

PUBLIC-PRIVATE PARTNERSHIPS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ralph Okerlund

House Sponsor: John Knotwell

LONG TITLE

General Description:

This bill modifies provisions of the Utah Procurement Code relating to public-private partnerships.

Highlighted Provisions:

This bill:

- ▶ defines "public-private partnership"; and
- ▶ enacts language relating to the use of public-private partnerships in the procurement of projects.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

63G-6a-703, as last amended by Laws of Utah 2016, Chapter 355

63G-6a-707, as last amended by Laws of Utah 2016, Chapters 237 and 355



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

29 Section 1. Section **63G-6a-103** is amended to read:

30 **63G-6a-103. Definitions.**

31 As used in this chapter:

32 (1) "Administrative law judge" means the same as that term is defined in Section
33 [67-19e-102](#).

34 (2) "Administrative law judge service" means service provided by an administrative
35 law judge.

36 (3) "Applicable rulemaking authority" means:

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

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

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

41 (A) for the building board or the Division of Facilities Construction and Management,
42 created in Section [63A-5-201](#), the building board;

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

44 (C) for the Department of Transportation created in Section [72-1-201](#), the executive
45 director of the Department of Transportation; and

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

47 (d) for a local government procurement unit:

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

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

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

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

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

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

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

58 (ii) on or after January 1, 2015, the board, except to the extent that the board of trustees

59 of the local district or the governing body of the special service district makes its own rules:

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

61 (B) that are in addition to board rules; or

62 (i) for any other procurement unit, the board.

63 (4) "Approved vendor" means a vendor who has been approved through the approved
64 vendor list process.

65 (5) "Approved vendor list" means a list of approved vendors established under Section
66 [63G-6a-507](#).

67 (6) "Approved vendor list process" means the procurement process described in
68 Section [63G-6a-507](#).

69 (7) "Bidder" means a person who submits a bid or price quote in response to an
70 invitation for bids.

71 (8) "Bidding process" means the procurement process described in Part 6, Bidding.

72 (9) "Board" means the Utah State Procurement Policy Board, created in Section
73 [63G-6a-202](#).

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

75 (11) "Change directive" means a written order signed by the procurement officer that
76 directs the contractor to suspend work or make changes, as authorized by contract, without the
77 consent of the contractor.

78 (12) "Change order" means a written alteration in specifications, delivery point, rate of
79 delivery, period of performance, price, quantity, or other provisions of a contract, upon mutual
80 agreement of the parties to the contract.

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

83 (14) "Conducting procurement unit" means a procurement unit that conducts all
84 aspects of a procurement:

85 (a) except:

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

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

88 (b) including:

89 (i) preparing any solicitation document;

- 90 (ii) appointing an evaluation committee;
- 91 (iii) conducting the evaluation process, except as provided in Subsection
- 92 [63G-6a-707\(6\)\(b\)](#) relating to scores calculated for costs of proposals;
- 93 (iv) selecting and recommending the person to be awarded a contract;
- 94 (v) negotiating the terms and conditions of a contract, subject to the issuing
- 95 procurement unit's approval; and
- 96 (vi) contract administration.
- 97 (15) "Conservation district" means the same as that term is defined in Section
- 98 [17D-3-102](#).
- 99 (16) "Construction":
- 100 (a) means services, including work, and supplies for a project for the construction,
- 101 renovation, alteration, improvement, or repair of a public facility on real property; and
- 102 (b) does not include services and supplies for the routine, day-to-day operation, repair,
- 103 or maintenance of an existing public facility.
- 104 (17) "Construction manager/general contractor":
- 105 (a) means a contractor who enters into a contract:
- 106 (i) for the management of a construction project; and
- 107 (ii) that allows the contractor to subcontract for additional labor and materials that are
- 108 not included in the contractor's cost proposal submitted at the time of the procurement of the
- 109 contractor's services; and
- 110 (b) does not include a contractor whose only subcontract work not included in the
- 111 contractor's cost proposal submitted as part of the procurement of the contractor's services is to
- 112 meet subcontracted portions of change orders approved within the scope of the project.
- 113 (18) "Contract" means an agreement for a procurement.
- 114 (19) "Contract administration" means all functions, duties, and responsibilities
- 115 associated with managing, overseeing, and carrying out a contract between a procurement unit
- 116 and a contractor, including:
- 117 (a) implementing the contract;
- 118 (b) ensuring compliance with the contract terms and conditions by the conducting
- 119 procurement unit and the contractor;
- 120 (c) executing change orders;

