

PROCUREMENT CODE AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David G. Buxton

House Sponsor: Val L. Peterson

LONG TITLE

General Description:

This bill modifies the Utah Procurement Code.

Highlighted Provisions:

This bill:

- ▶ modifies and enacts definitions applicable to the Utah Procurement Code;
- ▶ modifies provisions relating to procurement units with independent procurement authority;
- ▶ reorganizes and modifies provisions relating to the applicability of and exemptions from the Utah Procurement Code;
- ▶ includes community reinvestment agencies within the scope of the Utah Procurement Code;
- ▶ makes technical changes to eliminate a redundancy resulting from a reference to a public transit district separate from a local district, which includes a public transit district;
- ▶ modifies notice provisions;
- ▶ modifies provisions relating to correcting immaterial errors or clarifying information in a solicitation response;
- ▶ reorganizes and modifies provisions relating to procurement rules;
- ▶ enacts provisions relating to cancelling a solicitation and rejecting solicitation responses;



- 28 ▶ modifies provisions relating to the request for statement of qualifications process;
- 29 ▶ modifies small purchase provisions;
- 30 ▶ modifies provisions relating to the approved vendor list process;
- 31 ▶ modifies provisions relating to the invitation for bids process;
- 32 ▶ modifies and enacts provisions relating to the request for proposals process;
- 33 ▶ modifies provisions relating to trial use contracts;
- 34 ▶ modifies provisions relating to the purchase of goods from the correctional
- 35 industries division;
- 36 ▶ authorizes a procurement unit to procure professional services by using the design
- 37 professional procurement process;
- 38 ▶ modifies records retention provisions;
- 39 ▶ modifies provisions relating to agreements and purchases between public entities;
- 40 ▶ repeals provisions relating to:
 - 41 • the bidding process; and
 - 42 • the request for proposals process; and
- 43 ▶ makes technical and conforming changes.

44 Money Appropriated in this Bill:

45 None

46 Other Special Clauses:

47 None

48 Utah Code Sections Affected:

49 AMENDS:

50 **63G-6a-103**, as last amended by Laws of Utah 2019, Chapters 136, 170, 314, and 456

51 **63G-6a-106**, as last amended by Laws of Utah 2018, Second Special Session, Chapter

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53 **63G-6a-109**, as last amended by Laws of Utah 2016, Chapter 355

54 **63G-6a-112**, as last amended by Laws of Utah 2017, Chapter 348

55 **63G-6a-114**, as enacted by Laws of Utah 2016, Chapter 355

56 **63G-6a-115**, as enacted by Laws of Utah 2016, Chapter 355

57 **63G-6a-203**, as last amended by Laws of Utah 2016, Chapter 355

58 **63G-6a-204**, as last amended by Laws of Utah 2019, Chapter 454

- 59 [63G-6a-302](#), as last amended by Laws of Utah 2017, Chapter 348
- 60 [63G-6a-303](#), as last amended by Laws of Utah 2018, Chapter 200
- 61 [63G-6a-409](#), as renumbered and amended by Laws of Utah 2016, Chapter 355
- 62 [63G-6a-410](#), as last amended by Laws of Utah 2017, Chapter 348
- 63 [63G-6a-506](#), as last amended by Laws of Utah 2017, Chapter 348
- 64 [63G-6a-507](#), as last amended by Laws of Utah 2017, Chapter 348
- 65 [63G-6a-602](#), as last amended by Laws of Utah 2017, Chapter 348
- 66 [63G-6a-603](#), as last amended by Laws of Utah 2017, Chapter 348
- 67 [63G-6a-606](#), as last amended by Laws of Utah 2017, Chapter 348
- 68 [63G-6a-702](#), as last amended by Laws of Utah 2017, Chapters 348, 376 and last
- 69 amended by Coordination Clause, Laws of Utah 2017, Chapter 348
- 70 [63G-6a-703](#), as last amended by Laws of Utah 2017, Chapters 154, 348, and 376
- 71 [63G-6a-707](#), as last amended by Laws of Utah 2017, Chapters 154, 348, and 376
- 72 [63G-6a-707.5](#), as repealed and reenacted by Laws of Utah 2017, Chapter 348
- 73 [63G-6a-712](#), as enacted by Laws of Utah 2018, Chapter 352
- 74 [63G-6a-802](#), as last amended by Laws of Utah 2016, Chapter 355
- 75 [63G-6a-802.3](#), as enacted by Laws of Utah 2016, Chapter 355
- 76 [63G-6a-802.7](#), as last amended by Laws of Utah 2017, Chapter 348
- 77 [63G-6a-803](#), as last amended by Laws of Utah 2016, Chapter 355
- 78 [63G-6a-804](#), as last amended by Laws of Utah 2019, Chapter 314
- 79 [63G-6a-806](#), as last amended by Laws of Utah 2016, Chapter 355
- 80 [63G-6a-902](#), as last amended by Laws of Utah 2013, Chapter 445
- 81 [63G-6a-903](#), as last amended by Laws of Utah 2017, Chapter 348
- 82 [63G-6a-904](#), as last amended by Laws of Utah 2017, Chapter 348
- 83 [63G-6a-1002](#), as last amended by Laws of Utah 2017, Chapter 348
- 84 [63G-6a-1003](#), as last amended by Laws of Utah 2017, Chapter 348
- 85 [63G-6a-1102](#), as last amended by Laws of Utah 2013, Chapter 445
- 86 [63G-6a-1103](#), as last amended by Laws of Utah 2014, Chapter 196
- 87 [63G-6a-1105](#), as last amended by Laws of Utah 2014, Chapter 196
- 88 [63G-6a-1204.5](#), as last amended by Laws of Utah 2017, Chapter 348
- 89 [63G-6a-1205](#), as last amended by Laws of Utah 2014, Chapter 196

- 90 **63G-6a-1206**, as last amended by Laws of Utah 2016, Chapter 355
- 91 **63G-6a-1208**, as enacted by Laws of Utah 2013, Chapter 445
- 92 **63G-6a-1302**, as last amended by Laws of Utah 2013, Chapter 445
- 93 **63G-6a-1303**, as last amended by Laws of Utah 2013, Chapter 445
- 94 **63G-6a-1502**, as last amended by Laws of Utah 2016, Chapter 355
- 95 **63G-6a-1503.5**, as last amended by Laws of Utah 2016, Chapter 355
- 96 **63G-6a-1506**, as last amended by Laws of Utah 2015, Chapter 218
- 97 **63G-6a-1603**, as last amended by Laws of Utah 2017, Chapter 348
- 98 **63G-6a-1903**, as last amended by Laws of Utah 2016, Chapter 355
- 99 **63G-6a-1911**, as last amended by Laws of Utah 2013, Chapter 445
- 100 **63G-6a-2002**, as last amended by Laws of Utah 2016, Chapter 355
- 101 **63G-6a-2003**, as last amended by Laws of Utah 2016, Chapter 355
- 102 **63G-6a-2102**, as last amended by Laws of Utah 2013, Chapter 445
- 103 **63G-6a-2103**, as last amended by Laws of Utah 2014, Chapter 196

104 ENACTS:

- 105 **63G-6a-107.2**, Utah Code Annotated 1953
- 106 **63G-6a-107.4**, Utah Code Annotated 1953
- 107 **63G-6a-107.6**, Utah Code Annotated 1953
- 108 **63G-6a-107.7**, Utah Code Annotated 1953
- 109 **63G-6a-107.8**, Utah Code Annotated 1953
- 110 **63G-6a-118**, Utah Code Annotated 1953
- 111 **63G-6a-119**, Utah Code Annotated 1953
- 112 **63G-6a-120**, Utah Code Annotated 1953
- 113 **63G-6a-704.4**, Utah Code Annotated 1953
- 114 **63G-6a-704.6**, Utah Code Annotated 1953

115 REPEALS AND REENACTS:

- 116 **63G-6a-604**, as last amended by Laws of Utah 2016, Chapter 355
- 117 **63G-6a-608**, as last amended by Laws of Utah 2017, Chapter 348
- 118 **63G-6a-704**, as last amended by Laws of Utah 2014, Chapter 196

119 REPEALS:

- 120 **63G-6a-105**, as last amended by Laws of Utah 2016, Chapter 355

- 121 [63G-6a-107](#), as last amended by Laws of Utah 2016, Chapter 355
- 122 [63G-6a-110](#), as renumbered and amended by Laws of Utah 2016, Chapter 355
- 123 [63G-6a-601](#), as enacted by Laws of Utah 2012, Chapter 347
- 124 [63G-6a-605](#), as repealed and reenacted by Laws of Utah 2016, Chapter 355
- 125 [63G-6a-607](#), as last amended by Laws of Utah 2017, Chapter 348
- 126 [63G-6a-609](#), as last amended by Laws of Utah 2016, Chapter 355
- 127 [63G-6a-610](#), as last amended by Laws of Utah 2013, Chapter 445
- 128 [63G-6a-611](#), as last amended by Laws of Utah 2016, Chapter 355
- 129 [63G-6a-612](#), as last amended by Laws of Utah 2017, Chapter 348
- 130 [63G-6a-706](#), as repealed and reenacted by Laws of Utah 2016, Chapter 355
- 131 [63G-6a-708](#), as last amended by Laws of Utah 2016, Chapter 355
- 132 [63G-6a-709](#), as last amended by Laws of Utah 2017, Chapter 348
- 133 [63G-6a-709.5](#), as last amended by Laws of Utah 2014, Chapter 196
- 134 [63G-6a-710](#), as last amended by Laws of Utah 2013, Chapter 445

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

137 Section 1. Section [63G-6a-103](#) is amended to read:

138 **[63G-6a-103](#). Definitions.**

139 As used in this chapter:

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

141 [~~(a) for a legislative procurement unit, the Legislative Management Committee;~~]

142 [~~(b) for a judicial procurement unit, the Judicial Council;~~]

143 [~~(c) (i) only to the extent of the procurement authority expressly granted to the~~
 144 ~~procurement unit by statute;~~]

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

147 [~~(B) for the Office of the Attorney General, the attorney general; and]~~

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

150 [~~(ii) for each other executive branch procurement unit, the board;~~]

151 [~~(d) for a local government procurement unit;~~]

152 ~~[(i) the legislative body of the local government procurement unit; or]~~
153 ~~[(ii) an individual or body designated by the legislative body of the local government~~
154 ~~procurement unit;]~~
155 ~~[(e) for a school district or a public school, the board, except to the extent of a school~~
156 ~~district's own nonadministrative rules that do not conflict with the provisions of this chapter;]~~
157 ~~[(f) for a state institution of higher education described in:]~~
158 ~~[(i) Subsections 53B-1-102(1)(a) and (c), the State Board of Regents; or]~~
159 ~~[(ii) Subsection 53B-1-102(1)(b), the Utah System of Technical Colleges Board of~~
160 ~~Trustees;]~~
161 ~~[(g) for the State Board of Education or the Utah Schools for the Deaf and the Blind,~~
162 ~~the State Board of Education;]~~
163 ~~[(h) for a public transit district, the chief executive of the public transit district;]~~
164 ~~[(i) for a local district other than a public transit district or for a special service~~
165 ~~district:]~~
166 ~~[(i) before January 1, 2015, the board of trustees of the local district or the governing~~
167 ~~body of the special service district; or]~~
168 ~~[(ii) on or after January 1, 2015, the board, except to the extent that the board of~~
169 ~~trustees of the local district or the governing body of the special service district makes its own~~
170 ~~rules:]~~
171 ~~[(A) with respect to a subject addressed by board rules; or]~~
172 ~~[(B) that are in addition to board rules;]~~
173 ~~[(j) for the Utah Educational Savings Plan, created in Section 53B-8a-103, the board of~~
174 ~~directors of the Utah Educational Savings Plan;]~~
175 ~~[(k) for the School and Institutional Trust Lands Administration, created in Section~~
176 ~~53C-1-201, the School and Institutional Trust Lands Board of Trustees;]~~
177 ~~[(l) for the School and Institutional Trust Fund Office, created in Section 53D-1-201;~~
178 ~~the School and Institutional Trust Fund Board of Trustees;]~~
179 ~~[(m) for the Utah Communications Authority, established in Section 63H-7a-201, the~~
180 ~~Utah Communications Authority Board, created in Section 63H-7a-203; or]~~
181 ~~[(n) for any other procurement unit, the board.]~~
182 ~~[(2)] (1) "Approved vendor" means a person who has been approved for inclusion on~~

183 an approved vendor list through the approved vendor list process.

184 ~~[(3)]~~ (2) "Approved vendor list" means a list of approved vendors established under
185 Section [63G-6a-507](#).

186 ~~[(4)]~~ (3) "Approved vendor list process" means the procurement process described in
187 Section [63G-6a-507](#).

188 ~~[(5)]~~ (4) "Bidder" means a person who submits a bid or price quote in response to an
189 invitation for bids.

190 ~~[(6)]~~ (5) "Bidding process" means the procurement process described in Part 6,
191 Bidding.

192 ~~[(7)]~~ (6) "Board" means the Utah State Procurement Policy Board, created in Section
193 [63G-6a-202](#).

194 ~~[(8)]~~ (7) "Building board" means the State Building Board, created in Section
195 [63A-5-101](#).

196 ~~[(9)]~~ (8) "Change directive" means a written order signed by the procurement officer
197 that directs the contractor to suspend work or make changes, as authorized by contract, without
198 the consent of the contractor.

199 ~~[(10)]~~ (9) "Change order" means a written alteration in specifications, delivery point,
200 rate of delivery, period of performance, price, quantity, or other provisions of a contract, upon
201 mutual agreement of the parties to the contract.

202 ~~[(11)]~~ (10) "Chief procurement officer" means the ~~[chief procurement officer]~~
203 individual appointed under Subsection [63G-6a-302\(1\)](#).

204 (11) "Community reinvestment agency" means the same as that term is defined in
205 Section [17C-1-102](#).

206 (12) "Conducting procurement unit" means a procurement unit that conducts all
207 aspects of a procurement:

208 (a) except:

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

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

211 (b) including:

212 (i) preparing any solicitation document;

213 (ii) appointing an evaluation committee;

- 214 (iii) conducting the evaluation process, except [~~as provided in Subsection~~
- 215 ~~63G-6a-707(6)(b)]~~ the process relating to scores calculated for costs of proposals;
- 216 (iv) selecting and recommending the person to be awarded a contract;
- 217 (v) negotiating the terms and conditions of a contract, subject to the issuing
- 218 procurement unit's approval; and
- 219 (vi) contract administration.

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

221 17D-3-102.

222 (14) "Construction project":

223 (a) means [~~services, including work, and supplies for~~] a project for the construction,

224 renovation, alteration, improvement, or repair of a public facility on real property, including all

225 services, labor, supplies, and materials for the project; and

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

227 or maintenance of an existing public facility.

228 (15) "Construction manager/general contractor":

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

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

231 (ii) that allows the contractor to subcontract for additional labor and materials that are

232 not included in the contractor's cost proposal submitted at the time of the procurement of the

233 contractor's services; and

234 (b) does not include a contractor whose only subcontract work not included in the

235 contractor's cost proposal submitted as part of the procurement of the contractor's services is to

236 meet subcontracted portions of change orders approved within the scope of the project.

237 (16) "Construction subcontractor":

238 (a) means a person under contract with a contractor or another subcontractor to provide

239 services or labor for the design or construction of a construction project;

240 (b) includes a general contractor or specialty contractor licensed or exempt from

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

242 (c) does not include a supplier who provides only materials, equipment, or supplies to a

243 contractor or subcontractor for a construction project.

244 (17) "Contract" means an agreement for a procurement.

245 (18) "Contract administration" means all functions, duties, and responsibilities
246 associated with managing, overseeing, and carrying out a contract between a procurement unit
247 and a contractor, including:

- 248 (a) implementing the contract;
- 249 (b) ensuring compliance with the contract terms and conditions by the conducting
250 procurement unit and the contractor;
- 251 (c) executing change orders;
- 252 (d) processing contract amendments;
- 253 (e) resolving, to the extent practicable, contract disputes;
- 254 (f) curing contract errors and deficiencies;
- 255 (g) terminating a contract;
- 256 (h) measuring or evaluating completed work and contractor performance;
- 257 (i) computing payments under the contract; and
- 258 (j) closing out a contract.

259 (19) "Contractor" means a person who is awarded a contract with a procurement unit.

260 (20) "Cooperative procurement" means procurement conducted by, or on behalf of:

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

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

266 (22) "Cost-plus-a-percentage-of-cost contract" means a contract under which the
267 contractor is paid a percentage of the total actual expenses or costs in addition to the
268 contractor's actual expenses or costs.

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

272 (24) "Days" means calendar days, unless expressly provided otherwise.

273 (25) "Definite quantity contract" means a fixed price contract that provides for a
274 specified amount of supplies over a specified period, with deliveries scheduled according to a
275 specified schedule.

276 (26) "Design professional" means:
277 (a) an individual licensed as an architect under Title 58, Chapter 3a, Architects
278 Licensing Act;
279 (b) an individual licensed as a professional engineer or professional land surveyor
280 under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing
281 Act; or
282 (c) an individual certified as a commercial interior designer under Title 58, Chapter 86,
283 State Certification of Commercial Interior Designers Act.
284 (27) "Design professional procurement process" means the procurement process
285 described in Part 15, Design Professional Services.
286 (28) "Design professional services" means:
287 (a) professional services within the scope of the practice of architecture as defined in
288 Section 58-3a-102;
289 (b) professional engineering as defined in Section 58-22-102;
290 (c) master planning and programming services; or
291 (d) services within the scope of the practice of commercial interior design, as defined
292 in Section 58-86-102.
293 (29) "Design-build" means the procurement of design professional services and
294 construction by the use of a single contract.
295 ~~[(30) "Director" means the director of the division.]~~
296 ~~[(31)]~~ (30) "Division" means the Division of Purchasing and General Services, created
297 in Section 63A-2-101.
298 ~~[(32)]~~ (31) "Educational procurement unit" means:
299 (a) a school district;
300 (b) a public school, including a local school board or a charter school;
301 (c) the Utah Schools for the Deaf and the Blind;
302 (d) the Utah Education and Telehealth Network;
303 (e) an institution of higher education of the state described in Section 53B-1-102; or
304 (f) the State Board of Education.
305 ~~[(33)]~~ (32) "Established catalogue price" means the price included in a catalogue, price
306 list, schedule, or other form that:

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

312 ~~[(34)]~~ (33) "Executive branch procurement unit" means a department, division, office,

313 bureau, agency, or other organization within the state executive branch.

314 (34) "Facilities division" means the Division of Facilities Construction and

315 Management, created in Section [63A-5-201](#).

316 (35) "Fixed price contract" means a contract that provides a price, for each

317 procurement item obtained under the contract, that is not subject to adjustment except to the

318 extent that:

319 (a) the contract provides, under circumstances specified in the contract, for an

320 adjustment in price that is not based on cost to the contractor; or

321 (b) an adjustment is required by law.

322 (36) "Fixed price contract with price adjustment" means a fixed price contract that

323 provides for an upward or downward revision of price, precisely described in the contract, that:

324 (a) is based on the consumer price index or another commercially acceptable index,

325 source, or formula; and

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

327 (37) "Grant" means an expenditure of public funds or other assistance, or an agreement

328 to expend public funds or other assistance, for a public purpose authorized by law, without

329 acquiring a procurement item in exchange.

