days after the day on which the person knows or first has
- 1990 constructive knowledge of the facts giving rise to the protest, if:
- 1991 (i) the protestor did not know and did not have constructive knowledge of the facts
- 1992 giving rise to the protest before:
- 1993 (A) the opening of bids, for a protest relating to a procurement under a bidding process;
- 1994 (B) the deadline for submitting responses to the solicitation, for a protest relating to
- 1995 another standard procurement process; or
- 1996 (C) the closing of the procurement stage that is the subject of the protest, if the protest
- 1997 relates to a multiple-stage procurement; or
- 1998 (ii) the protest relates to a procurement process not described in Subsection (2)(a).
- 1999 (3) A deadline under Subsection (2) for filing a protest may not be modified.
- 2000 [~~3~~] (4) (a) A protestor shall include in a protest:
- 2001 (i) the protestor's mailing address and email address; and
- 2002 (ii) a concise statement of the facts and evidence:
- 2003 (A) leading the protestor to claim that the protestor has been aggrieved in connection
- 2004 with a procurement and providing the grounds for the protestor's protest; and
- 2005 (B) supporting the protestor's claim of standing.
- 2006 (b) A protest may not be considered unless it contains facts and evidence that, if true,
- 2007 would establish:
- 2008 (i) a violation of this chapter or other applicable law or rule;
- 2009 (ii) the procurement unit's failure to follow a provision of a solicitation;

- 2010 (iii) an error made by an evaluation committee or conducting procurement unit;
- 2011 (iv) a bias exercised by an evaluation committee or an individual committee member,
- 2012 excluding a bias that is a preference arising during the evaluation process because of how well
- 2013 a solicitation response meets criteria in the solicitation;
- 2014 (v) a failure to correctly apply or calculate a scoring criterion; or
- 2015 (vi) that specifications in a solicitation are unduly restrictive or unduly anticompetitive.
- 2016 ~~[(4)]~~ (5) A protest may not be based on:
- 2017 (a) the rejection of a solicitation response due to a protestor's failure to attend or
- 2018 participate in a mandatory conference, meeting, or site visit held before the deadline for
- 2019 submitting a solicitation response; ~~[or]~~
- 2020 (b) a vague or unsubstantiated allegation~~[-];~~ or
- 2021 (c) a person's claim that:
- 2022 (i) a procurement unit that complied with Section 63G-6a-112 did not provide
- 2023 individual notice of a solicitation to the person; or
- 2024 (ii) the person received late notice of a solicitation for which notice was provided in
- 2025 accordance with Section 63G-6a-112.
- 2026 ~~[(5)]~~ (6) A protest may not include a request for:
- 2027 (a) an explanation of the rationale or scoring of evaluation committee members;
- 2028 (b) the disclosure of a protected record or protected information in addition to the
- 2029 information provided under the disclosure provisions of this chapter; or
- 2030 (c) other information, documents, or explanations not explicitly provided for in this
- 2031 chapter.
- 2032 ~~[(6)]~~ (7) A person who fails to file a protest within the time prescribed in Subsection
- 2033 (2) may not:
- 2034 (a) protest to the protest officer a solicitation or award of a contract; or
- 2035 (b) file an action or appeal challenging a solicitation or award of a contract before an
- 2036 appeals panel, a court, or any other forum.
- 2037 ~~[(7)]~~ (8) Subject to the applicable requirements of Section 63G-10-403, a protest
- 2038 officer or the head of a procurement unit may enter into a settlement agreement to resolve a
- 2039 protest.
- 2040 Section 30. Section **63G-6a-1603** is amended to read:

2041           **63G-6a-1603. Protest officer responsibilities and authority -- Proceedings on**  
2042 **protest -- Effect of decision.**

2043           (1) After a protest is filed, the protest officer shall determine whether the protest is  
2044 timely filed and complies fully with the requirements of Section [63G-6a-1602](#).

2045           (2) If the protest officer determines that the protest is not timely filed or that the protest  
2046 does not fully comply with Section [63G-6a-1602](#), the protest officer shall dismiss the protest  
2047 without holding a hearing.

2048           (3) If the protest officer determines that the protest is timely filed and complies fully  
2049 with Section [63G-6a-1602](#), the protest officer shall:

2050           (a) dismiss the protest without holding a hearing if the protest officer determines that  
2051 the protest alleges facts that, if true, do not provide an adequate basis for the protest;

2052           (b) uphold the protest without holding a hearing if the protest officer determines that  
2053 the undisputed facts of the protest indicate that the protest should be upheld; or

2054           (c) hold a hearing on the protest if there is a genuine issue of material fact or law that  
2055 needs to be resolved in order to determine whether the protest should be upheld.