- 121 (d) processing contract amendments;
- 122 (e) resolving, to the extent practicable, contract disputes;
- 123 (f) curing contract errors and deficiencies;
- 124 (g) terminating a contract;
- 125 (h) measuring or evaluating completed work and contractor performance;
- 126 (i) computing payments under the contract; and
- 127 (j) closing out a contract.
- 128 (20) "Contractor" means a person who is awarded a contract with a procurement unit.
- 129 (21) "Cooperative procurement" means procurement conducted by, or on behalf of:
 - 130 (a) more than one procurement unit; or
 - 131 (b) a procurement unit and a cooperative purchasing organization.
- 132 (22) "Cooperative purchasing organization" means an organization, association, or
- 133 alliance of purchasers established to combine purchasing power in order to obtain the best
- 134 value for the purchasers by engaging in procurements in accordance with Section [63G-6a-2105](#).
- 135 (23) "Cost-plus-a-percentage-of-cost contract" means a contract under which the
- 136 contractor is paid a percentage of the total actual expenses or costs in addition to the
- 137 contractor's actual expenses or costs.
- 138 (24) "Cost-reimbursement contract" means a contract under which a contractor is
- 139 reimbursed for costs which are allowed and allocated in accordance with the contract terms and
- 140 the provisions of this chapter, and a fee, if any.
- 141 (25) "Days" means calendar days, unless expressly provided otherwise.
- 142 (26) "Definite quantity contract" means a fixed price contract that provides for a
- 143 specified amount of supplies over a specified period, with deliveries scheduled according to a
- 144 specified schedule.
- 145 (27) "Design-build" means the procurement of design professional services and
- 146 construction by the use of a single contract.
- 147 (28) "Design professional" means:
 - 148 (a) an individual licensed as an architect under Title 58, Chapter 3a, Architects
 - 149 Licensing Act; or
 - 150 (b) an individual licensed as a professional engineer or professional land surveyor
 - 151 under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing

152 Act.

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

155 (30) "Design professional services" means:

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

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

159 (c) master planning and programming services.

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

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

163 (33) "Educational procurement unit" means:

164 (a) a school district;

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

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

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

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

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

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

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

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

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

178 (36) "Fixed price contract" means a contract that provides a price, for each
179 procurement item obtained under the contract, that is not subject to adjustment except to the
180 extent that:

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

183 (b) an adjustment is required by law.

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

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

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

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

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

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

195 (b) for an executive branch procurement unit:

196 (i) the director of the division; or

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

198 (c) for a judicial procurement unit:

199 (i) the Judicial Council; or

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

201 (d) for a local government procurement unit:

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

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

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

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

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

210 (h) for a conservation district, the board of supervisors of the conservation district or a
211 designee of the board of supervisors;

212 (i) for a public corporation, the board of directors of the public corporation or a
213 designee of the board of directors;

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

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

218 (l) for an institution of higher education of the state, the president of the institution of
219 higher education, or the president's designee; or

220 (m) for a public transit district, the board of trustees or a designee of the board of
221 trustees.

222 (40) "Immaterial error":

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

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

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

227 (b) includes:

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

230 (ii) a typographical error;

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

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

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

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

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

238 (ii) provides a maximum purchase limit.