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

331 ~~[(a) for a legislative procurement unit, any person designated by rule made by the~~

332 ~~applicable rulemaking authority;]~~

333 ~~[(b) for an executive branch procurement unit:]~~

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

335 ~~[(ii) any other person designated by the board, by rule;]~~

336 ~~[(c) for a judicial procurement unit:]~~

337 ~~[(i) the Judicial Council; or]~~

- 338 ~~[(ii) any other person designated by the Judicial Council, by rule;]~~
339 ~~[(d) for a local government procurement unit;]~~
340 ~~[(i) the legislative body of the local government procurement unit; or]~~
341 ~~[(ii) any other person designated by the local government procurement unit;]~~
342 ~~[(e) for a local district other than a public transit district, the board of trustees of the~~
343 ~~local district or a designee of the board of trustees;]~~
344 ~~[(f) for a special service district, the governing body of the special service district or a~~
345 ~~designee of the governing body;]~~
346 ~~[(g) for a local building authority, the board of directors of the local building authority~~
347 ~~or a designee of the board of directors;]~~
348 ~~[(h) for a conservation district, the board of supervisors of the conservation district or a~~
349 ~~designee of the board of supervisors;]~~
350 ~~[(i) for a public corporation, the board of directors of the public corporation or a~~
351 ~~designee of the board of directors;]~~
352 ~~[(j) for a school district or any school or entity within a school district, the board of the~~
353 ~~school district, or the board's designee;]~~
354 ~~[(k) for a charter school, the individual or body with executive authority over the~~
355 ~~charter school, or the individual's or body's designee;]~~
356 ~~[(l) for an institution of higher education described in Section [53B-2-101](#), the president~~
357 ~~of the institution of higher education, or the president's designee;]~~
358 ~~[(m) for a public transit district, the board of trustees or a designee of the board of~~
359 ~~trustees;]~~
360 ~~[(n) for the State Board of Education, the State Board of Education or a designee of the~~
361 ~~State Board of Education; or]~~
362 ~~[(o) for the Utah Communications Authority, established in Section [63H-7a-201](#), the~~
363 ~~executive director of the Utah Communications Authority or a designee of the executive~~
364 ~~director.]~~
365 ~~[(39)]~~ (38) "Immaterial error":
366 (a) means an irregularity or abnormality that is:
367 (i) a matter of form that does not affect substance; or
368 (ii) an inconsequential variation from a requirement of a solicitation that has no, little,

369 or a trivial effect on the procurement process and that is not prejudicial to other vendors; and

370 (b) includes:

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

373 (ii) a typographical error;

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

375 (iv) any other error that the [~~chief procurement officer or the head of a procurement~~
376 ~~unit with independent procurement authority~~] procurement official reasonably considers to be
377 immaterial.

378 [~~(40)~~] (39) "Indefinite quantity contract" means a fixed price contract that:

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

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

382 (ii) provides a maximum purchase limit.

383 [~~(41) "Independent procurement authority" means authority granted to a procurement~~
384 ~~unit under Subsection 63G-6a-106(4)(a).]~~

385 (40) "Independent procurement unit" means:

386 (a) (i) a legislative procurement unit;

387 (ii) a judicial branch procurement unit;

388 (iii) an educational procurement unit;

389 (iv) a local government procurement unit;

390 (v) a conservation district;

391 (vi) a local building authority;

392 (vii) a local district;

393 (viii) a community reinvestment agency;

394 (ix) a public corporation;

395 (x) a special service district; or

396 (xi) the Utah Communications Authority, established in Section 63H-7a-201;

397 (b) the building board or the facilities division, but only to the extent of the

398 procurement authority provided under Title 63A, Chapter 5, State Building Board - Division of
399 Facilities Construction and Management;

400 (c) the attorney general, but only to the extent of the procurement authority provided
401 under Title 67, Chapter 5, Attorney General;

402 (d) the Department of Transportation, but only to the extent of the procurement
403 authority provided under Title 72, Transportation Code; or

404 (e) any other executive branch department, division, office, or entity that has statutory
405 procurement authority outside this chapter, but only to the extent of that statutory procurement
406 authority.

407 [~~42~~] (41) "Invitation for bids":

408 (a) means a document used to solicit:

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

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

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

412 described in Subsection [~~42~~] (41)(a).

413 [~~43~~] (42) "Issuing procurement unit" means a procurement unit that:

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

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

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

417 [~~44~~] (43) "Judicial procurement unit" means:

418 (a) the Utah Supreme Court;

419 (b) the Utah Court of Appeals;

420 (c) the Judicial Council;

421 (d) a state judicial district; or

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

424 [~~45~~] (44) "Labor hour contract" is a contract under which:

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

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

428 [~~46~~] (45) "Legislative procurement unit" means:

429 (a) the Legislature;

430 (b) the Senate;

- 431 (c) the House of Representatives;
- 432 (d) a staff office of the Legislature, the Senate, or the House of Representatives; or
- 433 (e) a committee, subcommittee, commission, or other organization:
- 434 (i) within the state legislative branch; or
- 435 (ii) (A) that is created by statute to advise or make recommendations to the Legislature;
- 436 (B) the membership of which includes legislators; and
- 437 (C) for which the Office of Legislative Research and General Counsel provides staff
- 438 support.

439 [~~47~~] (46) "Local building authority" means the same as that term is defined in Section
440 [17D-2-102](#).

441 [~~48~~] (47) "Local district" means the same as that term is defined in Section
442 [17B-1-102](#).

443 [~~49~~] (48) "Local government procurement unit" means:

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

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

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

451 [~~50~~] (49) "Multiple award contracts" means the award of a contract for an indefinite
452 quantity of a procurement item to more than one person.

453 [~~51~~] (50) "Multiyear contract" means a contract that extends beyond a one-year
454 period, including a contract that permits renewal of the contract, without competition, beyond
455 the first year of the contract.

456 [~~52~~] (51) "Municipality" means a city, town, or metro township.

457 [~~53~~] (52) "Nonadopting local government procurement unit" means:

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

461 (b) each office or agency of a county or municipality described in Subsection [~~53~~]

462 (52)(a).

463 ~~[(54)]~~ (53) "Offeror" means a person who submits a proposal in response to a request
464 for proposals.

465 ~~[(55)]~~ (54) "Preferred bidder" means a bidder that is entitled to receive a reciprocal
466 preference under the requirements of this chapter.

467 ~~[(56)]~~ (55) "Procure" means to acquire a procurement item through a procurement.

468 ~~[(57)]~~ (56) "Procurement"~~[(a) means a procurement unit's]~~ means the acquisition of a
469 procurement item through an expenditure of public funds, or an agreement to expend public
470 funds, including an acquisition through a public-private partnership[;].

471 ~~[(b) includes all functions that pertain to the acquisition of a procurement item,~~
472 ~~including:]~~

473 ~~[(i) preparing and issuing a solicitation; and]~~

474 ~~[(ii) (A) conducting a standard procurement process; or]~~

475 ~~[(B) conducting a procurement process that is an exception to a standard procurement~~
476 ~~process under Part 8, Exceptions to Procurement Requirements; and]~~

477 ~~[(c) does not include a grant.]~~

478 ~~[(58)]~~ (57) "Procurement item" means ~~[a supply]~~ an item of personal property, a
479 technology, a service, or a construction project.

480 ~~[(59) "Procurement officer" means:]~~

481 ~~[(a) for a procurement unit with independent procurement authority:]~~

482 ~~[(i) the head of the procurement unit;]~~

483 ~~[(ii) a designee of the head of the procurement unit; or]~~

484 ~~[(iii) a person designated by rule made by the applicable rulemaking authority; or]~~

485 ~~[(b) for the division or a procurement unit without independent procurement authority,~~
486 ~~the chief procurement officer.]~~

487 (58) "Procurement official" means:

488 (a) for a procurement unit other than an independent procurement unit, the chief
489 procurement officer;

490 (b) for a legislative procurement unit, the individual, individuals, or body designated in
491 a policy adopted by the Legislative Management Committee;

492 (c) for a judicial procurement unit, the Judicial Council or an individual or body

493 designated by the Judicial Council by rule;

494 (d) for a local government procurement unit:

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

496 (ii) an individual or body designated by the local government procurement unit;

497 (e) for a local district, the board of trustees of the local district or the board of trustees'
498 designee;

499 (f) for a community reinvestment agency, the board of the community reinvestment
500 agency or the board's designee;

501 (g) for a special service district, the governing body of the special service district or the
502 governing body's designee;

503 (h) for a local building authority, the board of directors of the local building authority
504 or the board of directors' designee;

505 (i) for a conservation district, the board of supervisors of the conservation district or
506 the board of supervisors' designee;

507 (j) for a public corporation, the board of directors of the public corporation or the board
508 of directors' designee;

509 (k) for a school district or any school or entity within a school district, the board of the
510 school district or the board's designee;

511 (l) for a charter school, the individual or body with executive authority over the charter
512 school or the designee of the individual or body;

513 (m) for an institution of higher education described in Section [53B-2-101](#), the president
514 of the institution of higher education or the president's designee;

515 (n) for the State Board of Education, the State Board of Education or the State Board of
516 Education's designee;

517 (o) for the State Board of Regents, the Commissioner of Higher Education or the
518 designee of the Commissioner of Higher Education;

519 (p) for the Utah Communications Authority, established in Section [63H-7a-201](#), the
520 executive director of the Utah Communications Authority or the executive director's designee;

521 or

522 (q) (i) for the building board, and only to the extent of procurement activities of the
523 building board as an independent procurement unit under the procurement authority provided

524 under Title 63A, Chapter 5, State Building Board - Division of Facilities Construction and
525 Management, the director of the building board or the director's designee;

526 (ii) for the facilities division, and only to the extent of procurement activities of the
527 facilities division as an independent procurement unit under the procurement authority
528 provided under Title 63A, Chapter 5, State Building Board - Division of Facilities Construction
529 and Management, the director of the facilities division or the director's designee;

530 (iii) for the attorney general, and only to the extent of procurement activities of the
531 attorney general as an independent procurement unit under the procurement authority provided
532 under Title 67, Chapter 5, Attorney General, the attorney general or the attorney general's
533 designee;

534 (iv) for the Department of Transportation created in Section [72-1-201](#), and only to the
535 extent of procurement activities of the Department of Transportation as an independent
536 procurement unit under the procurement authority provided under Title 72, Transportation
537 Code, the executive director of the Department of Transportation or the executive director's
538 designee; or

539 (v) for any other executive branch department, division, office, or entity that has
540 statutory procurement authority outside this chapter, and only to the extent of the procurement
541 activities of the department, division, office, or entity as an independent procurement unit
542 under the procurement authority provided outside this chapter for the department, division,
543 office, or entity, the chief executive officer of the department, division, office, or entity or the
544 chief executive officer's designee.

545 ~~[(60)]~~ (59) "Procurement unit":

546 (a) means:

547 (i) a legislative procurement unit;

548 (ii) an executive branch procurement unit;

549 (iii) a judicial procurement unit;

550 (iv) an educational procurement unit;

551 (v) the Utah Communications Authority, established in Section [63H-7a-201](#);

552 (vi) a local government procurement unit;

553 (vii) a local district;

554 (viii) a special service district;

- 555 (ix) a local building authority;
- 556 (x) a conservation district;
- 557 (xi) a community reinvestment agency; or
- 558 ~~[(xi)]~~ (xii) a public corporation; [or] and
- 559 ~~[(xii) a public transit district; and]~~
- 560 (b) does not include a political subdivision created under Title 11, Chapter 13,
- 561 Interlocal Cooperation Act.
- 562 ~~[(61)]~~ (60) "Professional service" means labor, effort, or work that requires ~~[an~~
- 563 ~~elevated degree of]~~ specialized knowledge, expertise, and discretion, including labor, effort, or
- 564 work in the field of:
- 565 (a) accounting;
- 566 (b) administrative law judge service;
- 567 (c) architecture;
- 568 (d) construction design and management;
- 569 (e) engineering;
- 570 (f) financial services;
- 571 (g) information technology;
- 572 (h) the law;
- 573 (i) medicine;
- 574 (j) psychiatry; or
- 575 (k) underwriting.
- 576 ~~[(62)]~~ (61) "Protest officer" means:
- 577 (a) for the division or ~~[a procurement unit with]~~ an independent procurement
- 578 ~~[authority]~~ unit:
- 579 (i) the ~~[head of the]~~ procurement ~~[unit]~~ official;
- 580 (ii) the ~~[head of the procurement unit's]~~ procurement official's designee who is an
- 581 employee of the procurement unit; or
- 582 (iii) a person designated by rule made by the ~~[applicable]~~ rulemaking authority; or
- 583 (b) for a procurement unit ~~[without]~~ other than an independent procurement ~~[authority]~~
- 584 unit, the chief procurement officer or the chief procurement officer's designee who is an
- 585 employee of the division.

586 ~~[(63)]~~ (62) "Public corporation" means the same as that term is defined in Section
587 [63E-1-102](#).

588 ~~[(64)]~~ (63) "Public entity" means the state or any other government entity [~~of the state~~
589 ~~or political subdivision of the state, including:~~ within the state that expends public funds.

590 ~~[(a) a procurement unit;~~

591 ~~[(b) a municipality or county, regardless of whether the municipality or county has~~
592 ~~adopted this chapter or any part of this chapter; and]~~

593 ~~[(c) any other government entity located in the state that expends public funds.]~~

594 ~~[(65)]~~ (64) "Public facility" means a building, structure, infrastructure, improvement,
595 or other facility of a public entity.

596 ~~[(66)]~~ (65) "Public funds" means money, regardless of its source, including from the
597 federal government, that is owned or held by a procurement unit.

598 ~~[(67)]~~ (66) "Public transit district" means a public transit district organized under Title
599 17B, Chapter 2a, Part 8, Public Transit District Act.

600 ~~[(68)]~~ (67) "Public-private partnership" means an arrangement or agreement, occurring
601 on or after January 1, 2017, between a procurement unit and one or more contractors to provide
602 for a public need through the development or operation of a project in which the contractor or
603 contractors share with the procurement unit the responsibility or risk of developing, owning,
604 maintaining, financing, or operating the project.

605 ~~[(69)]~~ (68) "Qualified vendor" means a vendor who:

606 (a) is responsible; and

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

610 ~~[(70)]~~ (69) "Real property" means land and any building, fixture, improvement,
611 appurtenance, structure, or other development that is permanently affixed to land.

612 ~~[(71)]~~ (70) "Request for information" means a nonbinding process through which a
613 procurement unit requests information relating to a procurement item.

614 ~~[(72)]~~ (71) "Request for proposals" means a document used to solicit proposals to
615 provide a procurement item to a procurement unit, including all other documents that are
616 attached to that document or incorporated in that document by reference.

617 ~~[(73)]~~ (72) "Request for proposals process" means the procurement process described
618 in Part 7, Request for Proposals.

619 ~~[(74)]~~ (73) "Request for statement of qualifications" means a document used to solicit
620 information about the qualifications of a person interested in responding to a potential
621 procurement, including all other documents attached to that document or incorporated in that
622 document by reference.

623 ~~[(75)]~~ (74) "Requirements contract" means a contract:

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

626 (b) that:

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

628 (ii) provides a maximum purchase limit.

629 ~~[(76)]~~ (75) "Responsible" means being capable, in all respects, of:

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

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

633 ~~[(77)]~~ (76) "Responsive" means conforming in all material respects to the requirements
634 of a solicitation.

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

636 (77) "Rule" includes a policy or regulation adopted by the rulemaking authority, if
637 adopting a policy or regulation is the method the rulemaking authority uses to adopt provisions
638 that govern the applicable procurement unit.

639 (78) "Rulemaking authority" means:

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

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

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

644 (A) for the building board or the facilities division, the building board;

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

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

648 (D) for any other executive branch department, division, office, or entity that has
649 statutory procurement authority outside this chapter, the governing authority of the department,
650 division, office, or entity; and

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

652 (d) for a local government procurement unit:

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

654 (ii) an individual or body designated by the local government procurement unit;

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

657 (f) for a state institution of higher education described in Subsection [53B-1-102\(1\)\(a\)](#)
658 or (c), the State Board of Regents;

659 (g) for a state institution of higher education described in Subsection [53B-1-102\(1\)\(b\)](#),
660 the Utah System of Technical Colleges Board of Trustees;

661 (h) for the State Board of Education or the Utah Schools for the Deaf and the Blind, the
662 State Board of Education;

663 (i) for a public transit district, the chief executive of the public transit district;

664 (j) for a local district other than a public transit district or for a special service district,
665 the board, except to the extent that the board of trustees of the local district or the governing
666 body of the special service district makes its own rules:

667 (i) with respect to a subject addressed by board rules; or

668 (ii) that are in addition to board rules;

669 (k) for the Utah Educational Savings Plan, created in Section [53B-8a-103](#), the board of
670 directors of the Utah Educational Savings Plan;

671 (l) for the School and Institutional Trust Lands Administration, created in Section
672 [53C-1-201](#), the School and Institutional Trust Lands Board of Trustees;

673 (m) for the School and Institutional Trust Fund Office, created in Section [53D-1-201](#),
674 the School and Institutional Trust Fund Board of Trustees;

675 (n) for the Utah Communications Authority, established in Section [63H-7a-201](#), the
676 Utah Communications Authority Board, created in Section [63H-7a-203](#); or

677 (o) for any other procurement unit, the board.

678 (79) "Service":

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

681 (b) includes a professional service; and

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

684 (80) "Small purchase process" means the procurement process described in Section
685 [63G-6a-506](#).

686 (81) "Sole source contract" means a contract resulting from a sole source procurement.

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

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

692 (84) "Solicitation response" means:

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

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

695 (c) a statement of qualifications submitted in response to a request for statement of
696 qualifications.

697 (85) "Special service district" means the same as that term is defined in Section
698 [17D-1-102](#).

699 (86) "Specification" means any description of the physical or functional characteristics
700 or of the nature of a procurement item included in an invitation for bids or a request for
701 proposals, or otherwise specified or agreed to by a procurement unit, including a description of:

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

703 (b) preparing a procurement item for delivery.

704 (87) "Standard procurement process" means:

705 (a) the bidding process;

706 (b) the request for proposals process;

707 (c) the approved vendor list process;

708 (d) the small purchase process; or

709 (e) the design professional procurement process.

710 (88) "State cooperative contract" means a contract awarded by the division for and in
711 behalf of all public entities.

712 (89) "Statement of qualifications" means a written statement submitted to a
713 procurement unit in response to a request for statement of qualifications.

714 (90) "Subcontractor":

715 (a) means a person under contract to perform part of a contractual obligation under the
716 control of the contractor, whether the person's contract is with the contractor directly or with
717 another person who is under contract to perform part of a contractual obligation under the
718 control of the contractor; and

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

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

723 (91) "Technology" means the same as "information technology," as defined in Section
724 [63F-1-102](#).

725 (92) "Tie bid" means that the lowest responsive bids of responsible bidders are
726 identical in price.

727 (93) "Time and materials contract" means a contract under which the contractor is paid:

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

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

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

732 (94) "Transitional costs":

733 (a) means the costs of changing:

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

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

737 (b) includes:

738 (i) training costs;

739 (ii) conversion costs;

740 (iii) compatibility costs;

- 741 (iv) costs associated with system downtime;
- 742 (v) disruption of service costs;
- 743 (vi) staff time necessary to implement the change;
- 744 (vii) installation costs; and
- 745 (viii) ancillary software, hardware, equipment, or construction costs; and
- 746 (c) does not include:
 - 747 (i) the costs of preparing for or engaging in a procurement process; or
 - 748 (ii) contract negotiation or drafting costs.