2056           (4) (a) If a hearing is held on a protest, the protest officer may:

2057           (i) subpoena witnesses and compel their attendance at the protest hearing;

2058           (ii) subpoena documents for production at the protest hearing;

2059           (iii) obtain additional factual information; and

2060           (iv) obtain testimony from experts, the person filing the protest, representatives of the  
2061 procurement unit, or others to assist the protest officer to make a decision on the protest.

2062           (b) The Rules of Evidence do not apply to a protest hearing.

2063           (c) The applicable rulemaking authority shall make rules relating to intervention in a  
2064 protest, including designating:

2065           (i) who may intervene; and

2066           (ii) the time and manner of intervention.

2067           (d) A protest officer shall:

2068           (i) record each hearing held on a protest under this section;

2069           (ii) regardless of whether a hearing on a protest is held under this section, preserve all  
2070 records and other evidence relied upon in reaching the protest officer's written decision until  
2071 the decision, and any appeal of the decision, becomes final; and

2072 ~~[(iii) submit to the procurement policy board chair a copy of the protest officer's~~  
2073 ~~written decision and all records and other evidence relied upon in reaching the decision, within~~  
2074 ~~seven days after receiving;]~~

2075 ~~[(A) notice that an appeal of the protest officer's decision has been filed under Section~~  
2076 ~~63G-6a-1702; or]~~

2077 ~~[(B) a request from the chair of the procurement policy board;]~~

2078 (iii) if the protestor appeals the protest officer's decision, submit the protest appeal  
2079 record to the procurement policy board chair within seven days after receiving:

2080 (A) notice that an appeal of the protest officer's decision has been filed under Section  
2081 63G-6a-1702; or

2082 (B) a request for the protest appeal record from the chair of the procurement policy  
2083 board.

2084 (e) A protest officer's holding a hearing, considering a protest, or issuing a written  
2085 decision under this section does not affect a person's right to later question or challenge the  
2086 protest officer's jurisdiction to hold the hearing, consider the protest, or issue the decision.

2087 (5) (a) The deliberations of a protest officer may be held in private.

2088 (b) If the protest officer is a public body, as defined in Section 52-4-103, the protest  
2089 officer shall comply with Section 52-4-205 in closing a meeting for its deliberations.

2090 (6) (a) A protest officer~~[-or the protest officer's designee;]~~ shall promptly issue a  
2091 written decision regarding any protest, unless the protest is settled by mutual agreement.

2092 (b) The decision shall:

2093 (i) state the reasons for the action taken;

2094 (ii) inform the protestor of the right to judicial or administrative review as provided in  
2095 this chapter; and

2096 (iii) indicate the amount of the security deposit or bond required under Section  
2097 63G-6a-1703.

2098 (c) A person who issues a decision under Subsection (6)(a) shall mail, email, or  
2099 otherwise immediately furnish a copy of the decision to the protestor.

2100 (7) A decision described in this section is effective until stayed or reversed on appeal,  
2101 except to the extent provided in Section 63G-6a-1903.

2102 (8) (a) A decision described in Subsection (6)(a) that is issued in relation to a

2103 procurement unit other than a legislative procurement unit, a judicial procurement unit, a  
 2104 nonadopting local government procurement unit, or a public transit district is final and  
 2105 conclusive unless the protestor files an appeal under Section [63G-6a-1702](#).

2106 (b) A decision described in Subsection (6)(a) that is issued in relation to a legislative  
 2107 procurement unit, a judicial procurement unit, a nonadopting local government procurement  
 2108 unit, or a public transit district is final and conclusive unless the protestor files an appeal under  
 2109 Section [63G-6a-1802](#).

2110 (9) If the protest officer does not issue the written decision regarding a protest within  
 2111 30 calendar days after the day on which the protest was filed with the protest officer, or within  
 2112 a longer period as may be agreed upon by the parties, the protestor may proceed as if an adverse  
 2113 decision had been received.

2114 (10) A determination under this section by the protest officer regarding an issue of fact  
 2115 may not be overturned on appeal unless the decision is arbitrary and capricious or clearly  
 2116 erroneous.

2117 (11) An individual is not precluded from acting, and may not be disqualified or  
 2118 required to be recused from acting, as a protest officer because the individual also acted in  
 2119 another capacity during the procurement process, as required or allowed in this chapter.

2120 Section 31. Section **63G-6a-1701.5** is enacted to read:

2121 **63G-6a-1701.5. Definitions.**

2122 As used in this part:

2123 (1) "Appointing officer" means:

2124 (a) the chair of the board; or

2125 (b) a designee of the chair who is not employed by the procurement unit responsible for  
 2126 the solicitation, contract award, or other action that is the subject of the protestor's protest.