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

241 (43) "Invitation for bids":

242 (a) means a document used to solicit:

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

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

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

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

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

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

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

251 (45) "Judicial procurement unit" means:

252 (a) the Utah Supreme Court;

253 (b) the Utah Court of Appeals;

254 (c) the Judicial Council;

255 (d) a state judicial district; or

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

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

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

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

262 (47) "Legislative procurement unit" means:

263 (a) the Legislature;

264 (b) the Senate;

265 (c) the House of Representatives;

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

267 (e) an office, committee, subcommittee, commission, or other organization within the
268 state legislative branch.

269 (48) "Local building authority" means the same as that term is defined in Section
270 [17D-2-102](#).

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

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

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

275 (b) a county or municipality that has adopted this entire chapter by ordinance, and each

276 office or agency of that county or municipality; or

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

280 (51) "Multiple award contracts" means the award of a contract for an indefinite
281 quantity of a procurement item to more than one bidder or offeror.

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

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

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

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

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

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

293 (56) "Person" means the same as that term is defined in Section 68-3-12.5, excluding a
294 political subdivision and a government office, department, division, bureau, or other body of
295 government.

296 (57) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference
297 under the requirements of this chapter.

298 (58) "Procure" means to acquire a procurement item through a procurement.

299 (59) "Procurement":

300 (a) means a procurement unit's acquisition of a procurement item through an
301 expenditure of public funds, or an agreement to expend public funds, including an acquisition
302 through a public-private partnership;

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

305 (i) preparing and issuing a solicitation; and

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

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

309 (c) does not include a grant.

310 (60) "Procurement item" means a supply, a service, or construction.

311 (61) "Procurement officer" means:

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

313 (i) the head of the procurement unit;

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

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

316 (b) for the division or a procurement unit without independent procurement authority,

317 the chief procurement officer.

318 (62) "Procurement unit":

319 (a) means:

320 (i) a legislative procurement unit;

321 (ii) an executive branch procurement unit;

322 (iii) a judicial procurement unit;

323 (iv) an educational procurement unit;

324 (v) a local government procurement unit;

325 (vi) a local district;

326 (vii) a special service district;

327 (viii) a local building authority;

328 (ix) a conservation district;

329 (x) a public corporation; or

330 (xi) a public transit district; and

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

332 Interlocal Cooperation Act.

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

335 (a) accounting;

336 (b) architecture;

337 (c) construction design and management;

338 (d) engineering;

339 (e) financial services;

340 (f) information technology;

341 (g) the law;

342 (h) medicine;

343 (i) psychiatry; or

344 (j) underwriting.

345 (64) "Protest officer" means:

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

347 (i) the head of the procurement unit;

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

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

350 (b) for a procurement unit without independent procurement authority, the chief
351 procurement officer or the chief procurement officer's designee.

352 (65) "Public corporation" means the same as that term is defined in Section 63E-1-102.

353 (66) "Public entity" means any government entity of the state or political subdivision of
354 the state, including:

355 (a) a procurement unit;

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

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

359 (67) "Public facility" means a building, structure, infrastructure, improvement, or other
360 facility of a public entity.

361 (68) "Public funds" means money, regardless of its source, including from the federal
362 government, that is owned or held by a procurement unit.

363 (69) "Public-private partnership" means an arrangement or agreement ~~Ŝ~~→ , **occurring on or**
363a **after January 1, 2017, ←Ŝ** between a
364 procurement unit and one or more contractors to provide for a public need through the
365 development or operation of a project in which the contractor or contractors share with the
366 procurement unit the responsibility or risk of developing, owning, ~~Ŝ~~→ **maintaining, financing,** ←Ŝ
366a or operating the project.

367 [(69)] (70) "Public transit district" means a public transit district organized under Title
368 17B, Chapter 2a, Part 8, Public Transit District Act.

369 [~~(70)~~] (71) "Qualified vendor" means a vendor who:

370 (a) is responsible; and

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

374 [~~(71)~~] (72) "Real property" means land and any building, fixture, improvement,
375 appurtenance, structure, or other development that is permanently affixed to land.

376 [~~(72)~~] (73) "Request for information" means a nonbinding process through which a
377 procurement unit requests information relating to a procurement item.