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

752 ~~[(96)]~~ (95) "Vendor":

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

755 (b) includes:

- 756 (i) a bidder;
- 757 (ii) an offeror;
- 758 (iii) an approved vendor;
- 759 (iv) a design professional; and
- 760 (v) a person who submits an unsolicited proposal under Section [63G-6a-712](#).

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

762 **63G-6a-106. Independent procurement units.**

763 ~~[(1) A procurement unit with procurement authority under the following provisions has~~
 764 ~~independent procurement authority to the extent of the applicable provisions and for the~~
 765 ~~procurement items specified in the applicable provisions:]~~

766 ~~[(a) Title 53B, State System of Higher Education;]~~

767 ~~[(b) Title 63A, Chapter 5, State Building Board - Division of Facilities Construction~~
 768 ~~and Management;]~~

769 ~~[(c) Title 67, Chapter 5, Attorney General;]~~

770 ~~[(d) Title 72, Transportation Code; and]~~

771 ~~[(e) Title 78A, Chapter 5, District Court.]~~

772 ~~[(2) Except as otherwise provided in Sections [63G-6a-105](#) and [63G-6a-107](#), a~~
 773 ~~procurement unit shall conduct a procurement in accordance with this chapter.]~~

774 ~~[(3) (a) The Department of Transportation may make rules governing the procurement~~
 775 ~~of highway construction or improvement.]~~

776 ~~[(b) The applicable rulemaking authority for a public transit district may make rules~~
 777 ~~governing the procurement of a transit construction project or a transit improvement project.]~~

778 ~~[(4) (a)]~~ (1) ~~[A]~~ An independent procurement unit ~~[listed in Subsection (4)(b)]~~ may,
 779 without the supervision, interference, oversight, control, or involvement of the division or the
 780 chief procurement officer, but in accordance with the requirements of this chapter:

781 ~~[(i)]~~ (a) engage in a standard procurement process;

782 ~~[(ii) procure an]~~

783 (b) acquire a procurement item under an exception, as provided in this chapter, to the
 784 requirement to use a standard procurement process; or

785 ~~[(iii)]~~ (c) otherwise engage in an act authorized or required by this chapter.

786 ~~[(b) The procurement units to which Subsection (4)(a) applies are:]~~

787 ~~[(i) a legislative procurement unit;]~~

788 ~~[(ii) a judicial procurement unit;]~~

789 ~~[(iii) an educational procurement unit;]~~

790 ~~[(iv) a local government procurement unit;]~~

791 ~~[(v) a conservation district;]~~

792 ~~[(vi) a local building authority;]~~

793 ~~[(vii) a local district;]~~

794 ~~[(viii) a public corporation;]~~

795 ~~[(ix) a special service district;]~~

796 ~~[(x) a public transit district;]~~

797 ~~[(xi) the Utah Communications Authority, established in Section [63H-7a-201](#); and]~~

798 ~~[(xii) a procurement unit referred to in Subsection (1), to the extent authorized in~~
 799 ~~Subsection (1).]~~

800 ~~[(c) A procurement unit with independent procurement authority shall comply with the~~
 801 ~~requirements of this chapter.]~~

802 ~~[(d)]~~ (2) Notwithstanding Subsection ~~[(4)(a), a procurement unit with]~~ (1), an

803 independent procurement [authority] unit may agree in writing with the division to extend the
804 authority of the division or the chief procurement officer to the procurement unit, as provided
805 in the agreement.

806 ~~[(e)]~~ (3) With respect to a procurement or contract over which ~~[the head of a~~
807 ~~procurement unit with]~~ an independent procurement [authority] unit's procurement official has
808 authority, the ~~[head of the procurement unit with independent procurement authority]~~
809 procurement official may:

810 ~~[(i)]~~ (a) manage and supervise the procurement to ensure to the extent practicable that
811 taxpayers receive the best value;

812 ~~[(ii)]~~ (b) prepare and issue standard specifications for procurement items;

813 ~~[(iii)]~~ (c) review contracts, coordinate contract compliance, conduct contract audits,
814 and approve change orders;

815 ~~[(iv)]~~ (d) delegate duties and authority to an employee of the procurement unit, as the
816 ~~[head of the procurement unit with]~~ independent procurement [authority] unit's procurement
817 official considers appropriate;

818 ~~[(v)]~~ (e) for the ~~[head]~~ procurement official of an executive branch procurement unit
819 ~~[with]~~ that is an independent procurement [authority] unit, coordinate with the Department of
820 Technology Services, created in Section 63F-1-103, with respect to the procurement unit's
821 procurement of information technology services;

822 ~~[(vi)]~~ (f) correct, amend, or cancel a procurement at any stage of the procurement
823 process if the procurement is out of compliance with this chapter or a rule adopted by the
824 ~~[applicable]~~ rulemaking authority;

825 ~~[(vii) after consultation with, as applicable, the attorney general's office or the~~
826 ~~procurement unit's legal counsel, correct, amend, or cancel a contract at any time during the~~
827 ~~term of the contract if:]~~

828 ~~[(A) the contract is out of compliance with this chapter or a board rule; and]~~

829 ~~[(B) the head of the procurement unit with independent procurement authority~~
830 ~~determines that correcting, amending, or canceling the contract is in the best interest of the~~
831 ~~procurement unit; and]~~

832 ~~[(viii)]~~ (g) attempt to resolve a contract dispute in coordination with the legal counsel
833 of the ~~[procurement unit with]~~ independent procurement [authority:] unit; and

834 (h) at any time during the term of a contract awarded by the independent procurement
835 unit, correct or amend a contract to bring it into compliance or cancel the contract:

836 (i) if the procurement official determines that correcting, amending, or canceling the
837 contract is in the best interest of the procurement unit; and

838 (ii) after consulting with, as applicable, the attorney general's office or the procurement
839 unit's legal counsel.

840 [~~(f) The head of a procurement unit with independent procurement authority serves as~~
841 ~~the protest officer for a protest involving the procurement unit.]~~

842 [~~(g) If, at any time during the term of a contract awarded by a procurement unit with~~
843 ~~independent procurement authority, the head of the procurement unit determines that the~~
844 ~~contract is out of compliance with this chapter or applicable rules, the head of the procurement~~
845 ~~unit may correct or amend the contract to bring it into compliance or cancel the contract:]~~

846 [~~(i) if the head of the procurement unit determines that correcting, amending, or~~
847 ~~canceling the contract is in the best interest of the procurement unit; and]~~

848 [~~(ii) after consulting with legal counsel.]~~

849 [~~(5)(a)~~ (4) The attorney general may, in accordance with the provisions of this
850 chapter, but without involvement by the division or the chief procurement officer:

851 [(i) (a) retain outside counsel, subject to Section 67-5-33 if the attorney general retains
852 outside counsel under a contingent fee contract, as defined in that section; or

853 [(ii) (b) procure litigation support services, including retaining an expert witness.

854 [(b) A procurement unit with]

855 (5) An independent procurement [authority] unit that is not represented by the attorney
856 general's office may, in accordance with the provisions of this chapter, but without involvement
857 by the division or the chief procurement officer:

858 [(i) (a) retain outside counsel; or

859 [(ii) (b) procure litigation support services, including retaining an expert witness.

860 (6) The state auditor's office may, in accordance with the provisions of this chapter, but
861 without involvement by the division or the chief procurement officer, procure audit services.

862 (7) The state treasurer may, in accordance with the provisions of this chapter, but
863 without involvement by the division or the chief procurement officer, procure:

864 (a) deposit services; and

865 (b) services related to issuing bonds.

866 Section 3. Section **63G-6a-107.2** is enacted to read:

867 **63G-6a-107.2. Application of chapter in general.**

868 (1) Except as provided in Section [63G-6a-107.6](#), this chapter applies to every

869 procurement.

870 (2) Notwithstanding any other provision of this chapter:

871 (a) a procurement unit may administer a procurement in accordance with the
872 requirements imposed by the source of the funds used to procure the procurement item; and

873 (b) if a procurement involves the expenditure of federal or state assistance, federal
874 contract funds, local matching funds, or federal financial participation funds, the procurement
875 unit shall comply with mandatory applicable federal or state law and regulations not reflected
876 in this chapter.

877 (3) A procurement unit that is subject to this chapter may not obtain a procurement
878 item unless:

879 (a) the procurement unit complies with:

880 (i) all applicable requirements of this chapter; and

881 (ii) the applicable rules that the rulemaking authority makes pursuant to this chapter;

882 and

883 (b) if the procurement unit is not the division or an independent procurement unit, the
884 procurement unit obtains the procurement item under the direction and approval of the
885 division, unless otherwise provided by a rule made by the board.

886 Section 4. Section **63G-6a-107.4** is enacted to read:

887 **63G-6a-107.4. Application of chapter to counties and municipalities and the Utah**
888 **Housing Corporation.**

889 A county or municipality or the Utah Housing Corporation:

890 (1) may adopt:

891 (a) any or all provisions of this chapter; or

892 (b) any or all rules adopted by the board under this chapter; and

893 (2) is subject to and shall comply with the provisions of this chapter and the rules that
894 are adopted by the county or municipality or the Utah Housing Corporation, respectively.

895 Section 5. Section **63G-6a-107.6** is enacted to read:

896 **63G-6a-107.6. Exemptions from chapter.**897 (1) Except for this Subsection (1), the provisions of this chapter do not apply to:898 (a) a public entity's acquisition of a procurement item from another public entity; or899 (b) a public entity that is not a procurement unit.900 (2) Unless otherwise provided by statute and except for this Subsection (2), the901 provisions of this chapter do not apply to the acquisition or disposal of real property or an902 interest in real property.903 (3) Except for this Subsection (3) and Part 24, Unlawful Conduct and Penalties, the904 provisions of this chapter do not apply to:905 (a) funds administered under the Percent-for-Art Program of the Utah Percent-for-Art906 Act;907 (b) a grant;908 (c) medical supplies or medical equipment, including service agreements for medical909 equipment, obtained by the University of Utah Hospital through a purchasing consortium if:910 (i) the consortium uses a competitive procurement process; and911 (ii) the chief administrative officer of the hospital makes a written finding that the912 prices for purchasing medical supplies and medical equipment through the consortium are913 competitive with market prices;914 (d) the purchase of firefighting supplies or equipment by the Division of Forestry, Fire,915 and State Lands, created in Section [65A-1-4](#), through the federal General Services916 Administration or the National Fire Cache system;917 (e) supplies purchased for resale to the public; or918 (f) activities related to the management of investments by a public entity granted919 investment authority by law.920 (4) This chapter does not supersede the requirements for retention or withholding of921 construction proceeds and release of construction proceeds as provided in Section [13-8-5](#).922 (5) Except for this Subsection (5), the provisions of this chapter do not apply to a923 procurement unit's hiring a mediator, arbitrator, or arbitration panel member to participate in924 the procurement unit's dispute resolution efforts.925 Section 6. Section **63G-6a-107.7** is enacted to read:926 **63G-6a-107.7. Procurement rules.**

927 (1) (a) Subject to Subsection (1)(b), the rulemaking authority for a procurement unit
928 shall make rules relating to the management and control of procurements and procurement
929 procedures by the procurement unit.

930 (b) Building board rules governing procurement of construction projects, design
931 professional services, and leases apply to the procurement of construction projects, design
932 professional services, and leases of real property, respectively, by the Division of Facilities
933 Construction and Management.

934 (2) A rulemaking authority may not adopt rules, policies, or regulations that are
935 inconsistent with this chapter.

936 (3) An individual or body that makes rules as required or authorized in this chapter
937 shall make the rules:

938 (a) in accordance with Chapter 3, Utah Administrative Rulemaking Act, if the
939 individual or body is subject to Chapter 3, Utah Administrative Rulemaking Act; or

940 (b) in accordance with the established process for making rules or their equivalent, if
941 the individual or body is not subject to Chapter 3, Utah Administrative Rulemaking Act.

942 (4) The rules of the rulemaking authority for the executive branch procurement unit
943 shall require, for each contract and request for proposals, the inclusion of a clause that requires
944 the issuing procurement unit, for the duration of the contract, to make available contact
945 information of the winning contractor to the Department of Workforce Services in accordance
946 with Section 35A-2-203. This requirement does not preclude a contractor from advertising job
947 openings in other forums throughout the state.

948 (5) The Department of Transportation may make rules governing the procurement of a
949 highway construction project or highway improvement project.

950 (6) The rulemaking authority for a public transit district may make rules governing the
951 procurement of a transit construction project or a transit improvement project.

952 Section 7. Section **63G-6a-107.8** is enacted to read:

953 **63G-6a-107.8. Building board report to legislative interim committee.**

954 The building board shall make a report on or before July 1 of each year to a legislative
955 interim committee designated by the Legislative Management Committee, created under
956 Section 36-12-6, on the establishment, implementation, and enforcement of the rules made by
957 the building board under this chapter.

958 Section 8. Section **63G-6a-109** is amended to read:

959 **63G-6a-109. Issuing procurement unit and conducting procurement unit.**

960 (1) With respect to a procurement by an executive branch procurement unit, except for
961 a procurement by an executive branch procurement unit that, under Subsection
962 63G-6a-103(40)(b), (c), (d), or (e), is designated as an independent procurement unit:

963 (a) the division is the issuing procurement unit; and

964 (b) the executive branch procurement unit is the conducting procurement unit and is
965 responsible to ensure that the procurement is conducted in compliance with this chapter.

966 (2) With respect to a procurement by any other procurement unit, the procurement unit
967 is both the issuing procurement unit and the conducting procurement unit.

968 (3) A conducting procurement unit is responsible for contract administration.

969 Section 9. Section **63G-6a-112** is amended to read:

970 **63G-6a-112. Required public notice.**

971 [~~(1) The division or a procurement unit with independent procurement authority that~~
972 ~~issues a solicitation required to be published in accordance with this section, shall provide~~
973 ~~public notice that includes:]~~

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

975 [~~(b) information on how to contact the issuing procurement unit;]~~

976 [~~(c) the date of the opening and closing of the solicitation;]~~

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

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

980 [~~(f) for a notice of a procurement under Section 63G-6a-802;]~~

981 [~~(i) contact information and other information relating to contesting or obtaining~~
982 ~~additional information relating to the procurement; and]~~

983 [~~(ii) the earliest date that the procurement unit may make the procurement.]~~

984 [~~(2) Except as provided in Subsection (4), the issuing procurement unit]~~

985 (1) A procurement unit that issues a solicitation shall publish ~~[the]~~ notice ~~[described in~~
986 ~~Subsection (1)]~~ of the solicitation:

987 (a) at least seven days before the day of the deadline for submission of a ~~[bid or other]~~
988 solicitation response; and

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

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

991 (A) directly impacted by the procurement; or

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

993 (iii) on the main website for the [issuing] procurement unit [~~or the procurement unit~~
994 ~~acquiring the procurement item~~]; or

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

997 [~~(3) Except as provided in Subsection (4), for a procurement under Section 63G-6a-802~~
998 ~~for which notice is required to be published in accordance with this section, the issuing~~
999 ~~procurement unit shall publish the notice described in Subsection (1):]~~

1000 [~~(a) at least seven days before the acquisition of the procurement item; and]~~

1001 [~~(b) (i) in a newspaper of general circulation in the state;]~~

1002 [~~(ii) in a newspaper of local circulation in the area:]~~

1003 [~~(A) directly impacted by the procurement; or]~~

1004 [~~(B) over which the procurement unit has jurisdiction;]~~

1005 [~~(iii) on the main website for the procurement unit acquiring the procurement item; or]~~

1006 [~~(iv) on a state website that is owned by, managed by, or provided under contract with,~~
1007 ~~the division for posting a procurement notice:]~~

1008 [~~(4) An issuing]~~

1009 (2) A procurement unit may reduce the seven-day period described in Subsection [(2)

1010 ~~or (3)] (1), if the procurement [officer or the procurement officer's designee] unit's procurement
1011 official signs a written statement that:~~

1012 (a) states that a shorter time is needed; and

1013 (b) determines that competition from multiple sources may be obtained within the
1014 shorter period of time.

1015 [~~(5) (a) An issuing procurement unit shall make a copy of the solicitation documents~~
1016 ~~available for public inspection at the main office of the issuing procurement unit or on the~~
1017 ~~website described in Subsection (2)(b) until the award of the contract or the cancellation of the~~
1018 ~~procurement:]~~

1019 [(b) A procurement unit issuing a procurement under Section 63G-6a-802 shall make a

1020 copy of information related to the procurement available for public inspection at the main
1021 office of the procurement unit or on the website described in Subsection (3)(b) until the award
1022 of the contract or the cancellation of the procurement.]

1023 [~~(c) A procurement unit shall maintain all records in accordance with Part 20,
1024 Records.~~]

1025 [~~(6) A procurement unit that issues a request for statement of qualifications as part of
1026 an approved vendor list process that results in the establishment of an open-ended vendor list,
1027 as defined in Section 63G-6a-507, shall keep the request for statement of qualifications posted
1028 on a website described in Subsection (2)(b)(iii) or (iv) during the entire period of the
1029 open-ended vendor list.~~]

1030 [~~(7)~~] (3) (a) It is the responsibility of a person seeking information provided by a
1031 [~~public~~] notice published under this section to seek out, find, and respond to [~~a public~~] the
1032 notice [~~issued by a procurement unit~~].

1033 (b) As a courtesy and in order to promote competition, a procurement unit may
1034 provide, but is not required to provide, individual notice.

1035 Section 10. Section **63G-6a-114** is amended to read:

1036 **63G-6a-114. Correcting an immaterial error in a solicitation response.**

1037 (1) [~~The chief procurement officer or the head of a procurement unit with independent
1038 procurement authority.~~] (a) A procurement unit may allow a vendor to correct an immaterial
1039 error in a responsive solicitation response as provided in this section[~~; and~~].

1040 [~~(b) may not allow a vendor to:~~]

1041 [~~(i) correct a deficiency, inaccuracy, or mistake in a responsive solicitation response
1042 that is not an immaterial error;~~]

1043 [~~(ii) correct an incomplete submission of documents that the solicitation required to be
1044 submitted with the solicitation response;~~]

1045 [~~(iii) correct a failure to submit a timely solicitation response;~~]

1046 [~~(iv) substitute or alter a required form or other document specified in the solicitation;~~]

1047 [~~(v) remedy a cause for a vendor being considered to be not responsible or a
1048 solicitation response not responsive; or~~]

1049 [~~(vi) correct a defect or inadequacy resulting in a determination that a vendor's
1050 solicitation response does not meet the mandatory minimum requirements, evaluation criteria,~~

1051 ~~or applicable score thresholds established in the solicitation.]~~

1052 ~~[(2)(a) The chief procurement officer or the head of a procurement unit with~~
 1053 ~~independent procurement authority shall establish a deadline by which a vendor is required to~~
 1054 ~~submit a correction under this section.]~~

1055 ~~[(b) The chief procurement officer or the head of a procurement unit with independent~~
 1056 ~~procurement authority may not allow a vendor to correct an immaterial error in a solicitation~~
 1057 ~~response if the vendor submits the correction after the deadline established under Subsection~~
 1058 ~~(2)(a).]~~

1059 ~~[(3) If the chief procurement officer or the head of a procurement unit with~~
 1060 ~~independent procurement authority allows a vendor to correct an immaterial error in a~~
 1061 ~~solicitation response, the chief procurement officer or head shall prepare and sign a written~~
 1062 ~~document supporting the reason for allowing the correction.]~~

1063 (2) (a) A procurement unit that allows a vendor to correct an immaterial error in a
 1064 responsive solicitation response shall:

1065 (i) require the vendor to submit the correction in writing; and

1066 (ii) establish a deadline by which the vendor is required to correct the immaterial error.