2127 (2) "Protest appeal record" means the same as that term is defined in Section  
 2128 [63G-6a-1601.5](#).

2129 (3) "Protestor" means the same as that term is defined in Section [63G-6a-1601.5](#).

2130 Section 32. Section **63G-6a-1702** is amended to read:

2131 **63G-6a-1702. Appeal to Utah State Procurement Policy Board -- Appointment of**  
 2132 **procurement appeals panel -- Proceedings.**

2133 (1) This part applies to all procurement units other than:

2134 (a) a legislative procurement unit;  
2135 (b) a judicial procurement unit;  
2136 (c) a nonadopting local government procurement unit; or  
2137 (d) a public transit district.

2138 (2) (a) Subject to Section [63G-6a-1703](#), a ~~[party to a protest involving a procurement~~  
2139 ~~unit other than a procurement unit listed in Subsection (1)(a), (b), (c), or (d)]~~ protestor may  
2140 appeal ~~[the protest decision]~~ to the board a protest decision of a procurement unit that is subject  
2141 to this part by filing a written notice of appeal with the chair of the board within seven days  
2142 after:

2143 (i) the day on which the written decision described in Section [63G-6a-1603](#) is:  
2144 (A) personally served on the party or the party's representative; or  
2145 (B) emailed or mailed to the address or email address provided by the party under  
2146 Subsection [63G-6a-1602](#)~~[(3)]~~(4); or  
2147 (ii) the day on which the 30-day period described in Subsection [63G-6a-1603](#)(9) ends,  
2148 if a written decision is not issued before the end of the 30-day period.

2149 ~~[(b) A person appealing a debarment or suspension of a procurement unit other than a~~  
2150 ~~procurement unit listed in Subsection (1)(a), (b), (c), or (d) shall file a written notice of appeal~~  
2151 ~~with the chair of the board no later than seven days after the debarment or suspension.]~~

2152 ~~[(c)]~~ (b) A notice of appeal under Subsection (2)(a) ~~[or (b)]~~ shall:  
2153 (i) include the address of record and email address of record of the party filing the  
2154 notice of appeal; and  
2155 (ii) be accompanied by a copy of any written protest decision ~~[or debarment or~~  
2156 ~~suspension order]~~.

2157 (c) The deadline for appealing a protest decision may not be modified.

2158 (3) A person may not base an appeal of a protest under this section on:  
2159 (a) a ground not specified in the person's protest under Section [63G-6a-1602](#)[-]; or  
2160 (b) new or additional evidence not considered by the protest officer.

2161 (4) (a) A person may not appeal from a protest described in Section [63G-6a-1602](#),  
2162 unless:

2163 ~~[(a)]~~ (i) a decision on the protest has been issued; or  
2164 ~~[(b)]~~ (ii) a decision is not issued and the 30-day period described in Subsection

2165 [63G-6a-1603](#)(9), or a longer period agreed to by the parties, has passed.

2166 ~~[(5) The chair of the board or a designee of the chair who is not employed by the~~  
2167 ~~procurement unit responsible for the solicitation, contract award, or other action complained~~  
2168 ~~of:]~~

2169 ~~[(a) shall, within seven days after the day on which the chair receives a timely written~~  
2170 ~~notice of appeal under Subsection (2), and if all the requirements of Subsection (2) and Section~~  
2171 ~~[63G-6a-1703](#) have been met, appoint:]~~

2172 ~~[(i) a procurement appeals panel to hear and decide the appeal, consisting of at least~~  
2173 ~~three individuals, each of whom is:]~~

2174 (b) A procurement unit may not appeal a protest decision or other determination made  
2175 by the procurement unit's protest officer.

2176 (5) (a) Within seven days after the chair of the board receives a written notice of an  
2177 appeal under this section, the chair shall submit a written request to the protest officer for the  
2178 protest appeal record.

2179 (b) Within seven days after the chair receives the protest appeal record from the protest  
2180 officer, the appointing officer shall, in consultation with the attorney general's office:

2181 (i) review the appeal to determine whether the appeal complies with the requirements  
2182 of Subsections (2), (3), and (4) and Section [63G-6a-1703](#); and

2183 (ii) (A) dismiss any claim asserted in the appeal, or dismiss the appeal, without holding  
2184 a hearing if the appointing officer determines that the claim or appeal, respectively, fails to  
2185 comply with any of the requirements listed in Subsection (5)(b)(i); or

2186 (B) appoint a procurement appeals panel to conduct an administrative review of any  
2187 claim in the appeal that has not been dismissed under Subsection (5)(b)(ii)(A), if the appointing  
2188 officer determines that one or more claims asserted in the appeal comply with the requirements  
2189 listed in Subsection (5)(b)(i).