378 [~~(73)~~] (74) "Request for proposals" means a document used to solicit proposals to
379 provide a procurement item to a procurement unit, including all other documents that are
380 attached to that document or incorporated in that document by reference.

381 [~~(74)~~] (75) "Request for proposals process" means the procurement process described
382 in Part 7, Request for Proposals.

383 [~~(75)~~] (76) "Request for statement of qualifications" means a document used to solicit
384 information about the qualifications of a person interested in responding to a potential
385 procurement, including all other documents attached to that document or incorporated in that
386 document by reference.

387 [~~(76)~~] (77) "Requirements contract" means a contract:

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

390 (b) that:

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

392 (ii) provides a maximum purchase limit.

393 [~~(77)~~] (78) "Responsible" means being capable, in all respects, of:

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

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

397 [~~(78)~~] (79) "Responsive" means conforming in all material respects to the requirements
398 of a solicitation.

399 [~~(79)~~] (80) "Sealed" means manually or electronically secured to prevent disclosure.

400 [~~(80)~~] (81) "Service":

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

403 (b) includes a professional service; and

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

406 [~~(81)~~] (82) "Small purchase process" means the procurement process described in
407 Section 63G-6a-506.

408 [~~(82)~~] (83) "Sole source contract" means a contract resulting from a sole source
409 procurement.

410 [~~(83)~~] (84) "Sole source procurement" means a procurement without competition
411 pursuant to a determination under Subsection 63G-6a-802(1)(a) that there is only one source
412 for the procurement item.

413 [~~(84)~~] (85) "Solicitation" means an invitation for bids, request for proposals, request
414 for statement of qualifications, or request for information.

415 [~~(85)~~] (86) "Solicitation response" means:

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

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

418 (c) a statement of qualifications submitted in response to a request for statement of
419 qualifications.

420 [~~(86)~~] (87) "Special service district" means the same as that term is defined in Section
421 17D-1-102.

422 [~~(87)~~] (88) "Specification" means any description of the physical or functional
423 characteristics or of the nature of a procurement item included in an invitation for bids or a
424 request for proposals, or otherwise specified or agreed to by a procurement unit, including a
425 description of:

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

427 (b) preparing a procurement item for delivery.

428 [~~(88)~~] (89) "Standard procurement process" means:

429 (a) the bidding process;

430 (b) the request for proposals process;

431 (c) the approved vendor list process;

432 (d) the small purchase process; or

433 (e) the design professional procurement process.

434 ~~[(89)]~~ (90) "State cooperative contract" means a contract awarded by the division for
435 and in behalf of all public entities.

436 ~~[(90)]~~ (91) "Statement of qualifications" means a written statement submitted to a
437 procurement unit in response to a request for statement of qualifications.

438 ~~[(91)]~~ (92) "Subcontractor":

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

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

442 (c) does not include a supplier who provides only materials, equipment, or supplies to a
443 contractor or subcontractor.

444 ~~[(92)]~~ (93) "Supply" means a good, material, technology, piece of equipment, or any
445 other item of personal property.

446 ~~[(93)]~~ (94) "Tie bid" means that the lowest responsive bids of responsible bidders are
447 identical in price.

448 ~~[(94)]~~ (95) "Time and materials contract" means a contract under which the contractor
449 is paid:

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

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

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

454 ~~[(95)]~~ (96) "Transitional costs":

455 (a) means the costs of changing:

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

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

459 (b) includes:

460 (i) training costs;

461 (ii) conversion costs;

- 462 (iii) compatibility costs;
463 (iv) costs associated with system downtime;
464 (v) disruption of service costs;
465 (vi) staff time necessary to implement the change;
466 (vii) installation costs; and
467 (viii) ancillary software, hardware, equipment, or construction costs; and
468 (c) does not include:
469 (i) the costs of preparing for or engaging in a procurement process; or
470 (ii) contract negotiation or drafting costs.