1067 (b) A procurement unit may not allow a vendor to correct an immaterial error in a
 1068 responsive solicitation response after the deadline established under Subsection (2)(a).

1069 Section 11. Section **63G-6a-115** is amended to read:

1070 **63G-6a-115. Clarifying information in a solicitation response.**

1071 (1) A procurement unit may at any time make a written request to a vendor to:

1072 (a) clarify information contained in a responsive solicitation response[-]; or

1073 (b) provide additional information that the procurement unit determines the
 1074 procurement unit needs to determine whether the vendor is responsible.

1075 ~~[(2) A procurement unit may allow a vendor to respond to a request under Subsection~~
 1076 ~~(1):]~~

1077 ~~[(a) in writing; or]~~

1078 ~~[(b) by submitting a printed document.]~~

1079 ~~[(3)]~~ (2) (a) A procurement unit that requests a vendor to clarify or provide additional
 1080 information [contained in a responsive solicitation response] under this section shall establish a
 1081 deadline by which the vendor is required to submit the clarifying or additional information.

1082 (b) A procurement unit may not allow a vendor to submit clarifying or additional
1083 information after the deadline established under Subsection ~~[(3)]~~ (2)(a).
1084 ~~[(4) A vendor's response to a request under this section:]~~
1085 ~~[(a) may only explain, illustrate, or interpret the contents of the vendor's original~~
1086 ~~solicitation response;]~~
1087 ~~[(b) may not be used to address criteria or specifications not contained in the vendor's~~
1088 ~~original solicitation response; and]~~
1089 ~~[(c) may not be used to:]~~
1090 ~~[(i) correct a deficiency, inaccuracy, or mistake in a solicitation response that is not an~~
1091 ~~immaterial error;]~~
1092 ~~[(ii) correct an incomplete submission of documents that the solicitation required to be~~
1093 ~~submitted with the solicitation response;]~~
1094 ~~[(iii) correct a failure to submit a timely solicitation response;]~~
1095 ~~[(iv) substitute or alter a required form or other document specified in the solicitation;]~~
1096 ~~[(v) remedy a cause for a vendor being considered to be not responsible or a~~
1097 ~~solicitation response not responsive; or]~~
1098 ~~[(vi) correct a defect or inadequacy resulting in a determination that a vendor does not~~
1099 ~~meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds~~
1100 ~~established in the solicitation.]~~

1101 Section 12. Section **63G-6a-118** is enacted to read:

1102 **63G-6a-118. Adoption of ordinance, resolution, rule, or policy relating to the**
1103 **procurement of design professional services.**

1104 Each of the following shall adopt a rule relating to the procurement of design
1105 professional services, not inconsistent with the provisions of Part 15, Design Professional
1106 Services:

- 1107 (1) an educational procurement unit;
1108 (2) a conservation district;
1109 (3) a local building authority;
1110 (4) a local district;
1111 (5) a special service district; and
1112 (6) a public corporation.

1113 Section 13. Section **63G-6a-119** is enacted to read:

1114 **63G-6a-119. Cancelling a solicitation.**

1115 (1) A procurement unit may cancel a solicitation if the procurement official determines
1116 that cancellation is in the best interests of the procurement unit.

1117 (2) If a procurement unit cancels a solicitation:

1118 (a) the procurement official shall explain in writing the reasons for the cancellation;

1119 and

1120 (b) the procurement unit shall make the written explanation described in Subsection

1121 (2)(a) available to the public for a period of one year after the cancellation.

1122 Section 14. Section **63G-6a-120** is enacted to read:

1123 **63G-6a-120. Rejecting a solicitation response.**

1124 (1) A procurement unit may reject a solicitation response if:

1125 (a) the solicitation response:

1126 (i) is not responsive;

1127 (ii) violates a requirement of the solicitation; or

1128 (iii) is not submitted before the deadline specified in the solicitation;

1129 (b) the vendor who submitted the solicitation response:

1130 (i) is not responsible;

1131 (ii) is in violation of a provision of this chapter;

1132 (iii) has had a previous contract with the procurement unit canceled;

1133 (iv) has engaged in unethical conduct;

1134 (v) is subject to an outstanding tax lien; or

1135 (vi) fails to sign a contract awarded as a result of the solicitation response within:

1136 (A) 90 days after the contract award, if the solicitation does not specify a deadline for
1137 the signing of the contract; or

1138 (B) the time specified in the solicitation, if the solicitation specifies a deadline for the
1139 signing of the contract; or

1140 (c) after the vendor submits a solicitation response there is a change in the vendor's
1141 circumstances that, if known at the time the solicitation response was submitted, would have
1142 caused the procurement unit to reject the solicitation response.

1143 (2) A procurement unit that rejects a solicitation response under Subsection (1) shall

1144 provide the vendor who submitted the rejected solicitation response a written statement of the
1145 reasons for the rejection.

1146 Section 15. Section **63G-6a-203** is amended to read:

1147 **63G-6a-203. Powers and duties of board.**

1148 (1) In addition to making rules in accordance with Section [~~63G-6a-110~~] 63G-6a-107.7
1149 and the other provisions of this chapter, the board shall consider and decide matters of policy
1150 within the provisions of this chapter, including those referred to it by the chief procurement
1151 officer.

1152 (2) (a) The board may:

1153 (i) audit and monitor the implementation of its rules and the requirements of this
1154 chapter;

1155 (ii) upon the request of a procurement unit with [~~an applicable~~] a rulemaking authority
1156 other than the board, review the procurement unit's proposed rules to ensure that they are not
1157 inconsistent with the provisions of this chapter or rules made by the board; and

1158 (iii) approve the use of innovative procurement processes.

1159 (b) Except as provided in Section 63G-6a-1702, the board may not exercise authority
1160 over:

1161 (i) the award or administration of any particular contract; or

1162 (ii) any dispute, claim, or litigation pertaining to any particular contract.

1163 (3) Except as otherwise expressly provided in this chapter, the board does not have
1164 authority over a matter involving [~~a~~] an independent procurement unit [~~with independent~~
1165 procurement authority].

1166 Section 16. Section **63G-6a-204** is amended to read:

1167 **63G-6a-204. Applicability of rules and regulations of Utah State Procurement**
1168 **Policy Board and State Building Board -- Report to interim committee.**

1169 (1) Except as provided in Subsection (2), rules made by the board under this chapter
1170 shall govern all procurement units for which the board is the [~~applicable~~] rulemaking authority.

1171 (2) The building board rules governing procurement of construction, design
1172 professional services, and leases apply to the procurement of construction, design professional
1173 services, and leases of real property by the [~~Division of Facilities Construction and~~
1174 Management] facilities division.

1175 (3) ~~[An applicable]~~ A rulemaking authority may make its own rules, consistent with
 1176 this chapter, governing procurement by a person over which the ~~[applicable]~~ rulemaking
 1177 authority has rulemaking authority.

1178 (4) The board shall make a report on or before July 1 of each year to a legislative
 1179 interim committee, designated by the Legislative Management Committee created under
 1180 Section ~~36-12-6~~, on the establishment, implementation, and enforcement of the rules made
 1181 under Section ~~63G-6a-203~~.

1182 ~~[(5) Notwithstanding Subsection 63G-3-301(15)(b), an applicable rulemaking authority~~
 1183 ~~is required to initiate rulemaking proceedings, for rules required to be made under this chapter,~~
 1184 ~~on or before:]~~

1185 ~~[(a) May 13, 2014, if the applicable rulemaking authority is the board; or]~~

1186 ~~[(b) January 1, 2015, for each other applicable rulemaking authority.]~~

1187 Section 17. Section ~~63G-6a-302~~ is amended to read:

1188 **63G-6a-302. Chief procurement officer -- Appointment -- Qualifications --**

1189 **Authority.**

1190 (1) The executive director of the Department of Administrative Services, with the
 1191 consent of the governor, shall appoint the chief procurement officer after considering
 1192 recommendations from the board.

1193 (2) The chief procurement officer shall:

1194 (a) have a minimum of eight years' experience:

1195 (i) (A) in the large-scale procurement of supplies, services, or construction; or

1196 (B) negotiating contract terms and conditions; and

1197 (ii) at least five years of which shall have been in public or comparable private
 1198 procurement within 12 years preceding the date of appointment; and

1199 (b) be a person with demonstrated executive and organizational ability.

1200 (3) The chief procurement officer appointed under Subsection (1) is also the director of
 1201 the Division of Purchasing and General Services.

1202 (4) The chief procurement officer has authority over a procurement by a procurement
 1203 unit, except:

1204 (a) ~~[a]~~ an independent procurement unit ~~[with independent procurement authority]~~; or

1205 (b) as otherwise expressly provided in this chapter.

1206 Section 18. Section **63G-6a-303** is amended to read:
1207 **63G-6a-303. Duties and authority of chief procurement officer.**
1208 (1) The chief procurement officer:
1209 (a) is the director of the division;
1210 (b) serves as the central procurement officer of the state;
1211 (c) serves as a voting member of the board; and
1212 (d) serves as the protest officer for a protest relating to a procurement of an executive
1213 branch procurement [~~unit without independent procurement authority~~], except an executive
1214 branch procurement unit designated under Subsection 63G-6a-103(40)(b), (c), (d), or (e) as an
1215 independent procurement unit, or a state cooperative contract procurement, unless the chief
1216 procurement officer designates another to serve as protest officer, as authorized in this chapter.
1217 (2) Except as otherwise provided in this chapter, the chief procurement officer shall:
1218 (a) develop procurement policies and procedures supporting ethical procurement
1219 practices, fair and open competition among vendors, and transparency within the state's
1220 procurement process;
1221 (b) administer the state's cooperative purchasing program, including state cooperative
1222 contracts and associated administrative fees;
1223 (c) enter into an agreement with a public entity for services provided by the division, if
1224 the agreement is in the best interest of the state;
1225 (d) ensure the division's compliance with any applicable law, rule, or policy, including
1226 a law, rule, or policy applicable to the division's role as an issuing procurement unit or
1227 conducting procurement unit, or as the state's central procurement organization;
1228 (e) manage the division's electronic procurement system;
1229 (f) oversee the recruitment, training, career development, certification requirements,
1230 and performance evaluation of the division's procurement personnel;
1231 (g) make procurement training available to procurement units and persons who do
1232 business with procurement units;
1233 (h) provide exemplary customer service and continually improve the division's
1234 procurement operations;
1235 (i) exercise all other authority, fulfill all other duties and responsibilities, and perform
1236 all other functions authorized under this chapter; and

1237 (j) ensure that any training described in this Subsection (2) complies with Title 63G,
1238 Chapter 22, State Training and Certification Requirements.

1239 (3) With respect to a procurement or contract over which the chief procurement officer
1240 has authority under this chapter, the chief procurement officer, except as otherwise provided in
1241 this chapter:

1242 (a) shall:

1243 (i) manage and supervise a procurement to ensure to the extent practicable that
1244 taxpayers receive the best value;

1245 (ii) prepare and issue standard specifications for procurement items;

1246 (iii) review contracts, coordinate contract compliance, conduct contract audits, and
1247 approve change orders;

1248 (iv) in accordance with Section 63F-1-205, coordinate with the Department of
1249 Technology Services, created in Section 63F-1-103, with respect to the procurement of
1250 information technology services by an executive branch procurement unit;

1251 (v) correct, amend, or cancel a procurement at any stage of the procurement process if
1252 the procurement is out of compliance with this chapter or a board rule;

1253 (vi) after consultation with the attorney general's office, correct, amend, or cancel a
1254 contract at any time during the term of the contract if:

1255 (A) the contract is out of compliance with this chapter or a board rule; and

1256 (B) the chief procurement officer determines that correcting, amending, or canceling
1257 the contract is in the best interest of the state; and

1258 (vii) make a reasonable attempt to resolve a contract dispute, in coordination with the
1259 attorney general's office; and

1260 (b) may:

1261 (i) delegate limited purchasing authority to a state agency, with appropriate oversight
1262 and control to ensure compliance with this chapter;

1263 (ii) delegate duties and authority to an employee of the division, as the chief
1264 procurement officer considers appropriate;

1265 (iii) negotiate and settle contract overcharges, undercharges, and claims, in accordance
1266 with the law and after consultation with the attorney general's office;

1267 (iv) authorize a procurement unit to make a procurement pursuant to a regional

1268 solicitation, as defined in Subsection [63G-6a-2105](#)(7), even if the procurement item is also
1269 offered under a state cooperative contract, if the chief procurement officer determines that the
1270 procurement pursuant to a regional solicitation is in the best interest of the acquiring
1271 procurement unit; and

1272 (v) remove an individual from the procurement process or contract administration for:

1273 (A) having a conflict of interest or the appearance of a conflict of interest with a person
1274 responding to a solicitation or with a contractor;

1275 (B) having a bias or the appearance of bias for or against a person responding to a
1276 solicitation or for or against a contractor;

1277 (C) making an inconsistent or unexplainable score for a solicitation response;

1278 (D) having inappropriate contact or communication with a person responding to a
1279 solicitation;

1280 (E) socializing inappropriately with a person responding to a solicitation or with a
1281 contractor;

1282 (F) engaging in any other action or having any other association that causes the chief
1283 procurement officer to conclude that the individual cannot fairly evaluate a solicitation
1284 response or administer a contract; or

1285 (G) any other violation of a law, rule, or policy.

1286 (4) The chief procurement officer may not delegate to an individual outside the
1287 division the chief procurement officer's authority over a procurement described in Subsection
1288 (3)(a)(iv).

1289 (5) The chief procurement officer has final authority to determine whether an executive
1290 branch procurement unit's anticipated expenditure of public funds, anticipated agreement to
1291 expend public funds, or provision of a benefit constitutes a procurement that is subject to this
1292 chapter.

1293 (6) Except as otherwise provided in this chapter, the chief procurement officer shall
1294 review, monitor, and audit the procurement activities and delegated procurement authority of
1295 an executive branch procurement unit [~~without independent procurement authority~~], except to
1296 the extent that an executive branch procurement unit is designated under Subsection
1297 [63G-6a-103](#)(40)(b), (c), (d), or (e) as an independent procurement unit, to ensure compliance
1298 with this chapter, rules made by the applicable rulemaking authority, and division policies.

1299 Section 19. Section **63G-6a-409** is amended to read:

1300 **63G-6a-409. Request for information.**

1301 (1) ~~[The purpose of]~~ A procurement unit may issue a request for information ~~[is]~~
1302 ~~to:(a)]~~ obtain information, comments, or suggestions ~~[from potential bidders or offerors]~~
1303 before issuing ~~[an invitation for bids or request for proposals;]~~ a solicitation.

1304 ~~[(b) determine whether to issue an invitation for bids or a request for proposals; and]~~

1305 ~~[(c) generate interest in a potential invitation for bids or request for proposals.]~~

1306 ~~[(2) A request for information may be useful in order to:]~~

1307 ~~[(a) prepare to issue an invitation for bids or request for proposals for an unfamiliar or~~
1308 ~~complex procurement;]~~

1309 ~~[(b) determine the market availability of a procurement item; or]~~

1310 ~~[(c) determine best practices, industry standards, performance standards, product~~
1311 ~~specifications, and innovations relating to a procurement item.]~~

1312 ~~[(3)]~~ (2) (a) A request for information is not a procurement process and may not be
1313 used to:

1314 ~~[(i) solicit cost, pricing, or rate information;]~~

1315 ~~[(ii)]~~ (i) negotiate fees;

1316 ~~[(iii)]~~ (ii) make a purchase; ~~[or]~~

1317 (iii) determine whether a procurement may be made under Part 8, Exceptions to
1318 Procurement Requirements; or

1319 (iv) enter into a contract.

1320 (b) To make a purchase or enter into a contract, a procurement unit is required to:

1321 (i) use a standard procurement process; or

1322 (ii) comply with an exception to the requirement to use a standard procurement
1323 process, as described in Part 8, Exceptions to Procurement Requirements.

1324 ~~[(4)]~~ (3) A response to a request for information is not an offer and may not be
1325 accepted to form a binding contract.

1326 ~~[(5) A request for information may seek a wide range of information, including:]~~

1327 ~~[(a) availability of a procurement item;]~~

1328 ~~[(b) delivery schedules;]~~

1329 ~~[(c) industry standards and practices;]~~

1330 [~~(d) product specifications;~~]

1331 [~~(e) training;~~]

1332 [~~(f) new technologies;~~]

1333 [~~(g) capabilities of potential providers of a procurement item; and]~~

1334 [~~(h) alternate solutions.]~~

1335 (4) A procurement unit that receives pricing information in response to a request for
1336 information shall ensure that an individual who serves on an evaluation committee to evaluate
1337 proposals that include a proposal as to which the pricing information applies does not have
1338 access to the pricing information, except as provided in Subsection [63G-6a-707\(7\)](#).

1339 [~~(6)~~] (5) A record containing information submitted to or by a governmental entity in
1340 response to a request for information is a protected record under Section [63G-2-305](#).

1341 Section 20. Section **63G-6a-410** is amended to read:

1342 **63G-6a-410. Request for statement of qualifications -- Process.**

1343 (1) (a) A procurement unit may use the process described in this section:

1344 (i) as one of the stages of a multiple-stage[+] standard procurement process; and

1345 [~~(A) bidding process;~~]

1346 [~~(B) request for proposals process; or]~~

1347 [~~(C) design professional procurement process; and]~~

1348 (ii) to identify qualified vendors to participate in other stages of the multiple-stage
1349 procurement process.

1350 (b) A procurement unit shall use the process described in this section as part of the
1351 approved vendor list process, if the procurement unit intends to establish an approved vendor
1352 list.

1353 (2) A procurement unit may not:

1354 (a) award a contract based solely on the process described in this section; or

1355 (b) solicit costs, pricing, or rates or negotiate fees through the process described in this
1356 section.

1357 (3) The process of identifying qualified vendors in a multiple-stage standard
1358 procurement process or of establishing an approved vendor list under Section [63G-6a-507](#) is
1359 initiated by a procurement unit issuing a request for statement of qualifications.

1360 (4) A request for statement of qualifications in a multiple-stage standard procurement

1361 process shall include:

1362 (a) a statement indicating that participation in other stages of the multiple-stage
1363 standard procurement process will be limited to qualified vendors;

1364 (b) the minimum mandatory requirements, evaluation criteria, and applicable score
1365 thresholds that will be used to identify qualified vendors, including, as applicable:

1366 (i) experience and work history;

1367 (ii) management and staff requirements or standards;

1368 (iii) licenses, certifications, and other qualifications;

1369 (iv) performance ratings or references;

1370 (v) financial stability; and

1371 (vi) other information pertaining to vendor qualifications that the [~~chief procurement~~

1372 ~~officer or the head of a procurement unit with independent procurement authority~~] procurement

1373 official considers relevant or important; and

1374 (c) the deadline by which a vendor is required to submit a statement of qualifications.