2190 (c) A procurement appeals panel appointed under Subsection (5)(a) shall consist of an  
2191 odd number of at least three individuals, each of whom is:

2192 ~~[(A)]~~ (i) a member of the board; or

2193 ~~[(B)]~~ (ii) a designee of a member appointed under Subsection (5)[~~(a)(i)(A)]~~(c)(i), if the  
2194 designee is approved by the chair[~~; and~~] of the board.

2195 ~~[(i)]~~ (d) The appointing officer shall appoint one of the members of the procurement

2196 appeals panel to ~~[be the chair]~~ serve as the coordinator of the panel[;].

2197 ~~[(b)]~~ (e) The appointing officer may:

2198 (i) appoint the same procurement appeals panel to hear more than one appeal; or

2199 (ii) appoint a separate procurement appeals panel for each appeal[;].

2200 ~~[(c)]~~ (f) The appointing officer may not appoint a person to a procurement appeals

2201 panel if the person is employed by the procurement unit responsible for the solicitation,

2202 contract award, or other action ~~[complained of, and]~~ that is the subject of the protestor's protest.

2203 ~~[(d)]~~ (g) The appointing officer shall, at the time the procurement appeals panel is

2204 appointed, provide appeals panel members with ~~[a copy of the protest officer's written decision~~

2205 ~~and all other records and other evidence that the protest officer relied on in reaching the~~

2206 ~~decision]~~ the protest decision record.

2207 (6) (a) A procurement appeals panel described in Subsection (5) ~~[shall]:~~

2208 ~~[(a) consist of an odd number of members;]~~

2209 ~~[(b)]~~ (i) shall conduct an ~~[informal proceeding on]~~ administrative review of the appeal

2210 within ~~[60]~~ 30 days after the day on which the procurement appeals panel is appointed[;], or

2211 before a later date that all parties agree upon, unless the appeal is dismissed under Subsection

2212 (8)(a); and

2213 ~~[(i) unless all parties stipulate to a later date; and]~~

2214 ~~[(ii) subject to Subsection (8);]~~

2215 (ii) (A) may, as part of the administrative review and at the sole discretion of the

2216 procurement appeals panel, conduct an informal hearing, if the procurement appeals panel

2217 considers a hearing to be necessary; and

2218 ~~[(c)]~~ (B) if the procurement appeals panel conducts an informal hearing, shall, at least

2219 seven days before the [proceeding] hearing, mail, email, or hand-deliver a written notice of the

2220 [proceeding] hearing to the parties to the appeal[; ~~and~~].

2221 (b) A procurement appeals panel may, during an informal hearing, ask questions and

2222 receive responses regarding the appeal and the protest appeal record to assist the procurement

2223 appeals panel to understand the basis of the appeal and information contained in the protest

2224 appeal record, but may not otherwise take any additional evidence or consider any additional

2225 ground for the appeal.

2226 (7) A procurement appeals panel shall consider and decide the appeal based solely on:



2227 (a) the protest appeal record; and  
 2228 (b) responses received during an informal hearing, if an informal hearing is held and to  
 2229 the extent allowed under Subsection (6)(b).

2230 (8) A procurement appeals panel:  
 2231 (a) may dismiss an appeal if the appeal does not comply with the requirements of this  
 2232 chapter; and  
 2233 (b) shall uphold the protest decision unless the protest decision is arbitrary and  
 2234 capricious or clearly erroneous.

2235 ~~[(7)]~~ (9) The procurement appeals panel shall, within seven days after the day on which  
 2236 the [proceeding ends] procurement appeals panel concludes the administrative review:

2237 ~~[(i)]~~ (a) issue a written decision on the appeal; and  
 2238 ~~[(ii)]~~ (b) mail, email, or hand-deliver the written decision on the appeal to the parties to  
 2239 the appeal and to the protest officer.

2240 ~~[(7)]~~ (10) (a) The deliberations of a procurement appeals panel may be held in private.  
 2241 (b) If the procurement appeals panel is a public body, as defined in Section 52-4-103,  
 2242 the procurement appeals panel shall comply with Section 52-4-205 in closing a meeting for its  
 2243 deliberations.

2244 ~~[(8)]~~ (11) A procurement appeals panel may continue [a procurement appeals  
 2245 proceeding] an administrative review under this section beyond the [60-day] 30-day period  
 2246 described in Subsection (6)[(b)](a)(i) if the procurement appeals panel determines that the  
 2247 continuance is in the interests of justice.