471 [(96)] (97) "Trial use contract" means a contract for a procurement item that the
472 procurement unit acquires for a trial use or testing to determine whether the procurement item
473 will benefit the procurement unit.

474 [(97)] (98) "Vendor":

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

477 (b) includes:

- 478 (i) a bidder;
479 (ii) an offeror;
480 (iii) an approved vendor; and
481 (iv) a design professional.

482 Section 2. Section **63G-6a-702** is amended to read:

483 **63G-6a-702. Contracts awarded by request for proposals.**

484 (1) A request for proposals standard procurement process may be used instead of
485 bidding if the procurement officer determines, in writing, that the request for proposals
486 standard procurement process will provide the best value to the procurement unit.

487 (2) The request for proposals standard procurement process is appropriate to use [~~for~~]:

- 488 (a) for the procurement of professional services;
489 (b) for a design-build procurement;
490 (c) [~~when~~] if cost is not the most important factor to be considered in making the
491 selection that is most advantageous to the procurement unit; [~~or~~]
492 (d) [~~when~~] if factors, in addition to cost, are highly significant in making the selection

493 that is most advantageous to the procurement unit[-]; or

494 (e) if the procurement unit anticipates entering into a public-private partnership.

495 (3) The procurement of architect-engineer services is governed by Part 15,
496 Architect-Engineer Services.

497 Section 3. Section **63G-6a-703** is amended to read:

498 **63G-6a-703. Request for proposals -- Requirements -- Publication of request.**

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

501 (2) A request for proposals shall:

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

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

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

505 (d) include, or incorporate by reference:

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

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

509 (iii) the standard contractual terms and conditions required by the authorized
510 purchasing entity;

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

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

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

518 (h) state that best and final offers may be allowed, as provided in Section
519 **63G-6a-707.5**, from responsible offerors who submit responsive proposals that meet minimum
520 qualifications, evaluation criteria, or applicable score thresholds identified in the request for
521 proposals[-]; and

522 (i) if the procurement unit anticipates the procurement process to result in a
523 public-private partnership, state that the procurement unit anticipates entering into a

524 public-private partnership.

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

527 Section 4. Section 63G-6a-707 is amended to read:

528 **63G-6a-707. Evaluation of proposals -- Evaluation committee.**

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

- 533 (a) experience;
- 534 (b) performance ratings;
- 535 (c) inspection;
- 536 (d) testing;
- 537 (e) quality;
- 538 (f) workmanship;
- 539 (g) time, manner, or schedule of delivery;
- 540 (h) references;
- 541 (i) financial solvency;
- 542 (j) suitability for a particular purpose;
- 543 (k) management plans;
- 544 (l) the presence and quality of a work site safety program, including any requirement
545 that the offeror imposes on subcontractors for a work site safety program;
- 546 (m) cost; ~~or~~
- 547 (n) if applicable, the offeror's willingness and capability to enter into a public-private

548 partnership; or

549 ~~(n)~~ (o) other subjective or objective criteria specified in the request for proposals.

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

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

- 554 (i) the head of the conducting procurement unit, or the head's designee;

555 (ii) the head of an executive branch procurement unit other than the conducting
556 procurement unit, appointed by the executive director of the Department of Human Resource
557 Management, or the head's designee; and

558 (iii) the executive director of the Department of Human Resource Management, or the
559 executive director's designee.

560 (b) For every other procurement requiring an evaluation by an evaluation committee,
561 the conducting procurement unit shall:

562 (i) appoint an evaluation committee consisting of at least three individuals with at least
563 a general familiarity with or basic understanding of:

564 (A) the technical requirements relating to the type of procurement item that is the
565 subject of the procurement; or

566 (B) the need that the procurement item is intended to address; and

567 (ii) ensure that the evaluation committee and each individual participating in the
568 evaluation committee process:

569 (A) does not have a conflict of interest with any of the offerors;

570 (B) can fairly evaluate each proposal;

571 (C) does not contact or communicate with an offeror concerning the procurement
572 outside the official evaluation committee process; and

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

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

577 (a) from an expert or consultant who:

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

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

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

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

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

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

586 proposal; and
587 (ii) may not:
588 (A) address criteria or specifications not contained in the offeror's original proposal;
589 (B) correct a deficiency, inaccuracy, or mistake in a proposal that is not an immaterial
590 error;
591 (C) correct an incomplete submission of documents that the solicitation required to be
592 submitted with the proposal;
593 (D) correct a failure to submit a timely proposal;
594 (E) substitute or alter a required form or other document specified in the solicitation;
595 (F) remedy a cause for an offeror being considered to be not responsible or a proposal
596 not responsive; or
597 (G) correct a defect or inadequacy resulting in a determination that an offeror does not
598 meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds
599 established in the solicitation.
600 (6) (a) Except as provided in Subsection (7)(b) relating to access to management fee
601 information, and except as provided in Subsection (9), each member of the evaluation
602 committee is prohibited from knowing, or having access to, any information relating to the
603 cost, or the scoring of the cost, of a proposal until after the evaluation committee submits its
604 final recommended scores on all other criteria to the issuing procurement unit.
605 (b) The issuing procurement unit shall:
606 (i) if applicable, assign an individual who is not a member of the evaluation committee
607 to calculate scores for cost based on the applicable scoring formula, weighting, and other
608 scoring procedures contained in the request for proposals;
609 (ii) review the evaluation committee's scores and correct any errors, scoring
610 inconsistencies, and reported noncompliance with this chapter;
611 (iii) add the scores calculated for cost, if applicable, to the evaluation committee's final
612 recommended scores on criteria other than cost to derive the total combined score for each
613 responsive and responsible proposal; and
614 (iv) provide to the evaluation committee the total combined score calculated for each
615 responsive and responsible proposal, including any applicable cost formula, weighting, and
616 scoring procedures used to calculate the total combined scores.

- 617 (c) The evaluation committee may not:
- 618 (i) change its final recommended scores described in Subsection (6)(a) after the
619 evaluation committee has submitted those scores to the issuing procurement unit; or
- 620 (ii) change cost scores calculated by the issuing procurement unit.
- 621 (7) (a) As used in this Subsection (7), "management fee" includes only the following
622 fees of the construction manager/general contractor:
- 623 (i) preconstruction phase services;
- 624 (ii) monthly supervision fees for the construction phase; and
- 625 (iii) overhead and profit for the construction phase.
- 626 (b) When selecting a construction manager/general contractor for a construction
627 project, the evaluation committee:
- 628 (i) may score a construction manager/general contractor based upon criteria contained
629 in the solicitation, including qualifications, performance ratings, references, management plan,
630 certifications, and other project specific criteria described in the solicitation;
- 631 (ii) may, as described in the solicitation, weight and score the management fee as a
632 fixed rate or as a fixed percentage of the estimated contract value;
- 633 (iii) may, at any time after the opening of the responses to the request for proposals,
634 have access to, and consider, the management fee proposed by the offerors; and
- 635 (iv) except as provided in Subsection (9), may not know or have access to any other
636 information relating to the cost of construction submitted by the offerors, until after the
637 evaluation committee submits its final recommended scores on all other criteria to the issuing
638 procurement unit.
- 639 (8) (a) The deliberations of an evaluation committee may be held in private.
- 640 (b) If the evaluation committee is a public body, as defined in Section [52-4-103](#), the
641 evaluation committee shall comply with Section [52-4-205](#) in closing a meeting for its
642 deliberations.
- 643 (9) An issuing procurement unit is not required to comply with Subsection (6) or
644 (7)(b)(iv), as applicable, if the head of the issuing procurement unit or a person designated by
645 rule made by the applicable rulemaking authority:
- 646 (a) signs a written statement:
- 647 (i) indicating that, due to the nature of the proposal or other circumstances, it is in the

648 best interest of the procurement unit to waive compliance with Subsection (6) or (7)(b)(iv), as
649 the case may be; and

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

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

Legislative Review Note
Office of Legislative Research and General Counsel