1375 (5) A request for statement of qualifications in an approved vendor list process under
1376 Section [63G-6a-507](#) shall include:

1377 (a) a general description of, as applicable:

1378 (i) the procurement item that the procurement unit seeks to acquire;

1379 (ii) the type of project or scope or category of work that will be the subject of a
1380 procurement by the procurement unit;

1381 (iii) the procurement process the procurement unit will use to acquire the procurement
1382 item; and

1383 (iv) the type of vendor the procurement unit seeks to provide the procurement item;

1384 (b) the minimum mandatory requirements, evaluation criteria, and applicable score
1385 thresholds that vendors are required to meet to be included on the approved vendor list;

1386 (c) a statement indicating that the approved vendor list will include only responsible
1387 vendors that:

1388 (i) submit a responsive statement of qualifications; and

1389 (ii) meet the minimum mandatory requirements, evaluation criteria, and applicable
1390 score thresholds described in the request for statement of qualifications;

1391 (d) a statement indicating that only vendors on the approved vendor list will be able to

1392 participate in the procurements identified in the request for statement of qualifications;

1393 (e) a statement indicating whether the procurement unit will use a performance rating
1394 system for evaluating the performance of vendors on the approved vendor list, including
1395 whether a vendor on the approved vendor list may be disqualified and removed from the list;

1396 (f) (i) a statement indicating whether the procurement unit uses a closed-ended
1397 approved vendor list, as defined in Section 63G-6a-507, or an open-ended approved vendor
1398 list, as defined in Section 63G-6a-507; and

1399 (ii) (A) if the procurement unit uses a closed-ended approved vendor list, the deadline
1400 by which a vendor is required to submit a statement of qualifications and a specified period of
1401 time after which the approved vendor list will expire; or

1402 (B) if the procurement unit uses an open-ended approved vendor list, the deadline by
1403 which a vendor is required to submit a statement of qualifications to be considered for the
1404 initial approved vendor list, a schedule indicating when a vendor not on the initial approved
1405 vendor list may submit a statement of qualifications to be considered to be added to the
1406 approved vendor list, and the specified period of time after which a vendor is required to
1407 submit a new statement of qualifications for evaluation before the vendor's status as an
1408 approved vendor on the approved vendor list may be renewed; and

1409 (g) a description of any other criteria or requirements specific to the procurement item
1410 or scope of work that is the subject of the procurement.

1411 (6) A procurement unit issuing a request for statement of qualifications shall publish
1412 the request as provided in Section 63G-6a-112.

1413 (7) After the deadline for submitting a statement of qualifications, the [~~chief~~
1414 ~~procurement officer or the head of a procurement unit with independent procurement authority]~~
1415 procurement official] may allow a vendor to correct an immaterial error in a statement of
1416 qualifications, as provided in Section 63G-6a-114.

1417 (8) (a) A conducting procurement unit may reject a statement of qualifications if the
1418 conducting procurement unit determines that:

1419 (i) the vendor who submitted the statement of qualifications:

1420 (A) is not responsible;

1421 (B) is in violation of a provision of this chapter;

1422 (C) has engaged in unethical conduct; or

1423 (D) receives a performance rating below the satisfactory performance threshold
1424 specified in the request for statement of qualifications;

1425 (ii) there has been a change in the vendor's circumstances after the vendor submits a
1426 statement of qualifications that, if the change had been known at the time the statement of
1427 qualifications was evaluated, would have caused the statement of qualifications not to have
1428 received a qualifying score; or

1429 (iii) the statement of qualifications:

1430 (A) is not responsive; or

1431 (B) does not meet the mandatory minimum requirements, evaluation criteria, or
1432 applicable score thresholds stated in the request for statement of qualifications.

1433 (b) A procurement unit that rejects a statement of qualifications under Subsection
1434 (8)(a) shall:

1435 (i) make a written finding, stating the reasons for the rejection; and

1436 (ii) provide a copy of the written finding to the vendor that submitted the rejected
1437 statement of qualifications.

1438 (9) (a) (i) After the issuance of a request for statement of qualifications, the conducting
1439 procurement unit shall appoint an evaluation committee consisting, subject to Subsection
1440 (9)(b), of at least three individuals with at least a general familiarity with or basic
1441 understanding of:

1442 (A) the technical requirements relating to the type of procurement item that is the
1443 subject of the request for statement of qualifications; or

1444 (B) the need that the procurement item is intended to address.

1445 (ii) The conducting procurement unit shall ensure that each member of an evaluation
1446 committee and each individual participating in the evaluation committee process:

1447 (A) does not have a conflict of interest with any vendor that submits a statement of
1448 qualifications;

1449 (B) can fairly evaluate each statement of qualifications;

1450 (C) does not contact or communicate with a vendor concerning the evaluation process
1451 or procurement outside the official evaluation committee process; and

1452 (D) conducts or participates in the evaluation in a manner that ensures a fair and
1453 competitive process and avoids the appearance of impropriety.

1454 (b) A procurement unit may reduce the number of individuals appointed to an
1455 evaluation committee if the procurement official determines in writing that the evaluation
1456 criteria:

1457 (i) consist of only objective criteria; and
1458 (ii) do not include any subjective criterion that requires analysis, assessment, or
1459 deliberation.

1460 ~~[(b)]~~ (c) A conducting procurement unit may authorize an evaluation committee to
1461 receive assistance:

1462 (i) from an expert or consultant who:
1463 (A) is not a member of the evaluation committee; and
1464 (B) does not participate in the evaluation scoring; and
1465 (ii) to better understand a technical issue involved in the procurement.

1466 ~~[(c)]~~ (d) An evaluation committee appointed under this Subsection (9):

1467 (i) shall evaluate and score statements of qualifications submitted in response to a
1468 request for statement of qualifications using the minimum mandatory requirements, evaluation
1469 criteria, and applicable score thresholds set forth in the request for statement of qualifications;
1470 (ii) may not evaluate or score a statement of qualifications using criteria not included in
1471 the request for statement of qualifications; and

1472 (iii) may, with the approval of the ~~[head of the conducting procurement unit]~~
1473 procurement official, enter into discussions or conduct interviews with or attend presentations
1474 by vendors, for the purpose of clarifying information contained in statements of qualifications.

1475 ~~[(d)]~~ (e) In a discussion, interview, or presentation under Subsection (9)(c)(iii), a
1476 vendor:

1477 (i) may only explain, illustrate, or interpret the contents of the vendor's original
1478 statement of qualifications; and

1479 (ii) may not:

1480 (A) address criteria or specifications not contained in the vendor's original statement of
1481 qualifications;

1482 (B) correct a deficiency, inaccuracy, or mistake in a statement of qualifications that is
1483 not an immaterial error;

1484 (C) correct an incomplete submission of documents that the request for statement of

- 1485 qualifications required to be submitted with the statement of qualifications;
- 1486 (D) correct a failure to submit a timely statement of qualifications;
- 1487 (E) substitute or alter a required form or other document specified in the statement of
1488 qualifications;
- 1489 (F) remedy a cause for a vendor being considered to be not responsible or a statement
1490 of qualifications not responsive; or
- 1491 (G) correct a defect or inadequacy resulting in a determination that a vendor does not
1492 meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds
1493 established in the statement of qualifications.
- 1494 ~~(e)~~ (f) After the evaluation committee completes its evaluation and scoring of the
1495 statements of qualifications, the evaluation committee shall submit the statements of
1496 qualifications and evaluation scores to the ~~[head of the procurement unit]~~ procurement official
1497 for review and final determination of:
- 1498 (i) qualified vendors, if the request for statement of qualifications process is used as
1499 one of the stages of a multiple-stage process; or
- 1500 (ii) vendors to be included on an approved vendor list, if the request for statement of
1501 qualifications process is used as part of the approved vendor list process.
- 1502 ~~(f)~~ (g) The issuing procurement unit shall review the evaluation committee's scores
1503 and correct any errors, scoring inconsistencies, and reported noncompliance with this chapter.
- 1504 ~~(g)~~ (h) (i) The deliberations of an evaluation committee under this Subsection (9)
1505 may be held in private.
- 1506 (ii) If the evaluation committee is a public body, as defined in Section [52-4-103](#), the
1507 evaluation committee shall comply with Section [52-4-205](#) in closing a meeting for its
1508 deliberations.
- 1509 (10) A procurement unit may at any time request a vendor to clarify information
1510 contained in a statement of qualifications, as provided in Section [63G-6a-115](#).
- 1511 (11) A vendor may voluntarily withdraw a statement of qualifications at any time
1512 before a contract is awarded with respect to which the statement of qualifications was
1513 submitted.
- 1514 (12) If only one vendor meets the minimum qualifications, evaluation criteria, and
1515 applicable score thresholds set forth in the request for statement of qualifications that the

1516 procurement unit is using as part of an approved vendor list process, the conducting
1517 procurement unit may:

1518 (a) [~~shall~~] cancel the request for statement of qualifications; [~~and~~] or
1519 [~~(b) may not establish an approved vendor list based on the canceled request for~~
1520 ~~statement of qualifications or on statements of qualifications submitted in response to the~~
1521 ~~request for statement of qualifications.]~~

1522 (b) establish an approved vendor list that includes the one vendor if the procurement
1523 unit continues to try to identify more vendors to be included on the approved vendor list by:

1524 (i) keeping the request for statement of qualifications open; or

1525 (ii) immediately reissuing the request for statement of qualifications and repeating the
1526 process under this section.

1527 (13) If a conducting procurement unit cancels a request for statement of qualifications,
1528 the conducting procurement unit shall make available for public inspection a written
1529 justification for the cancellation.

1530 (14) After receiving and reviewing the statements of qualifications and evaluation
1531 scores submitted by the evaluation committee, the [~~head~~] procurement official of the
1532 procurement unit using the request for statement of qualifications process under this section as
1533 one of the stages of a multiple-stage procurement process shall identify those vendors meeting
1534 the minimum mandatory requirements, evaluation criteria, and applicable score thresholds as
1535 qualified vendors who are allowed to participate in the remaining stages of the multiple-stage
1536 procurement process.

1537 (15) The [~~applicable~~] rulemaking authority may make rules pertaining to the request
1538 for statement of qualifications and the process described in this section.

1539 Section 21. Section **63G-6a-506** is amended to read:

1540 **63G-6a-506. Small purchases.**

1541 (1) As used in this section:

1542 (a) "Annual cumulative threshold" means the maximum total annual amount,
1543 established by the [~~applicable~~] rulemaking authority under Subsection (2), that a procurement
1544 unit may expend to obtain procurement items from the same source under this section.

1545 (b) "Individual procurement threshold" means the maximum amount, established by
1546 the [~~applicable~~] rulemaking authority under Subsection (2), for which a procurement unit may

1547 purchase a procurement item under this section.

1548 (c) "Single procurement aggregate threshold" means the maximum total amount,
1549 established by the [applicable] rulemaking authority under Subsection (2), that a procurement
1550 unit may expend to obtain multiple procurement items from one source at one time under this
1551 section.

1552 (2) (a) The [applicable] rulemaking authority may make rules governing small
1553 purchases of any procurement item, including construction, job order contracting, design
1554 professional services, other professional services, information technology, and goods.

1555 (b) Rules under Subsection (2)(a) may include provisions:

1556 (i) establishing expenditure thresholds, including:

1557 (A) an annual cumulative threshold;

1558 (B) an individual procurement threshold; and

1559 (C) a single procurement aggregate threshold;

1560 (ii) establishing procurement requirements relating to the thresholds described in
1561 Subsection (2)(b)(i); and

1562 (iii) providing for the use of electronic, telephone, or written quotes.

1563 (c) If a procurement unit obtains administrative law judge service through a small
1564 purchase standard procurement process, rules made under Subsection (2)(a) shall provide that
1565 the process for the procurement of administrative law judge service include an evaluation
1566 committee described in Subsection [63G-6a-116\(3\)](#).

1567 (3) Expenditures made under this section by a procurement unit may not exceed a
1568 threshold established by the [applicable] rulemaking authority, unless the [~~chief procurement
1569 officer or the head of a procurement unit with independent procurement authority~~] procurement
1570 official gives written authorization to exceed the threshold that includes the reasons for
1571 exceeding the threshold.

1572 (4) Except as provided in Subsection (5), an executive branch procurement unit may
1573 not obtain a procurement item through a small purchase standard procurement process if the
1574 procurement item may be obtained through a state cooperative contract or a contract awarded
1575 by the chief procurement officer under Subsection [63G-6a-2105\(1\)](#).

1576 (5) Subsection (4) does not apply if:

1577 (a) the procurement item is obtained for an unanticipated, urgent, or emergency

1578 condition, including:

1579 (i) an item needed to avoid stopping a public construction project;

1580 (ii) an immediate repair to a facility or equipment; or

1581 (iii) another emergency condition; or

1582 (b) the chief procurement officer or the ~~[head]~~ procurement official of a procurement
1583 unit that is an executive branch procurement unit with independent procurement authority:

1584 (i) determines in writing that it is in the best interest of the procurement unit to obtain
1585 an individual procurement item outside of the state contract, comparing:

1586 (A) the contract terms and conditions applicable to the procurement item under the
1587 state contract with the contract terms and conditions applicable to the procurement item if the
1588 procurement item is obtained outside of the state contract;

1589 (B) the maintenance and service applicable to the procurement item under the state
1590 contract with the maintenance and service applicable to the procurement item if the
1591 procurement item is obtained outside of the state contract;

1592 (C) the warranties applicable to the procurement item under the state contract with the
1593 warranties applicable to the procurement item if the procurement item is obtained outside of
1594 the state contract;

1595 (D) the quality of the procurement item under the state contract with the quality of the
1596 procurement item if the procurement item is obtained outside of the state contract; and

1597 (E) the ~~[cost of the procurement item]~~ ability of the vendor under the state contract
1598 ~~[with the]~~ to match the quoted cost of the procurement item if the procurement item is obtained
1599 outside of the state contract;

1600 (ii) for a procurement item that, if defective in its manufacture, installation, or
1601 performance, may result in serious physical injury, death, or substantial property damage,
1602 determines in writing that the terms and conditions, relating to liability for injury, death, or
1603 property damage, available from the source other than the contractor who holds the state
1604 contract, are similar to, or better than, the terms and conditions available under the state
1605 contract; and

1606 (iii) grants an exception, in writing, to the requirement described in Subsection (4).

1607 (6) Except as otherwise expressly provided in this section, a procurement unit:

1608 (a) may not use the small purchase standard procurement process described in this

1609 section for ongoing, continuous, and regularly scheduled procurements that exceed the annual
1610 cumulative threshold; and

1611 (b) shall make its ongoing, continuous, and regularly scheduled procurements that
1612 exceed the annual cumulative threshold through a contract awarded through another standard
1613 procurement process described in this chapter or an applicable exception to another standard
1614 procurement process, described in Part 8, Exceptions to Procurement Requirements.

1615 (7) This section does not prohibit regularly scheduled payments for a procurement item
1616 obtained under another provision of this chapter.

1617 (8) (a) It is unlawful for a person knowingly to divide a single procurement into
1618 multiple smaller procurements, including by dividing an invoice or purchase order into
1619 multiple invoices or purchase orders, if:

1620 (i) the single procurement would not have qualified as a small purchase under this
1621 section;

1622 (ii) one or more of the multiple smaller procurements qualify as a small purchase under
1623 this section; and

1624 (iii) the division is done with the intent to:

1625 (A) avoid having to use a standard procurement process, other than the small purchase
1626 process, that the person would otherwise be required to use for the single procurement; or

1627 (B) make one or more of the multiple smaller procurements fall below a small
1628 purchase expenditure threshold established by rule under Subsection (2)(b) that the single
1629 procurement would not have fallen below without the division.

1630 (b) A violation of Subsection (8)(a) is subject to penalties as provided in Subsection
1631 [63G-6a-2404.3\(2\)](#).

1632 (9) The Division of Finance within the Department of Administrative Services may
1633 conduct an audit of an executive branch procurement unit to verify compliance with the
1634 requirements of this section.

1635 (10) An executive branch procurement unit may not make a small purchase after
1636 January 1, 2014, unless the chief procurement officer certifies that the person responsible for
1637 procurements in the procurement unit has satisfactorily completed training on this section and
1638 the rules made under this section.

1639 Section 22. Section **63G-6a-507** is amended to read:

1640 **63G-6a-507. Approved vendor list procurement process.**

1641 (1) As used in this section:

1642 (a) "Closed-ended approved vendor list" means an approved vendor list that is subject
1643 to:

1644 (i) a short period of time, specified by the procurement unit, during which vendors may
1645 be added to the list; and

1646 (ii) a specified period of time after which the list will expire.

1647 (b) "Open-ended approved vendor list" means an approved vendor list that is subject
1648 to:

1649 (i) an indeterminate period of time during which vendors may be added to the list;

1650 (ii) the addition of vendors to the list throughout the term of the list; and

1651 (iii) a specified period of time after which ~~[a vendor on the list is required to submit the~~
1652 ~~vendor's qualifications for evaluation before the vendor may be renewed as an approved~~
1653 ~~vendor]~~ the procurement unit is required to verify that vendors on the list continue to meet the
1654 minimum mandatory requirements, evaluation criteria, and applicable score thresholds.

1655 (2) A procurement unit may not establish an approved vendor list unless the
1656 procurement unit has first completed the statement of qualifications process described in
1657 Section [63G-6a-410](#).

1658 (3) (a) A procurement unit may establish an approved vendor list for:

1659 (i) a specific, fully defined procurement item; or

1660 (ii) a future procurement item that is not specifically and fully defined, if the request
1661 for statement of qualifications contains a general description of:

1662 (A) the procurement item; and

1663 (B) the type of vendor that the procurement unit seeks to provide the procurement item.

1664 (b) A procurement unit may not award a contract to a vendor on an approved vendor
1665 list for a procurement item that is outside the scope of the general description of the
1666 procurement item contained in the request for statement of qualifications.

1667 (4) After receiving the statements of qualifications and evaluation scores submitted by
1668 the evaluation committee under Subsection [63G-6a-410\(9\)\(e\)](#)~~(f)~~, the ~~[head of the conducting]~~
1669 procurement official of the procurement unit using the request for statement of qualifications
1670 process under Section [63G-6a-410](#) as part of an approved vendor list process shall:

1671 (a) include on an approved vendor list those vendors meeting the minimum mandatory
1672 requirements, evaluation criteria, and applicable score thresholds; and

1673 (b) reject any vendor not meeting the minimum mandatory requirements, evaluation
1674 criteria, and applicable score thresholds as ineligible for inclusion on the approved vendor list.

1675 (5) (a) A procurement unit shall include approved vendors on a closed-ended approved
1676 vendor list or an open-ended approved vendor list.

1677 (b) (i) A closed-ended approved vendor list shall expire no later than 18 months after
1678 the publication of the closed-ended approved vendor list.

1679 (ii) A procurement unit shall [~~require a vendor on an open-ended approved vendor list,~~
1680 ~~in order to remain on the approved vendor list, to submit an updated statement of qualifications~~
1681 ~~for evaluation no later than 18 months after the vendor was added to the list as an approved~~
1682 ~~vendor]~~ verify, no less frequently than every 18 months, by a method approved by the
1683 procurement official, that each vendor on an open-ended approved vendor list continues to
1684 meet the minimum mandatory requirements, evaluation criteria, and applicable score
1685 thresholds.

1686 (6) A procurement unit may:

1687 (a) (i) using a bidding process, request for proposals process, small purchase process,
1688 or design professional procurement process, award a contract to a vendor on an approved
1689 vendor list for any procurement item or type of procurement item specified by the procurement
1690 unit in the request for statement of qualifications, including procurement items that the
1691 procurement unit intends to acquire in a series of future procurements described in the request
1692 for statement of qualifications; and

1693 (ii) limit participation in a bidding process, request for proposals process, small
1694 purchase process, or design professional procurement process to vendors on an approved
1695 vendor list; or

1696 (b) award a contract to a vendor on an approved vendor list at a price established as
1697 provided in Section [63G-6a-113](#).