2248 ~~[(9) A procurement appeals panel:]~~  
 2249 ~~[(a) shall, subject to Subsection (9)(c), consider the appeal based solely on:]~~  
 2250 ~~[(i) the protest decision;]~~  
 2251 ~~[(ii) the record considered by the person who issued the protest decision; and]~~  
 2252 ~~[(iii) if a protest hearing was held, the record of the protest hearing;]~~  
 2253 ~~[(b) may not take additional evidence;]~~  
 2254 ~~[(c) notwithstanding Subsection (9)(b), may, during an informal hearing, ask questions~~  
 2255 ~~and receive responses regarding the appeal, the protest decision, or the record in order to assist~~  
 2256 ~~the panel to understand the appeal, the protest decision, and the record; and]~~  
 2257 ~~[(d) shall uphold the decision of the protest officer, unless the decision is arbitrary and~~

2258 ~~capricious or clearly erroneous.]~~

2259 ~~[(+0)]~~ (12) If a procurement appeals panel determines that the decision of the protest  
2260 officer is arbitrary and capricious or clearly erroneous, the procurement appeals panel:

2261 (a) shall remand the matter to the protest officer, to cure the problem or render a new  
2262 decision;

2263 (b) may recommend action that the protest officer should take; and

2264 (c) may not order that:

2265 (i) a contract be awarded to a certain person;

2266 (ii) a contract or solicitation be cancelled; or

2267 (iii) any other action be taken other than the action described in Subsection ~~[(+0)]~~

2268 (12)(a).

2269 ~~[(+1)]~~ (13) The board shall make rules relating to the conduct of an appeals proceeding,  
2270 including rules that provide for:

2271 (a) expedited proceedings; and

2272 (b) electronic participation in the proceedings by panel members and participants.

2273 ~~[(+2)]~~ (14) The Rules of Evidence do not apply to ~~[an appeals proceeding]~~ a hearing  
2274 held by a procurement appeals panel.

2275 (15) Part 20, Records, applies to the records involved in the process described in this  
2276 section, including the decision issued by a procurement appeals panel.

2277 Section 33. Section **63G-6a-1703** is amended to read:

2278 **63G-6a-1703. Requirement to pay a security deposit or post a bond -- Exceptions**  
2279 **-- Amount -- Forfeiture of security deposit or bond.**

2280 (1) A person who files a notice of appeal under Section **63G-6a-1702** shall, before the  
2281 expiration of the time provided under Subsection **63G-6a-1702(2)** for filing a notice of appeal,  
2282 pay a security deposit or post a bond with the office of the protest officer.

2283 (2) The amount of a security deposit or bond required under Subsection (1) is:

2284 (a) for an appeal relating to an invitation for bids or request for proposals and except as  
2285 provided in Subsection (2)(b)(ii):

2286 (i) \$20,000, if the total contract value is under \$500,000;

2287 (ii) \$25,000, if the total contract value is \$500,000 or more but less than \$1,000,000;

2288 (iii) \$50,000, if the total contract value is \$1,000,000 or more but less than \$2,000,000;

- 2289 (iv) \$95,000, if the total contract value is \$2,000,000 or more but less than \$4,000,000;
- 2290 (v) \$180,000, if the total contract value is \$4,000,000 or more but less than \$8,000,000;
- 2291 (vi) \$320,000, if the total contract value is \$8,000,000 or more but less than
- 2292 \$16,000,000;
- 2293 (vii) \$600,000, if the total contract value is \$16,000,000 or more but less than
- 2294 \$32,000,000;
- 2295 (viii) \$1,100,000, if the total contract value is \$32,000,000 or more but less than
- 2296 \$64,000,000;
- 2297 (ix) \$1,900,000, if the total contract value is \$64,000,000 or more but less than
- 2298 \$128,000,000;
- 2299 (x) \$3,500,000, if the total contract value is \$128,000,000 or more but less than
- 2300 \$256,000,000;
- 2301 (xi) \$6,400,000, if the total contract value is \$256,000,000 or more but less than
- 2302 \$512,000,000; and
- 2303 (xii) \$10,200,000, if the total contract value is \$512,000,000 or more; or
- 2304 (b) \$20,000, for an appeal:
- 2305 (i) relating to any type of procurement process other than an invitation for bids or
- 2306 request for proposals;
- 2307 (ii) relating to an invitation for bids or request for proposals, if the estimated total
- 2308 contract value cannot be determined; or
- 2309 (iii) of a debarment or suspension.
- 2310 (3) (a) For an appeal relating to an invitation for bids, the estimated total contract value
- 2311 shall be based on:
- 2312 (i) the lowest [~~responsible and~~] responsive bid amount for the entire term of the
- 2313 contract, excluding any renewal period, if the bid opening has occurred;
- 2314 (ii) the total budget for the procurement item for the entire term of the contract,
- 2315 excluding any renewal period, if bids are based on unit or rate pricing; or
- 2316 (iii) if the contract is being rebid, the historical usage and amount spent on the contract
- 2317 over the life of the contract.
- 2318 (b) For an appeal relating to a request for proposals, the estimated total contract value
- 2319 shall be based on:

2320 (i) the lowest cost proposed in a response to a request for proposals, considering the  
2321 entire term of the contract, excluding any renewal period, if the opening of proposals has  
2322 occurred;

2323 (ii) the total budget for the procurement item over the entire term of the contract,  
2324 excluding any renewal period, if opened cost proposals are based on unit or rate pricing; or

2325 (iii) if the contract is being reissued, the historical usage and amount spent on the  
2326 contract over the life of the contract that is being reissued.

2327 (4) The protest officer shall:

2328 (a) retain the security deposit or bond until the protest and any appeal of the protest  
2329 decision is final;

2330 (b) as it relates to a security deposit:

2331 (i) deposit the security deposit into an interest-bearing account; and

2332 (ii) after any appeal of the protest decision becomes final, return the security deposit  
2333 and the interest it accrues to the person who paid the security deposit, unless the security  
2334 deposit is forfeited to the general fund of the procurement unit under Subsection (5); and

2335 (c) as it relates to a bond:

2336 (i) retain the bond until the protest and any appeal of the protest decision becomes  
2337 final; and

2338 (ii) after the protest and any appeal of the protest decision becomes final, return the  
2339 bond to the person who posted the bond, unless the bond is forfeited to the general fund of the  
2340 procurement unit under Subsection (5).

2341 (5) A security deposit that is paid, or a bond that is posted, under this section shall  
2342 forfeit to the general fund of the procurement unit if:

2343 (a) the person who paid the security deposit or posted the bond fails to ultimately  
2344 prevail on appeal; and

2345 (b) the procurement appeals panel finds that the protest or appeal is frivolous or that its  
2346 primary purpose is to harass or cause a delay.

2347 Section 34. Section **63G-6a-1802** is amended to read:

2348 **63G-6a-1802. Appeal to Utah Court of Appeals.**

2349 (1) (a) As provided in this part:

2350 (i) a person may appeal a dismissal of an appeal by the board chair under Subsection

2351 [~~63G-6a-1706(1)~~] 63G-6a-1702(5)(b)(ii)(A);

2352 (ii) a person who receives an adverse decision by a procurement appeals panel may  
2353 appeal that decision;

2354 (iii) subject to Subsection (2), a procurement unit, other than a legislative procurement  
2355 unit, a judicial procurement unit, a nonadopting local government procurement unit, or a public  
2356 transit district, may appeal an adverse decision by a procurement appeals panel; and

2357 (iv) a person who receives an adverse decision in a protest relating to a legislative  
2358 procurement unit, a judicial procurement unit, a nonadopting local government procurement  
2359 unit, or a public transit district may appeal that decision[~~;~~ and].

2360 [~~(v) a person who is debarred or suspended under Section 63G-6a-904 by a legislative  
2361 procurement unit, a judicial procurement unit, a nonadopting local government procurement  
2362 unit, or a public transit district may appeal the debarment or suspension.]~~

2363 (b) A person seeking to appeal a dismissal[~~;~~] or decision[~~;~~ or debarment or suspension]  
2364 under Subsection (1)(a) shall file a notice of appeal with the Utah Court of Appeals within  
2365 seven days after the dismissal[~~;~~] or decision[~~;~~ or debarment or suspension].

2366 (2) A procurement unit may not appeal the decision of a procurement appeals panel,  
2367 unless the appeal is:

2368 (a) recommended by the protest officer involved; and

2369 (b) except for a procurement unit that is not represented by the attorney general's  
2370 office, approved by the attorney general.

2371 (3) A person appealing a dismissal, decision, or protest[~~;~~ debarment, or suspension]  
2372 under this section may not base the appeal on a ground not specified in the proceeding from  
2373 which the appeal is taken.

2374 (4) The Utah Court of Appeals:

2375 (a) shall consider the appeal as an appellate court;

2376 (b) may not hear the matter as a trial de novo; and

2377 (c) may not overturn a finding, dismissal, or decision[~~;~~ or debarment or suspension];

2378 unless the finding, dismissal, or decision, [~~or debarment or suspension~~] is arbitrary and  
2379 capricious or clearly erroneous.

2380 (5) The Utah Court of Appeals is encouraged to:

2381 (a) give an appeal made under this section priority; and

- 2382 (b) consider the appeal and render a decision in an expeditious manner.
- 2383 Section 35. Section **63G-6a-2403** is amended to read:
- 2384 **63G-6a-2403. Applicability.**
- 2385 (1) This part applies to each public entity.
- 2386 (2) A procurement professional is subject to this part at all times during:
- 2387 (a) the procurement process; and
- 2388 (b) the administration of a contract or grant.
- 2389 (3) A contract administration professional is subject to this part at all times during the
- 2390 period the contract administration professional is:
- 2391 (a) under contract with a procurement unit; and
- 2392 (b) involved in:
- 2393 (i) the procurement process; or
- 2394 (ii) the administration of a contract or grant.
- 2395 (4) This part does not apply to:
- 2396 (a) an individual described in Subsection **63G-6a-2402(9)(b)**; [or]
- 2397 (b) any individual other than a procurement professional or contract administration
- 2398 professional[-]; or
- 2399 (c) a taxed interlocal entity or a director, officer, or employee of a taxed interlocal
- 2400 entity.
- 2401 (5) The other subsections of this section do not affect the applicability or effect of any
- 2402 other ethics, bribery, or other law.
- 2403 Section 36. Section **63G-6a-2404.3** is enacted to read:
- 2404 **63G-6a-2404.3. Dividing a procurement to avoid using a standard procurement**
- 2405 **process.**
- 2406 (1) It is unlawful for a person knowingly to divide a single procurement into multiple
- 2407 smaller procurements if dividing the single procurement:
- 2408 (a) is done with the intent to avoid the use of a standard procurement process that
- 2409 would have otherwise been required if the procurement had not been divided; or
- 2410 (b) is otherwise prohibited by this chapter.
- 2411 (2) A violation of Subsection (1) is:
- 2412 (a) a second degree felony, if the value of the procurement before being divided is

2413 \$1,000,000 or more;

2414 (b) a third degree felony, if the value of the procurement before being divided is

2415 \$250,000 or more but less than \$1,000,000;

2416 (c) a class A misdemeanor, if the value of the procurement before being divided is

2417 \$100,000 or more but less than \$250,000; or

2418 (d) a class B misdemeanor, if the value of the procurement before being divided is less

2419 than \$100,000.

2420 Section 37. Section **63G-6a-2404.7** is enacted to read:

2421 **63G-6a-2404.7. Improper action against a public officer or employee involved in**  
2422 **the procurement process.**

2423 (1) As used in this section, "requisite intent" means the intent to:

2424 (a) prevent a public officer or employee from performing a duty or responsibility that  
2425 the officer or employee has under this chapter;

2426 (b) influence a public officer or employee to award a contract under this chapter to the  
2427 person or take other action under this chapter in favor of the person; or

2428 (c) retaliate against a public officer or employee for:

2429 (i) not awarding a contract under this chapter to the person;

2430 (ii) issuing a decision or taking an action under this chapter that is adverse to the  
2431 person; or

2432 (iii) performing a duty or responsibility the officer or employee has under this chapter.

2433 (2) (a) It is unlawful for a person knowingly to threaten to make a false allegation or to  
2434 take a menacing or intimidating action against a public officer or employee with the requisite  
2435 intent.

2436 (b) A violation of Subsection (2)(a) is a third degree felony.

2437 (3) (a) It is unlawful for a person knowingly to make a false allegation or to take a  
2438 menacing or intimidating action against a public officer or employee with the requisite intent.

2439 (b) A violation of Subsection (3)(a) is a second degree felony.

2440 Section 38. Section **63G-6a-2407** is amended to read:

2441 **63G-6a-2407. Duty to report unlawful conduct.**

2442 (1) As used in this section, "unlawful conduct" means:

2443 (a) conduct made unlawful under this part; or

2444 (b) conduct, including bid rigging, improperly steering a contract to a favored vendor,  
2445 exercising undue influence on an individual involved in the procurement process, or  
2446 participating in collusion or other anticompetitive practices, made unlawful under other  
2447 applicable law.

2448 (2) (a) A procurement professional with actual knowledge that a person has engaged in  
2449 unlawful conduct shall report the person's unlawful conduct to:

2450 (i) the state auditor; or

2451 (ii) the attorney general or other appropriate prosecuting attorney.

2452 (b) An individual not subject to the requirement of Subsection (2)(a) who has actual  
2453 knowledge that a person has engaged in unlawful conduct may report the person's unlawful  
2454 conduct to:

2455 (i) the state auditor; or

2456 (ii) the attorney general or other appropriate prosecuting attorney.

2457 (3) A procurement professional who fails to comply with the requirement of  
2458 Subsection (2)(a) is subject to any applicable disciplinary action [~~or civil penalty identified in~~  
2459 ~~Subsection 63G-6a-2404(5)~~].