1698 (7) (a) After establishing an approved vendor list as provided in this section, [~~the~~] a
1699 conducting procurement unit shall, before using the approved vendor list, submit the approved
1700 vendor list to the issuing procurement unit [~~for publication by the issuing procurement unit~~].

1701 (b) An issuing procurement unit that receives an approved vendor list under Subsection

1702 (7)(a) shall make the approved vendor list available to the public.

1703 (8) A conducting procurement unit administering an open-ended approved vendor list
1704 shall:

1705 (a) require a vendor seeking inclusion on the approved vendor list to submit a
1706 statement of qualifications that complies with all requirements applicable at the time of the
1707 initial request for statement of qualifications; and

1708 (b) if modifying the requirements for inclusion on the approved vendor list, apply any
1709 new or additional requirement to all vendors equally, whether a vendor is seeking inclusion on
1710 the approved vendor list for the first time or is already included on the approved vendor list[;
1711 ~~and~~].

1712 [~~(c) keep the request for statement of qualifications posted on a website as required~~
1713 ~~under Subsection 63G-6a-112(6).~~]

1714 (9) [~~The applicable~~] A rulemaking authority shall make rules pertaining to an approved
1715 vendor list process, including:

1716 (a) procedures to ensure that all vendors on an approved vendor list have a fair and
1717 equitable opportunity to compete for a contract for a procurement item; and

1718 (b) requirements for using an approved vendor list with the small purchase process.

1719 Section 23. Section **63G-6a-602** is amended to read:

1720 **63G-6a-602. Contracts awarded by bidding.**

1721 [~~(1) The division or a~~] A procurement unit [~~with independent procurement authority~~]
1722 may award a contract for a procurement item by the bidding process, in accordance with the
1723 rules of the [~~applicable~~] rulemaking authority.

1724 [~~(2) The bidding standard procurement process is appropriate to use when cost is the~~
1725 ~~major factor in determining the award of a procurement.~~]

1726 Section 24. Section **63G-6a-603** is amended to read:

1727 **63G-6a-603. Invitation for bids -- Requirements -- Publication.**

1728 [~~(1) The bidding standard procurement process begins when the issuing procurement~~
1729 ~~unit issues an invitation for bids.~~]

1730 [~~(2) An invitation for bids shall:~~]

1731 [~~(a) state the period of time during which bids will be accepted;~~]

1732 [~~(b) describe the manner in which a bid shall be submitted;~~]

- 1733 ~~[(c) state the place where a bid shall be submitted; and]~~
 1734 ~~[(d) include, or incorporate by reference:]~~
 1735 ~~[(i) to the extent practicable, a full description of the procurement items sought and the~~
 1736 ~~full scope of work;]~~
 1737 ~~[(ii) the objective criteria that will be used to evaluate the bids; and]~~
 1738 ~~[(iii) the required contractual terms and conditions:]~~
 1739 (1) A procurement unit that intends to award a contract for a procurement item using
 1740 the bidding process shall issue an invitation for bids.
 1741 (2) A procurement unit shall include in an invitation for bids:
 1742 (a) a description of the procurement item that the procurement unit seeks;
 1743 (b) instructions for submitting a bid, including the deadline for submitting a bid;
 1744 (c) the objective criteria that the procurement unit will use to evaluate bids;
 1745 (d) information about the time and manner of opening bids; and
 1746 (e) terms and conditions that the procurement unit intends to include in a contract
 1747 resulting from the bidding process.
 1748 (3) ~~[An issuing]~~ A procurement unit shall publish an invitation for bids in accordance
 1749 with the requirements of Section [63G-6a-112](#).
 1750 Section 25. Section [63G-6a-604](#) is repealed and reenacted to read:
 1751 **63G-6a-604. Processing of bids -- Changes to bids not allowed.**
 1752 (1) A procurement unit:
 1753 (a) shall accept bids as provided in the invitation for bids; and
 1754 (b) may not open a bid until after the deadline for submitting bids.
 1755 (2) A person who submits a bid may not, after the deadline for submitting bids, make a
 1756 change to the bid if the change is prejudicial to:
 1757 (a) the interest of the procurement unit; or
 1758 (b) fair competition.
 1759 Section 26. Section [63G-6a-606](#) is amended to read:
 1760 **63G-6a-606. Evaluation of bids -- Award -- Cancellation.**
 1761 (1) A procurement unit that conducts a procurement using a bidding process shall
 1762 evaluate each bid using the objective criteria described in the invitation for bids~~[- which may~~
 1763 ~~include:].~~

- 1764 ~~[(a) experience;]~~
1765 ~~[(b) performance ratings;]~~
1766 ~~[(c) inspection;]~~
1767 ~~[(d) testing;]~~
1768 ~~[(e) quality;]~~
1769 ~~[(f) workmanship;]~~
1770 ~~[(g) time and manner of delivery;]~~
1771 ~~[(h) references;]~~
1772 ~~[(i) financial stability;]~~
1773 ~~[(j) cost;]~~
1774 ~~[(k) suitability for a particular purpose;]~~
1775 ~~[(l) the contractor's work site safety program, including any requirement that the~~
1776 ~~contractor imposes on subcontractors for a work site safety program; or]~~
1777 ~~[(m) other objective criteria specified in the invitation for bids.]~~
1778 (2) Criteria not described in the invitation for bids may not be used to evaluate a bid.
1779 ~~[(3) The conducting procurement unit shall:]~~
1780 ~~[(a) subject to the provisions of Section [63G-6a-1204.5](#) for multiple award contracts,~~
1781 ~~award the contract as soon as practicable to:]~~
1782 ~~[(i) the responsible bidder who submits the lowest responsive bid that meets the~~
1783 ~~objective criteria described in the invitation for bids; or]~~
1784 ~~[(ii) if, in accordance with Subsection (4), the procurement officer or the head of the~~
1785 ~~conducting procurement unit rejects a bid described in Subsection (3)(a)(i), the responsible~~
1786 ~~bidder who submits the next lowest responsive bid that meets the objective criteria described in~~
1787 ~~the invitation for bids; or]~~
1788 ~~[(b) cancel the invitation for bids without awarding a contract.]~~
1789 ~~[(4) In accordance with Subsection (5), the procurement officer or the head of the~~
1790 ~~conducting procurement unit may reject a bid for:]~~
1791 ~~[(a) a violation of this chapter by the bidder who submitted the bid;]~~
1792 ~~[(b) a violation of a requirement of the invitation for bids;]~~
1793 ~~[(c) unlawful or unethical conduct by the bidder who submitted the bid; or]~~
1794 ~~[(d) a change in a bidder's circumstance that, had the change been known at the time~~

1795 ~~the bid was submitted, would have caused the bid to be rejected.]~~

1796 ~~[(5) A procurement officer or head of a conducting procurement unit who rejects a bid~~
1797 ~~under Subsection (4) shall:]~~

1798 ~~[(a) make a written finding, stating the reasons for the rejection; and]~~

1799 ~~[(b) provide a copy of the written finding to the bidder who submitted the rejected bid.]~~

1800 ~~[(6) If a conducting procurement unit cancels an invitation for bids without awarding a~~
1801 ~~contract, the conducting procurement unit shall make available for public inspection a written~~
1802 ~~justification for the cancellation.]~~

1803 (3) After evaluating bids, the procurement unit shall:

1804 (a) (i) award a contract as soon as practicable to the responsible bidder who submits the
1805 lowest responsive bid; and

1806 (ii) publish the name and bid amount of the bidder to whom the contract is awarded; or

1807 (b) (i) cancel the invitation for bids without awarding a contract; and

1808 (ii) publish a notice of the cancellation that includes an explanation of the reasons for
1809 cancelling the invitation for bids.

1810 Section 27. Section **63G-6a-608** is repealed and reenacted to read:

1811 **63G-6a-608. Tie bids.**

1812 A procurement unit shall resolve a tie bid in a fair manner, as determined in writing by
1813 the procurement official.

1814 Section 28. Section **63G-6a-702** is amended to read:

1815 **63G-6a-702. Contracts awarded by request for proposals.**

1816 (1) ~~[The division or a]~~ A procurement unit ~~[with independent procurement authority]~~
1817 may award a contract for a procurement item by the request for proposals process, in
1818 accordance with ~~[the rules of the applicable]~~ rulemaking authority rules.

1819 ~~[(2) (a) The request for proposals process is appropriate for a procurement unit to use~~
1820 ~~in selecting the proposal that provides the best value or is the most advantageous to the~~
1821 ~~procurement unit, including when:]~~

1822 ~~[(i) the procurement involves a contract whose terms and conditions are to be~~
1823 ~~negotiated in order to achieve the result that is the most advantageous to the procurement unit;]~~

1824 ~~[(ii) cost is not the most important factor to be considered in making the selection that~~
1825 ~~is most advantageous to the procurement unit;]~~

1826 ~~[(iii) factors, apart from or in addition to cost, are highly significant in making the~~
1827 ~~selection that is most advantageous to the procurement unit; or]~~

1828 ~~[(iv) the procurement unit anticipates entering into a public-private partnership.]~~

1829 ~~[(b) The types of procurements for which it is appropriate to use the request for~~
1830 ~~proposals process include:]~~

1831 ~~[(i) a procurement of professional services; and]~~

1832 ~~[(ii) a procurement of design-build or construction manager/general contractor~~
1833 ~~services:]~~

1834 ~~[(3)]~~ (2) The procurement of architect-engineer services is governed by Part 15, Design
1835 Professional Services.

1836 Section 29. Section **63G-6a-703** is amended to read:

1837 **63G-6a-703. Request for proposals -- Requirements -- Publication of request.**

1838 (1) ~~[The request for proposals standard procurement process begins when the division~~
1839 ~~or a procurement unit with independent procurement authority issues] A procurement unit that~~
1840 ~~intends to award a contract for a procurement item using the request for proposals process shall~~
1841 ~~issue a request for proposals.~~

1842 ~~[(2) A request for proposals shall:]~~

1843 ~~[(a) state the period of time during which a proposal will be accepted;]~~

1844 ~~[(b) describe the manner in which a proposal shall be submitted;]~~

1845 ~~[(c) state the place where a proposal shall be submitted;]~~

1846 ~~[(d) include, or incorporate by reference:]~~

1847 ~~[(i) to the extent practicable, a full description of the procurement items sought and the~~
1848 ~~full scope of work;]~~

1849 ~~[(ii) a description of the subjective and objective criteria that will be used to evaluate~~
1850 ~~the proposal; and]~~

1851 ~~[(iii) the standard contractual terms and conditions required by the authorized~~
1852 ~~purchasing entity;]~~

1853 ~~[(e) if the request for proposals is for a construction project, require each offeror to~~
1854 ~~include in a proposal a description of the offeror's company safety plan and the offeror's safety~~
1855 ~~plan for the specific project that is the subject of the proposal;]~~

1856 ~~[(f) state the relative weight that will be given to each score for the criteria described in~~

1857 Subsection (2)(d)(ii), including cost;]

1858 [~~(g) state the formula that will be used to determine the score awarded for the cost of~~
1859 ~~each proposal;~~]

1860 [~~(h) if the request for proposals will be conducted in multiple stages, as described in~~
1861 ~~Section 63G-6a-710, include a description of the stages and the criteria and scoring that will be~~
1862 ~~used to screen offerors at each stage;~~]

1863 [~~(i) state that best and final offers may be allowed, as provided in Section~~
1864 ~~63G-6a-707.5, from responsible offerors who submit responsive proposals that meet minimum~~
1865 ~~qualifications, evaluation criteria, or applicable score thresholds identified in the request for~~
1866 ~~proposals; and]~~

1867 [~~(j) if the procurement unit anticipates the procurement process to result in a~~
1868 ~~public-private partnership, state that the procurement unit anticipates entering into a~~
1869 ~~public-private partnership.]~~

1870 (2) A procurement unit shall include in a request for proposals:

1871 (a) a description of the procurement item that the procurement unit seeks;

1872 (b) instructions for submitting a proposal, including the deadline for submitting a
1873 proposal;

1874 (c) the objective criteria, including, if applicable, cost, and subjective criteria that the
1875 procurement unit will use to evaluate proposals;

1876 (d) information about the time and manner of opening proposals; and

1877 (e) terms and conditions that the procurement unit intends to include in a contract
1878 resulting from the request for proposals process.

1879 (3) [~~The division or a~~ A procurement unit [~~with independent procurement authority~~]
1880 shall publish a request for proposals in accordance with the requirements of Section
1881 63G-6a-112.

1882 Section 30. Section 63G-6a-704 is repealed and reenacted to read:

1883 **63G-6a-704. Processing of proposals -- Changes to proposals not allowed.**

1884 (1) A procurement unit:

1885 (a) shall accept proposals as provided in the request for proposals;

1886 (b) may not open a proposal until after the deadline for submitting proposals; and

1887 (c) may not disclose the contents of a proposal to the public or to another offeror,

1888 except as provided in Subsection 63G-2-305(6).

1889 (2) A person who submits a proposal may not, after the deadline for submitting
1890 proposals, make a change to the proposal if the change is prejudicial to:

1891 (a) the interest of the procurement unit; or

1892 (b) fair competition.

1893 Section 31. Section **63G-6a-704.4** is enacted to read:

1894 **63G-6a-704.4. Limited addenda to requests for proposals.**

1895 After the deadline for submitting proposals, a procurement unit may, at the discretion of
1896 the procurement official, issue a request for proposals addendum that has limited application
1897 only to offerors that have submitted proposals, if the addendum does not change the request for
1898 proposals in a way that, in the opinion of the procurement official, would likely have affected
1899 the number of proposals submitted in response to the request for proposals had the addendum
1900 been included in the original request for proposals.

1901 Section 32. Section **63G-6a-704.6** is enacted to read:

1902 **63G-6a-704.6. Discussions with persons who submit a proposal.**

1903 (1) A procurement unit may have discussions with an offeror to obtain a more
1904 complete understanding of whether the offeror is responsible or the offeror's proposal is
1905 responsive.

1906 (2) A procurement unit may reject a proposal following discussions under Subsection
1907 (1) if the procurement unit determines that the offeror is not responsible or the proposal is not
1908 responsive.

1909 Section 33. Section **63G-6a-707** is amended to read:

1910 **63G-6a-707. Evaluation committee -- Evaluation of proposals.**

1911 (1) A procurement unit shall appoint an evaluation committee of at least three members
1912 to evaluate proposals received in response to a request for proposals issued by the procurement
1913 unit.

1914 (2) The evaluation committee shall evaluate proposals in accordance with the process
1915 described in the request for proposals.

1916 ~~[(1)(a)]~~ (3) To determine which proposal provides the best value to the procurement
1917 unit, the evaluation committee shall evaluate each responsible offeror's responsive proposal
1918 that has not been disqualified from consideration under the provisions of this chapter, using the

1919 evaluation criteria described in the request for proposals.

1920 ~~[(b) The criteria in a request for proposals may include:]~~

1921 ~~[(i) experience;]~~

1922 ~~[(ii) performance ratings;]~~

1923 ~~[(iii) inspection;]~~

1924 ~~[(iv) testing;]~~

1925 ~~[(v) quality;]~~

1926 ~~[(vi) workmanship;]~~

1927 ~~[(vii) time, manner, or schedule of delivery;]~~

1928 ~~[(viii) references;]~~

1929 ~~[(ix) financial solvency;]~~

1930 ~~[(x) suitability for a particular purpose;]~~

1931 ~~[(xi) management plans;]~~

1932 ~~[(xii) cost;]~~

1933 ~~[(xiii) if applicable, the offeror's willingness and capability to enter into a~~

1934 ~~public-private partnership; or]~~

1935 ~~[(xiv) other subjective or objective criteria specified in the request for proposals.]~~

1936 ~~[(c) The criteria in a request for proposals for a construction project shall include the~~

1937 ~~existence and quality of:]~~

1938 ~~[(i) an offeror's company safety plan; and]~~

1939 ~~[(ii) the offeror's safety plan for the specific project that is the subject of the proposal.]~~

1940 ~~[(2)] (4) Criteria not described in the request for proposals may not be used to evaluate~~

1941 a proposal.

1942 ~~[(3) The conducting]~~

1943 (5) A procurement unit shall:

1944 (a) appoint ~~[an]~~ evaluation committee ~~[consisting of at least three individuals with]~~

1945 members who have at least a general familiarity with or basic understanding of:

1946 (i) the technical requirements relating to the type of procurement item that is the

1947 subject of the procurement; or

1948 (ii) the need that the procurement item is intended to address; and

1949 (b) ensure that the evaluation committee and each individual participating in the

1950 evaluation committee process:

1951 (i) does not have a conflict of interest with any of the offerors;

1952 (ii) can fairly evaluate each proposal;

1953 (iii) does not contact or communicate with an offeror concerning the procurement

1954 outside the official evaluation committee process; and

1955 (iv) conducts or participates in the evaluation in a manner that ensures a fair and

1956 competitive process and avoids the appearance of impropriety.

1957 ~~[(4) A conducting]~~

1958 (6) A procurement unit may authorize an evaluation committee to receive assistance[:

1959 (a)] from an expert or consultant [who: (i) is not a member of the evaluation committee; and

1960 (ii) does not participate in the evaluation scoring; and (b)] to better understand a technical

1961 issue involved in the procurement.

1962 ~~[(5) (a) An evaluation committee may, with the approval of the head of the conducting~~

1963 ~~procurement unit, enter into discussions or conduct interviews with, or attend presentations by,~~

1964 ~~the offerors, for the purpose of clarifying information contained in proposals.]~~

1965 ~~[(b) In a discussion, interview, or presentation under Subsection (5)(a), an offeror:]~~

1966 ~~[(i) may only explain, illustrate, or interpret the contents of the offeror's original~~

1967 ~~proposal; and]~~

1968 ~~[(ii) may not:]~~

1969 ~~[(A) address criteria or specifications not contained in the offeror's original proposal;]~~

1970 ~~[(B) correct a deficiency, inaccuracy, or mistake in a proposal that is not an immaterial~~

1971 ~~error;]~~

1972 ~~[(C) correct an incomplete submission of documents that the solicitation required to be~~

1973 ~~submitted with the proposal;]~~

1974 ~~[(D) correct a failure to submit a timely proposal;]~~

1975 ~~[(E) substitute or alter a required form or other document specified in the solicitation;]~~

1976 ~~[(F) remedy a cause for an offeror being considered to be not responsible or a proposal~~

1977 ~~not responsive; or]~~

1978 ~~[(G) correct a defect or inadequacy resulting in a determination that an offeror does not~~

1979 ~~meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds~~

1980 ~~established in the solicitation.]~~

1981 ~~[(6) (a) Except as provided in Subsection (7)(b) relating to access to management fee~~
1982 ~~information, and except as provided in Subsection (9), each member of the evaluation~~
1983 ~~committee is prohibited from knowing, or having access to, any information relating to the~~
1984 ~~cost, or the scoring of the cost, of a proposal until after the evaluation committee submits its~~
1985 ~~final recommended scores on all other criteria to the issuing procurement unit.]~~

1986 ~~[(b) The issuing procurement unit shall:]~~

1987 ~~[(i) if applicable, assign an individual who is not a member of the evaluation~~
1988 ~~committee to calculate scores for cost based on the applicable scoring formula, weighting, and~~
1989 ~~other scoring procedures contained in the request for proposals;]~~

1990 ~~[(ii) review the evaluation committee's scores and correct any errors, scoring~~
1991 ~~inconsistencies, and reported noncompliance with this chapter;]~~

1992 ~~[(iii) add the scores calculated for cost, if applicable, to the evaluation committee's~~
1993 ~~final recommended scores on criteria other than cost to derive the total combined score for each~~
1994 ~~responsive proposal from a responsible offeror; and]~~

1995 ~~[(iv) provide to the evaluation committee the total combined score calculated for each~~
1996 ~~responsive proposal from a responsible offeror, including any applicable cost formula,~~
1997 ~~weighting, and scoring procedures used to calculate the total combined scores.]~~

1998 (7) (a) Except as provided in Subsection (7)(b), an evaluation committee member is
1999 prohibited from knowing or having access to information relating to the cost of a proposal until
2000 after the evaluation committee submits its recommendation to the procurement unit based on
2001 the scores of all criteria other than cost.

2002 (b) A procurement official may waive the prohibition of Subsection (7)(a) by signing a
2003 written statement indicating why waiving the prohibition is in the best interests of the
2004 procurement unit.

2005 ~~[(c) The] (8) An evaluation committee may [not: (i)] change its final recommended~~
2006 ~~scores [described in Subsection (6)(a)] after the evaluation committee has submitted those~~
2007 ~~scores to the [issuing] procurement unit[; or].~~

2008 ~~[(ii) change cost scores calculated by the issuing procurement unit.]~~

2009 ~~[(7) (a) As used in this Subsection (7), "management fee" includes only the following~~
2010 ~~fees of the construction manager/general contractor:]~~

2011 ~~[(i) preconstruction phase services;]~~

2012 ~~[(ii) monthly supervision fees for the construction phase; and]~~
2013 ~~[(iii) overhead and profit for the construction phase.]~~
2014 ~~[(b) When selecting a construction manager/general contractor for a construction~~
2015 ~~project, the evaluation committee:]~~
2016 ~~[(i) may score a construction manager/general contractor based upon criteria contained~~
2017 ~~in the solicitation, including qualifications, performance ratings, references, management plan,~~
2018 ~~certifications, and other project specific criteria described in the solicitation;]~~
2019 ~~[(ii) may, as described in the solicitation, weight and score the management fee as a~~
2020 ~~fixed rate or as a fixed percentage of the estimated contract value;]~~
2021 ~~[(iii) may, at any time after the opening of the responses to the request for proposals,~~
2022 ~~have access to, and consider, the management fee proposed by the offerors; and]~~
2023 ~~[(iv) except as provided in Subsection (9), may not know or have access to any other~~
2024 ~~information relating to the cost of construction submitted by the offerors, until after the~~
2025 ~~evaluation committee submits its final recommended scores on all other criteria to the issuing~~
2026 ~~procurement unit.]~~
2027 ~~[(8)] (9) (a) The deliberations and other proceedings of an evaluation committee may~~
2028 ~~be held in private.~~
2029 (b) If the evaluation committee is a public body, as defined in Section [52-4-103](#), the
2030 evaluation committee shall comply with Section [52-4-205](#) in closing a meeting for its
2031 deliberations and other proceedings.
2032 ~~[(9) An issuing procurement unit is not required to comply with Subsection (6) or~~
2033 ~~(7)(b)(iv), as applicable, if the head of the issuing procurement unit or a person designated by~~
2034 ~~rule made by the applicable rulemaking authority:]~~
2035 ~~[(a) signs a written statement:]~~
2036 ~~[(i) indicating that, due to the nature of the proposal or other circumstances, it is in the~~
2037 ~~best interest of the procurement unit to waive compliance with Subsection (6) or (7)(b)(iv), as~~
2038 ~~the case may be; and]~~
2039 ~~[(ii) describing the nature of the proposal and the other circumstances relied upon to~~
2040 ~~waive compliance with Subsection (6) or (7)(b)(iv); and]~~
2041 ~~[(b) makes the written statement available to the public, upon request.]~~
2042 (10) (a) At the conclusion of the evaluation process, an evaluation committee shall

2043 prepare and submit to the procurement unit a written statement that:

2044 (i) recommends a proposal for an award of a contract, if the evaluation committee
2045 decides to recommend a proposal;

2046 (ii) contains the score awarded to the recommended proposal based on the criteria
2047 stated in the request for proposals; and

2048 (iii) explains how the recommended proposal provides the best value to the
2049 procurement unit.

2050 (b) A procurement unit is not required to comply with Subsection (10)(a) for a contract
2051 with a construction manager/general contractor if the contract is awarded based solely on:

2052 (i) the qualifications of the construction manager/general contractor; and

2053 (ii) the management fee to be paid to the construction manager/general contractor.

2054 Section 34. Section **63G-6a-707.5** is amended to read:

2055 **63G-6a-707.5. Best and final offers.**

2056 (1) The best and final offer process described in this section:

2057 (a) may be used only in a request for proposals process, whether the request for
2058 proposals process is used independently or after the establishment of an approved vendor list
2059 through the approved vendor list process; and

2060 (b) may not be used in any other standard procurement process, whether the other
2061 standard procurement process is used independently or after the establishment of an approved
2062 vendor list through the approved vendor list process.

2063 (2) Subject to Subsection (3), a conducting procurement unit may request best and final
2064 offers from responsible offerors:

2065 (a) only with the approval of the [~~chief procurement officer or the head of the issuing~~
2066 ~~procurement unit~~] procurement official; and

2067 (b) if:

2068 (i) no single proposal adequately addresses all the specifications stated in the request
2069 for proposals;

2070 (ii) all proposals are unclear or deficient in one or more respects;

2071 (iii) all cost proposals exceed the identified budget or the procurement unit's available
2072 funding; or

2073 (iv) two or more proposals receive an identical evaluation score that is the highest

2074 score.

2075 (3) A conducting procurement unit may request a best and final offer from, and a best
2076 and final offer may be submitted to the conducting procurement unit by, only a responsible
2077 offeror that has submitted a responsive proposal that meets the minimum mandatory criteria
2078 stated in the request for proposals required to be considered in the stage of the procurement
2079 process at which best and final offers are being requested.

2080 (4) The best and final offer process may not be used to change:

2081 (a) a determination that an offeror is not responsible to a determination that the offeror
2082 is responsible; or

2083 (b) a determination that a proposal is not responsive to a determination that the
2084 proposal is responsive.

2085 (5) (a) This Subsection (5) applies if a request for best and final offers is issued
2086 because all cost proposals exceed the identified budget or the procurement unit's available
2087 funding.

2088 (b) (i) The conducting procurement unit may, in the request for best and final offers:

2089 (A) specify the scope of work reductions the procurement unit is making in order to
2090 generate proposals that are within the identified budget or the procurement unit's available
2091 funding; or

2092 (B) invite offerors submitting best and final offers to specify the scope of work
2093 reductions being made so that the reduced cost proposal is within the identified budget or the
2094 procurement unit's available funding.

2095 (ii) The conducting procurement unit is not required to accept a scope of work
2096 reduction that an offeror has specified in the offeror's best and final offer.

2097 (c) A best and final offer submitted with a reduced cost proposal shall include an
2098 itemized list identifying specific reductions in the offeror's proposed scope of work that
2099 correspond to the offeror's reduced cost proposal.

2100 (d) A reduction in the scope of work may not:

2101 (i) eliminate a component identified in the request for proposals as a minimum
2102 mandatory requirement; or

2103 (ii) alter the nature of the original request for proposals to the extent that a request for
2104 proposals for the reduced scope of work would have likely attracted a significantly different set

2105 of offerors submitting proposals in response to the request for proposals.

2106 (6) If a request for best and final offers is issued because two or more proposals
2107 received an identical evaluation score that is the highest score:

2108 (a) the request may be issued only to offerors who submitted a proposal receiving the
2109 highest score; and

2110 (b) an offeror submitting a best and final offer may revise:

2111 (i) the technical aspects of the offeror's proposal;

2112 (ii) the offeror's cost proposal, as provided in Subsection (5); or

2113 (iii) both the technical aspects of the offeror's proposal and, as provided in Subsection
2114 (5), the offeror's cost proposal.

2115 (7) In a request for best and final offers, the conducting procurement unit shall:

2116 (a) clearly specify:

2117 (i) the issues that the procurement unit requests the offerors to address in their best and
2118 final offers; and

2119 (ii) how best and final offers will be evaluated and scored in accordance with Section
2120 [~~63G-6a-707~~] [63G-6a-707.5](#);

2121 (b) establish a deadline for an offeror to submit a best and final offer; and

2122 (c) if applicable, establish a schedule and procedure for conducting discussions with
2123 offerors concerning the best and final offers.

2124 (8) In conducting a best and final offer process under this section, a conducting
2125 procurement unit shall:

2126 (a) maintain confidential the information the procurement unit receives from an
2127 offeror, including any cost information, until a contract has been awarded or the request for
2128 proposals canceled;

2129 (b) ensure that each offeror receives fair and equal treatment; and

2130 (c) safeguard the integrity of the scope of the original request for proposals, except as
2131 specifically provided otherwise in this section.

2132 (9) In a best and final offer, an offeror:

2133 (a) may address only the issues described in the request for best and final offers; and

2134 (b) may not correct a material error or deficiency in the offeror's proposal or address
2135 any issue not described in the request for best and final offers.

2136 (10) If an offeror fails to submit a best and final offer, the conducting procurement unit
2137 shall treat the offeror's original proposal as the offeror's best and final offer.

2138 (11) After the deadline for submitting best and final offers has passed, the evaluation
2139 committee shall evaluate the best and final offers submitted using the criteria described in the
2140 request for proposals.

2141 (12) An offeror may not make and a conducting procurement unit may not consider a
2142 best and final offer that the conducting procurement unit has not requested under this section.

2143 (13) To implement the best and final offer process described in this section, ~~an~~
2144 ~~applicable~~ a rulemaking authority may make rules consistent with this section and the other
2145 provisions of this chapter.

2146 Section 35. Section ~~63G-6a-712~~ is amended to read:

2147 **63G-6a-712. Unsolicited proposals.**

2148 (1) As used in this section, "unsolicited proposal"~~[(a)]~~ means a written proposal:

2149 ~~[(i)]~~ (a) for a public-private partnership for:

2150 ~~[(A)]~~ (i) an infrastructure project; or

2151 ~~[(B)]~~ (ii) a project to collect, analyze, and distribute health data to improve health and
2152 health care and to facilitate interaction regarding health and health care issues; and

2153 ~~[(ii)]~~ (b) that is not submitted in response to a solicitation~~[-and]~~.

2154 ~~[(b) does not include an initial proposal, as defined in Section 63G-6a-711.]~~

2155 (2) (a) Subject to Subsection (2)(b), a person may submit an unsolicited proposal to a
2156 procurement unit at any time.

2157 (b) An unsolicited proposal may not be used to seek a procurement unit's consideration
2158 of a proposal after the expiration of the time for submitting proposals in response to a request
2159 for proposals.

2160 (3) An unsolicited proposal shall include:

2161 (a) a reference to this section and a statement that the unsolicited proposal is submitted
2162 under this section;

2163 (b) a conceptual description of the project that constitutes the procurement item that is
2164 the subject of the proposed public-private partnership;

2165 (c) a description of the economic benefit of the project to the state and the procurement
2166 unit;

- 2167 (d) information concerning the services or facilities currently being provided by the
2168 state or procurement unit that are similar to the project;
- 2169 (e) an estimate of the project costs for:
- 2170 (i) design;
- 2171 (ii) implementation;
- 2172 (iii) operation and maintenance; and
- 2173 (iv) any other related project cost; and
- 2174 (f) the name, address, telephone number, and email address of an individual who may
2175 be contacted for further information concerning the unsolicited proposal.
- 2176 (4) A procurement unit is not required to consider an unsolicited proposal.
- 2177 (5) A procurement unit may charge a person submitting an unsolicited proposal a fee to
2178 cover the actual cost of processing, considering, and evaluating the unsolicited proposal.
- 2179 (6) A procurement unit that receives an unsolicited proposal may not award a contract
2180 for the procurement item described in the unsolicited proposal unless:
- 2181 (a) the procurement unit first engages in a standard procurement process for proposals
2182 to provide the procurement item described in the unsolicited proposal; or
- 2183 (b) awarding the contract without the procurement unit engaging in a standard
2184 procurement process is allowed under Section [63G-6a-802](#).
- 2185 (7) If a procurement unit engages in a standard procurement process pursuant to
2186 Subsection (6)(a):
- 2187 (a) the procurement unit shall treat an unsolicited proposal as though it were submitted
2188 as a proposal in response to the solicitation; and
- 2189 (b) a person who has submitted an unsolicited proposal may, within the time provided
2190 in the solicitation for the submission of proposals, modify the unsolicited proposal to the extent
2191 necessary to address matters raised in the solicitation that were not addressed in the initial
2192 unsolicited proposal.
- 2193 (8) ~~[An applicable]~~ A rulemaking authority may make rules to govern the submission,
2194 processing, consideration, and evaluation of an unsolicited proposal, including fees relating to
2195 the unsolicited proposal.
- 2196 (9) An unsolicited proposal is subject to Chapter 2, Government Records Access and
2197 Management Act, including, if applicable, provisions relating to a written claim of business

2198 confidentiality, as provided in Section [63G-2-309](#), for trade secrets, commercial information, or
2199 nonindividual financial information described in Subsection [63G-2-305](#)(1) or (2).

2200 Section 36. Section **63G-6a-802** is amended to read:

2201 **63G-6a-802. Award of contract without engaging in a standard procurement**
2202 **process -- Notice -- Duty to negotiate contract terms in best interest of procurement unit.**

2203 (1) [~~The chief procurement officer or the head of a procurement unit with independent~~
2204 ~~procurement authority~~] A procurement unit may award a contract for a procurement item
2205 without engaging in a standard procurement process if the [~~chief procurement officer or the~~
2206 ~~head of the procurement unit with independent procurement authority~~] procurement official
2207 determines in writing that:

2208 (a) there is only one source for the procurement item;

2209 (b) (i) transitional costs are a significant consideration in selecting a procurement item;

2210 and

2211 (ii) the results of a cost-benefit analysis demonstrate that transitional costs are
2212 unreasonable or cost-prohibitive, and that the award of a contract without engaging in a
2213 standard procurement process is in the best interest of the procurement unit; or

2214 (c) the award of a contract is under circumstances, described in rules adopted by the
2215 [~~applicable~~] rulemaking authority, that make awarding the contract through a standard
2216 procurement process impractical and not in the best interest of the procurement unit.

2217 (2) Transitional costs associated with a trial use or testing of a procurement item under
2218 a trial use contract awarded under Section [63G-6a-802.3](#) may not be included in a
2219 consideration of transitional costs under Subsection (1)(b).

2220 (3) (a) Subject to Subsection (3)(b), [~~the applicable~~] a rulemaking authority shall make
2221 rules regarding the publication of notice for a procurement under this section that, at a
2222 minimum, require publication of notice of the procurement, in accordance with Section
2223 [63G-6a-112](#), if the cost of the procurement exceeds \$50,000.

2224 (b) Publication of notice under Section [63G-6a-112](#) is not required for:

2225 (i) the procurement of public utility services pursuant to a sole source contract; or

2226 (ii) other procurements under this section for which an applicable rule provides that
2227 notice is not required.

2228 (4) [~~The chief procurement officer or the head of a procurement unit with independent~~

2229 ~~procurement authority]~~ A procurement official who awards a contract under this section shall
 2230 negotiate with the contractor to ensure that the terms of the contract, including price and
 2231 delivery, are in the best interest of the procurement unit.

2232 Section 37. Section **63G-6a-802.3** is amended to read:

2233 **63G-6a-802.3. Trial use contracts.**

2234 (1) A procurement unit may award a trial use contract without engaging in a standard
 2235 procurement process if:

2236 (a) the purpose of the contract is to:

2237 (i) determine whether the procurement item will benefit the procurement unit;

2238 (ii) assess the feasibility of a procurement item that:

2239 (A) is new or innovative; or

2240 (B) has a proposed use or application that is novel or unproven; or

2241 (iii) evaluate whether to conduct a standard procurement process for the procurement
 2242 item being tested; and

2243 (b) the contract is:

2244 ~~[(a)]~~ (i) awarded for a procurement item that is not already available to the
 2245 procurement unit under an existing contract;

2246 ~~[(b)]~~ (ii) restricted to the procurement of a procurement item in the minimum quantity
 2247 and for the minimum period of time necessary to test the procurement item;

2248 ~~[(c)]~~ (iii) the only trial use contract for that procurement unit for the same procurement
 2249 item; and

2250 ~~[(d)]~~ (iv) not used to circumvent the purposes and policies of this chapter as set forth in
 2251 Section [63G-6a-102](#).

2252 (2) The period of trial use or testing of a procurement item under a trial use contract
 2253 may not exceed [~~18~~] 24 months, unless the procurement [~~officer~~] official provides a written
 2254 exception documenting the reason for a longer period.

2255 (3) A trial use contract shall:

2256 (a) state that the contract is strictly for the trial use or testing of a procurement item;

2257 (b) state that the contract terminates upon completion of the trial use or testing period;

2258 (c) state that the procurement unit is not obligated to purchase or enter into a contract
 2259 for the procurement item, regardless of the trial use or testing result;

2260 (d) state that any purchase of the procurement item that is the subject of the trial use
2261 contract will be made in accordance with this chapter; and

2262 (e) include, as applicable:

2263 (i) test schedules;

2264 (ii) deadlines and a termination date;

2265 (iii) measures that will be used to evaluate the performance of the procurement item;

2266 (iv) any fees and associated expenses or an explanation of the circumstances

2267 warranting a waiver of those fees and expenses;

2268 (v) the obligations of the procurement unit and vendor;

2269 (vi) provisions regarding the ownership of the procurement item during and after the
2270 trial use or testing period;

2271 (vii) an explanation of the grounds upon which the contract may be terminated;

2272 (viii) a provision relating to any required bond or security deposit; and

2273 (ix) other requirements unique to the procurement item for trial use or testing.

2274 (4) Publication of notice under Section [63G-6a-112](#) is not required for a trial use
2275 contract.

2276 (5) ~~[The applicable]~~ A rulemaking authority may make rules pertaining to a trial use
2277 contract.

2278 Section 38. Section **63G-6a-802.7** is amended to read:

2279 **63G-6a-802.7. Extension of a contract without engaging in a standard**

2280 **procurement process.**

2281 ~~[The chief procurement officer or the head of a procurement unit with independent~~
2282 ~~procurement authority]~~ A procurement official may extend an existing contract without
2283 engaging in a standard procurement process:

2284 (1) for a period of time not to exceed 120 days, if:

2285 (a) an extension of the contract is necessary to:

2286 (i) avoid a lapse in a critical government service; or

2287 (ii) to mitigate a circumstance that is likely to have a negative impact on public health,
2288 safety, welfare, or property; and

2289 (b) (i) (A) the procurement unit is engaged in a standard procurement process for a
2290 procurement item that is the subject of the contract being extended; and

- 2291 (B) the standard procurement process is delayed due to an unintentional error;
- 2292 (ii) a change in an industry standard requires one or more significant changes to
- 2293 specifications for the procurement item; or
- 2294 (iii) an extension is necessary:
- 2295 (A) to prevent the loss of federal funds;
- 2296 (B) to mitigate the effects of a delay of a state or federal appropriation;
- 2297 (C) to enable the procurement unit to continue to receive a procurement item during a
- 2298 delay in the implementation of a contract awarded pursuant to a procurement that has already
- 2299 been conducted; or
- 2300 (D) to enable the procurement unit to continue to receive a procurement item during a
- 2301 period of time during which negotiations with a vendor under a new contract for the
- 2302 procurement item are being conducted;
- 2303 (2) for the period of a protest, appeal, or court action, if the protest, appeal, or court
- 2304 action is the reason for delaying the award of a new contract; or
- 2305 (3) for a period of time exceeding 120 days, if, after consulting with the attorney
- 2306 general or the procurement unit's attorney, the [~~chief procurement officer or head of a~~
- 2307 ~~procurement unit with independent procurement authority~~] procurement official determines in
- 2308 writing that the contract extension does not violate state or federal antitrust laws and is
- 2309 consistent with the purpose of ensuring the fair and equitable treatment of all persons who deal
- 2310 with the procurement system.