2460 Section 39. Section ~~63G-10-403~~ is amended to read:

2461 **63G-10-403. Department of Transportation bid or request for proposals protest**  
2462 **settlement agreement approval and review.**

2463 (1) As used in this section:

2464 (a) "Department" means the Department of Transportation created in Section ~~72-1-201~~.

2465 (b) "Settlement agreement" includes stipulations, consent decrees, settlement  
2466 agreements, or other legally binding documents or representations resolving a dispute between  
2467 the department and another party when the department is required to pay money or required to  
2468 take legally binding action.

2469 (2) The department shall obtain the approval of the Transportation Commission or the  
2470 governor or review by the Legislative Management Committee of a settlement agreement that  
2471 involves a bid or request for proposal protest in accordance with this section.

2472 (3) A settlement agreement that is being settled by the department as part of a bid or  
2473 request for proposal protest, in accordance with Subsection ~~63G-6a-1602[(7)](8)~~, that might  
2474 cost government entities more than \$100,000 to implement shall be presented to the



2475 Transportation Commission for approval or rejection.

2476 (4) A settlement agreement that is being settled by the department as part of a bid or  
2477 request for proposal protest, in accordance with Subsection 63G-6a-1602[(7)](8), that might  
2478 cost government entities more than \$500,000 to implement shall be presented:

2479 (a) to the Transportation Commission for approval or rejection; and

2480 (b) to the governor for approval or rejection.

2481 (5) (a) A settlement agreement that is being settled by the department as part of a bid or  
2482 request for proposal protest, in accordance with Subsection 63G-6a-1602[(7)](8), that might  
2483 cost government entities more than \$1,000,000 to implement shall be presented:

2484 (i) to the Transportation Commission for approval or rejection;

2485 (ii) to the governor for approval or rejection; and

2486 (iii) if the settlement agreement is approved by the Transportation Commission and the  
2487 governor, to the Legislative Management Committee.

2488 (b) The Legislative Management Committee may recommend approval or rejection of  
2489 the settlement agreement.

2490 (6) (a) The department may not enter into a settlement agreement that resolves a bid or  
2491 request for proposal protest, in accordance with Subsection 63G-6a-1602[(7)](8), that might  
2492 cost government entities more than \$100,000 to implement until the Transportation  
2493 Commission has approved the agreement.

2494 (b) The department may not enter into a settlement agreement that resolves a bid or  
2495 request for proposal protest, in accordance with Subsection 63G-6a-1602[(7)](8), that might  
2496 cost government entities more than \$500,000 to implement until the Transportation  
2497 Commission and the governor have approved the agreement.

2498 (c) The department may not enter into a settlement agreement that resolves a bid or  
2499 request for proposal protest, in accordance with Subsection 63G-6a-1602[(7)](8), that might  
2500 cost government entities more than \$1,000,000 to implement until:

2501 (i) the Transportation Commission has approved the agreement;

2502 (ii) the governor has approved the agreement; and

2503 (iii) the Legislative Management Committee has reviewed the agreement.

2504 Section 40. **Repealer.**

2505 This bill repeals:

2506 Section **63G-6a-1604, Dismissal of protest not filed in accordance with**  
2507 **requirements.**

2508 Section **63G-6a-1706, Dismissal of an appeal not filed in compliance with**  
2509 **requirements.**

2510 Section 41. **Coordinating H.B. 398 with S.B. 204 -- Technical amendments.**

2511 If this H.B. 398 and S.B. 204, Public-Private Partnerships, both pass and become law, it  
2512 is the intent of the Legislature that the Office of Legislative Research and General Counsel in  
2513 preparing the Utah Code database for publication, merge the amendments in Subsection  
2514 63G-6a-702(2) to read:

2515 "(2) (a) The request for proposals [~~standard procurement~~] process is appropriate for a  
2516 procurement unit to use [for] in selecting the proposal that provides the best value or is the  
2517 most advantageous to the procurement unit, including when:

2518 [~~(a) the procurement of professional services;~~]

2519 [~~(b) a design-build procurement;~~]

2520 (i) the procurement involves a contract whose terms and conditions are to be negotiated  
2521 in order to achieve the result that is the most advantageous to the procurement unit;

2522 [~~(c) when~~] (ii) cost is not the most important factor to be considered in making the  
2523 selection that is most advantageous to the procurement unit; [or]

2524 [~~(d) when~~] (iii) factors, apart from or in addition to cost, are highly significant in  
2525 making the selection that is most advantageous to the procurement unit[-]; or

2526 (iv) the procurement unit anticipates entering into a public-private partnership.

2527 (b) The types of procurements for which it is appropriate to use the request for  
2528 proposals process include:

2529 (i) a procurement of professional services; and

2530 (ii) a procurement of design-build or construction manager/general contractor  
2531 services."