2311 Section 39. Section **63G-6a-803** is amended to read:

2312 **63G-6a-803. Emergency procurement.**

- 2313 (1) Notwithstanding any other provision of this chapter, [~~the chief procurement officer~~
- 2314 ~~or the head of a procurement unit with independent procurement authority~~] a procurement
- 2315 official may authorize a procurement unit to engage in an emergency procurement without
- 2316 using a standard procurement process if the procurement is necessary to:
- 2317 (a) avoid a lapse in a critical government service;
- 2318 (b) mitigate a circumstance that is likely to have a negative impact on public health,
- 2319 safety, welfare, or property; or
- 2320 (c) protect the legal interests of a public entity.
- 2321 (2) A procurement unit conducting an emergency procurement under Subsection (1)

2322 shall:

2323 (a) ensure that the procurement is made with as much competition as reasonably

2324 practicable while:

2325 (i) avoiding a lapse in a critical government service;

2326 (ii) avoiding harm, or a risk of harm, to the public health, safety, welfare, or property;

2327 or

2328 (iii) protecting the legal interests of a public entity; and

2329 (b) after the emergency has abated, prepare a written document explaining the

2330 emergency condition that necessitated the emergency procurement under Subsection (1).

2331 Section 40. Section **63G-6a-804** is amended to read:

2332 **63G-6a-804. Purchase of prison industry goods.**

2333 (1) As used in this section[~~,"applicable~~]:

2334 (a) "Applicable procurement unit" means a procurement unit that is not:

2335 [~~(a)~~] (i) a political subdivision of the state; or

2336 [~~(b)~~] (ii) the Utah Schools for the Deaf and the Blind.

2337 (b) "Correctional industries division" means the Division of Correctional Industries,

2338 created in Section 64-13a-4.

2339 (c) "Correctional industries director" means the director of the correctional industries

2340 division, appointed under Section 64-13a-4.

2341 (2) (a) An applicable procurement unit shall purchase goods and services produced by

2342 the [~~Utah Correctional Industries Division~~] correctional industries division as provided in this

2343 section.

2344 (b) A procurement unit that is not an applicable procurement unit may, and is

2345 encouraged to, purchase goods and services under this section.

2346 (c) A procurement unit is not required to use a standard procurement process to

2347 purchase goods or services under this section.

2348 (3) On or before July 1 of each year, the correctional industries director [~~of the Utah~~

2349 ~~Correctional Industries~~] shall:

2350 (a) publish and distribute to all procurement units and other interested public entities a

2351 catalog of goods and services [~~provided~~] produced by the [~~Correctional Industries Division~~]

2352 correctional industries division, including a description and price of each item offered for sale;

2353 and

2354 (b) update and revise the catalog described in Subsection (3)(a) during the year as the
2355 correctional industries director considers necessary.

2356 (4) (a) An applicable procurement unit may not purchase any goods or services
2357 provided by the [~~Correctional Industries Division~~] correctional industries division from any
2358 other source unless [~~it has been determined in writing by the director of Correctional Industries~~
2359 ~~and by the~~] the correctional industries director and the procurement [officer] official or, in the
2360 case of institutions of higher education, the institutional procurement officer, determine in
2361 writing that purchase from the [~~Correctional Industries Division~~] correctional industries
2362 division is not feasible due to one of the following circumstances:

2363 (i) the good or service offered by the correctional industries division does not meet the
2364 reasonable requirements of the procurement unit;

2365 (ii) the good or service cannot be supplied within a reasonable time by the correctional
2366 industries division; or

2367 (iii) the cost of the good or service, including basic price, transportation costs, and
2368 other expenses of acquisition, is not competitive with the cost of procuring the item from
2369 another source.

2370 (b) In cases of disagreement under Subsection (4)(a):

2371 (i) the decision may be appealed to a board consisting of:

2372 (A) the director of the Department of Corrections;

2373 (B) the director of Administrative Services; and

2374 (C) a neutral third party agreed upon by the other two members of the board;

2375 (ii) in the case of an institution of higher education of the state, the president of the
2376 institution, or the president's designee, shall make the final decision; or

2377 (iii) in the case of any of the following entities, a person designated by the [~~applicable~~]
2378 rulemaking authority shall make the final decision:

2379 (A) a legislative procurement unit;

2380 (B) a judicial procurement unit; or

2381 (C) a public transit district.

2382 Section 41. Section **63G-6a-806** is amended to read:

2383 **63G-6a-806. Exception for public transit district contracting with a county or**

2384 **municipality.**

2385 A public transit district, organized under Title 17B, Chapter 2a, Part 8, Public Transit
2386 District Act, may, without going through a standard procurement process or another exception
2387 to a standard procurement process described in this part:

2388 (1) contract with a county or municipality to receive money from the county or
2389 municipality; and

2390 (2) use the money described in Subsection (1) to fund a transportation project or a
2391 transit-related program in accordance with rules made by the [applicable] rulemaking authority.

2392 Section 42. Section **63G-6a-902** is amended to read:

2393 **63G-6a-902. Cancellation and rejection of bids and proposals.**

2394 (1) An issuing procurement unit may cancel an invitation for bids, a request for
2395 proposals, or other solicitation or reject any or all bids or proposal responses, in whole or in
2396 part, as may be specified in the solicitation, when it is in the best interests of the procurement
2397 unit in accordance with the rules of the [applicable] rulemaking authority.

2398 (2) The reasons for a cancellation or rejection described in Subsection (1) shall be
2399 made part of the contract file.

2400 Section 43. Section **63G-6a-903** is amended to read:

2401 **63G-6a-903. Determination of nonresponsibility.**

2402 (1) A determination of nonresponsibility of a person made by an issuing procurement
2403 unit shall be made in writing, in accordance with the rules of the [applicable] rulemaking
2404 authority.

2405 (2) A person's unreasonable failure to promptly supply information in connection with
2406 an inquiry with respect to responsibility may be grounds for a determination of
2407 nonresponsibility with respect to the person.

2408 (3) Subject to Title 63G, Chapter 2, Government Records Access and Management
2409 Act, information furnished by a person pursuant to this section may not be disclosed outside of
2410 a procurement unit without the person's prior written consent.

2411 Section 44. Section **63G-6a-904** is amended to read:

2412 **63G-6a-904. Debarment or suspension from consideration for award of contracts**
2413 **-- Process -- Causes for debarment -- Judicial review.**

2414 (1) (a) Subject to Subsection (1)(b), [~~the chief procurement officer or the head of a~~

2415 ~~procurement unit with independent procurement authority]~~ a procurement official may:

2416 (i) debar a person for cause from consideration for award of contracts for a period not
2417 to exceed three years; or

2418 (ii) suspend a person from consideration for award of contracts if there is cause to
2419 believe that the person has engaged in any activity that might lead to debarment.

2420 (b) Before debarring or suspending a person under Subsection (1)(a), ~~[the chief~~
2421 ~~procurement officer or head of a procurement unit with independent procurement authority]~~ a
2422 procurement official shall:

2423 (i) consult with:

2424 (A) the procurement unit involved in the matter for which debarment or suspension is
2425 sought; and

2426 (B) the attorney general, if the procurement unit is in the state executive branch, or the
2427 procurement unit's attorney, if the procurement unit is not in the state executive branch;

2428 (ii) give the person at least 10 days' prior written notice of:

2429 (A) the reasons for which debarment or suspension is being considered; and

2430 (B) the hearing under Subsection (1)(b)(iii); and

2431 (iii) hold an informal hearing in accordance with Subsection (1)(c).

2432 (c) (i) At an informal hearing under Subsection (1)(b)(iii), ~~[the chief procurement~~
2433 ~~officer or head of a procurement unit with independent procurement authority]~~ a procurement
2434 official may:

2435 (A) subpoena witnesses and compel their attendance at the hearing;

2436 (B) subpoena documents for production at the hearing;

2437 (C) obtain additional factual information; and

2438 (D) obtain testimony from experts, the person who is the subject of the proposed
2439 debarment or suspension, representatives of the procurement unit, or others to assist the ~~[chief~~
2440 ~~procurement officer or head of a procurement unit with independent procurement authority]~~
2441 procurement official to make a decision on the proposed debarment or suspension.

2442 (ii) The Rules of Evidence do not apply to an informal hearing under Subsection
2443 (1)(b)(iii).

2444 ~~[(iii) The chief procurement officer or head of a procurement unit with independent~~
2445 ~~procurement authority]~~

2446 (iii) A procurement official shall:

2447 (A) record a hearing under Subsection (1)(b)(iii); and

2448 (B) preserve all records and other evidence relied upon in reaching a decision until the
2449 decision becomes final.

2450 (iv) The holding of an informal hearing under Subsection (1)(b)(iii) or the issuing of a
2451 decision under Subsection (1)(c)(v) does not affect a person's right to later question or
2452 challenge the jurisdiction of the [~~chief procurement officer or head of a procurement unit with~~
2453 ~~independent procurement authority~~] procurement official to hold a hearing or issue a decision.

2454 [~~(v) The chief procurement officer or head of a procurement unit with independent~~
2455 ~~procurement authority~~]

2456 (v) A procurement official shall:

2457 (A) promptly issue a written decision regarding a proposed debarment or suspension,
2458 unless the matter is settled by mutual agreement; and

2459 (B) mail, email, or otherwise immediately furnish a copy of the decision to the person
2460 who is the subject of the decision.

2461 (vi) A written decision under Subsection (1)(c)(v) shall:

2462 (A) state the reasons for the debarment or suspension, if debarment or suspension is
2463 ordered; and

2464 (B) inform the person who is debarred or suspended of the right to judicial review as
2465 provided in this chapter.

2466 (vii) A decision of debarment or suspension is final and conclusive unless the decision
2467 is overturned by a court under Subsection (4).

2468 (2) A suspension under this section may not be for a period exceeding three months,
2469 unless an indictment has been issued for an offense which would be a cause for debarment
2470 under Subsection (3), in which case the suspension shall, at the request of the attorney general,
2471 if the procurement unit is in the state executive branch, or the procurement unit's attorney, if
2472 the procurement unit is not in the state executive branch, remain in effect until after the trial of
2473 the suspended person.

2474 (3) The causes for debarment include the following:

2475 (a) conviction of a criminal offense as an incident to obtaining or attempting to obtain a
2476 public or private contract or subcontract or in the performance of a public or private contract or

2477 subcontract;

2478 (b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery,
2479 falsification or destruction of records, receiving stolen property, or any other offense indicating
2480 a lack of business integrity or business honesty which currently, seriously, and directly affects
2481 responsibility as a contractor for the procurement unit;

2482 (c) conviction under state or federal antitrust statutes;

2483 (d) failure without good cause to perform in accordance with the terms of the contract;

2484 (e) a violation of this chapter; or

2485 (f) any other cause that the [~~chief procurement officer or the head of a procurement unit~~
2486 ~~with independent procurement authority~~] procurement official determines to be so serious and
2487 compelling as to affect responsibility as a contractor for the procurement unit, including
2488 debarment by another governmental entity.

2489 (4) (a) A person who is debarred or suspended under this section may seek judicial
2490 review of the debarment or suspension by filing a petition for judicial review in district court.

2491 (b) A petition under Subsection (4)(a):

2492 (i) is a complaint governed by the Utah Rules of Civil Procedure;

2493 (ii) shall name the procurement unit as respondent;

2494 (iii) shall be accompanied by a copy of the written decision as to which judicial review
2495 is sought; and

2496 (iv) is barred unless filed in district court within 30 days after the date of the issuance
2497 of the written decision of suspension or debarment under Subsection (1)(c)(v).

2498 (c) A district court's review of a petition under Subsection (4)(a) shall be de novo.

2499 (d) A district court shall, without a jury, determine all questions of fact and law,
2500 including any constitutional issue, presented in the pleadings.

2501 (5) A procurement unit may consider a cause for debarment under Subsection (3) as the
2502 basis for determining that a person responding to a solicitation is not responsible:

2503 (a) independent of any effort or proceeding under this section to debar or suspend the
2504 person; and

2505 (b) even if the procurement unit does not choose to seek debarment or suspension.

2506 (6) [~~An applicable~~] A rulemaking authority may make rules pertaining to the
2507 suspension and debarment process under this section, including rules governing an informal

2508 hearing under Subsection (1)(b)(iii).

2509 Section 45. Section **63G-6a-1002** is amended to read:

2510 **63G-6a-1002. Reciprocal preference for providers of state products.**

2511 (1) (a) An issuing procurement unit shall, for all procurements, give a reciprocal
2512 preference to those bidders offering procurement items that are produced, manufactured,
2513 mined, grown, or performed in Utah over those bidders offering procurement items that are
2514 produced, manufactured, mined, grown, or performed in any state that gives or requires a
2515 preference to procurement items that are produced, manufactured, mined, grown, or performed
2516 in that state.

2517 (b) The amount of reciprocal preference shall be equal to the amount of the preference
2518 applied by the other state for that particular procurement item.

2519 (c) In order to receive a reciprocal preference under this section, the bidder shall certify
2520 on the bid that the procurement items offered are produced, manufactured, mined, grown, or
2521 performed in Utah.

2522 (d) The reciprocal preference is waived if the certification described in Subsection
2523 (1)(c) does not appear on the bid.

2524 (2) (a) If the responsible bidder submitting the lowest responsive bid offers
2525 procurement items that are produced, manufactured, mined, grown, or performed in a state that
2526 gives or requires a preference, and if another responsible bidder has submitted a responsive bid
2527 offering procurement items that are produced, manufactured, mined, grown, or performed in
2528 Utah, and with the benefit of the reciprocal preference, the bid of the other bidder is equal to or
2529 less than the original lowest bid, the issuing procurement unit shall:

2530 (i) give notice to the bidder offering procurement items that are produced,
2531 manufactured, mined, grown, or performed in Utah that the bidder qualifies as a preferred
2532 bidder; and

2533 (ii) make the purchase from the preferred bidder if the bidder agrees, in writing, to
2534 meet the low bid within 72 hours after notification that the bidder is a preferred bidder.

2535 (b) The issuing procurement unit shall include the exact price submitted by the lowest
2536 bidder in the notice the issuing procurement unit submits to the preferred bidder.

2537 (c) The issuing procurement unit may not enter into a contract with any other bidder for
2538 the purchase until 72 hours have elapsed after notification to the preferred bidder.

2539 (3) (a) If there is more than one preferred bidder, the issuing procurement unit shall
2540 award the contract to the willing preferred bidder who was the lowest preferred bidder
2541 originally.

2542 (b) If there were two or more equally low preferred bidders, the issuing procurement
2543 unit shall comply with the rules of the [applicable] rulemaking authority to determine which
2544 bidder should be awarded the contract.

2545 (4) The provisions of this section do not apply if application of this section might
2546 jeopardize the receipt of federal funds.

2547 Section 46. Section **63G-6a-1003** is amended to read:

2548 **63G-6a-1003. Preference for resident contractors.**

2549 (1) As used in this section, "resident contractor" means a person, partnership,
2550 corporation, or other business entity that:

2551 (a) either has its principal place of business in Utah or that employs workers who are
2552 residents of this state when available; and

2553 (b) was transacting business on the date when bids for the public contract were first
2554 solicited.

2555 (2) (a) When awarding contracts for construction, an issuing procurement unit shall
2556 grant a resident contractor a reciprocal preference over a nonresident contractor from any state
2557 that gives or requires a preference to contractors from that state.

2558 (b) The amount of the reciprocal preference shall be equal to the amount of the
2559 preference applied by the state of the nonresident contractor.

2560 (3) (a) In order to receive the reciprocal preference under this section, the bidder shall
2561 certify on the bid that the bidder qualifies as a resident contractor.

2562 (b) The reciprocal preference is waived if the certification described in Subsection
2563 (2)(a) does not appear on the bid.

2564 (4) (a) If the responsible contractor submitting the lowest responsive bid is not a
2565 resident contractor whose principal place of business is in a state that gives or requires a
2566 preference to contractors from that state, and if a resident responsible contractor has also
2567 submitted a responsive bid, and, with the benefit of the reciprocal preference, the resident
2568 contractor's bid is equal to or less than the original lowest bid, the issuing procurement unit
2569 shall:

2570 (i) give notice to the resident contractor that the resident contractor qualifies as a
2571 preferred resident contractor; and

2572 (ii) issue the contract to the resident contractor if the resident contractor agrees, in
2573 writing, to meet the low bid within 72 hours after notification that the resident contractor is a
2574 preferred resident contractor.

2575 (b) The issuing procurement unit shall include the exact price submitted by the lowest
2576 bidder in the notice that the issuing procurement unit submits to the preferred resident
2577 contractor.

2578 (c) The issuing procurement unit may not enter into a contract with any other bidder for
2579 the construction until 72 hours have elapsed after notification to the preferred resident
2580 contractor.

2581 (5) (a) If there is more than one preferred resident contractor, the issuing procurement
2582 unit shall award the contract to the willing preferred resident contractor who was the lowest
2583 preferred resident contractor originally.

2584 (b) If there were two or more equally low preferred resident contractors, the issuing
2585 procurement unit shall comply with the rules of the [applicable] rulemaking authority to
2586 determine which bidder should be awarded the contract.

2587 (6) The provisions of this section do not apply if application of this section might
2588 jeopardize the receipt of federal funds.

2589 Section 47. Section **63G-6a-1102** is amended to read:

2590 **63G-6a-1102. Bid security requirements -- Directed suretyship prohibited --**
2591 **Penalty.**

2592 (1) Bid security in an amount equal to at least 5% of the amount of the bid shall be
2593 required for all competitive bidding for construction contracts. Bid security shall be a bond
2594 provided by a surety company authorized to do business in this state, the equivalent in cash, or
2595 any other form satisfactory to the state.

2596 (2) When a bidder fails to comply with the requirement for bid security described in the
2597 invitation for bids, the bid shall be rejected unless, pursuant to rules of the [applicable]
2598 rulemaking authority, the issuing procurement unit determines that the failure to comply with
2599 the security requirements is nonsubstantial.

2600 (3) After the bids are opened, they shall be irrevocable for the period specified in the

2601 invitation for bids[, ~~except as provided in Section 63G-6a-605~~]. If a bidder is permitted to
2602 withdraw a bid before award, no action shall be taken against the bidder or the bid security.

2603 (4) (a) When issuing an invitation for a bid under this chapter, the procurement [~~officer~~
2604 ~~or the head of an issuing procurement unit~~] official responsible for carrying out a construction
2605 project may not require a person or entity who is bidding for a contract to obtain a bond of the
2606 type described in Subsection (1) from a specific insurance or surety company, producer, agent,
2607 or broker.

2608 (b) A person who violates Subsection (4)(a) is guilty of an infraction.

2609 Section 48. Section **63G-6a-1103** is amended to read:

2610 **63G-6a-1103. Bonds or security necessary when contract is awarded -- Waiver --**
2611 **Action -- Attorney fees.**

2612 (1) When a construction contract is awarded under this chapter, the contractor to whom
2613 the contract is awarded shall deliver the following bonds or security to the procurement unit,
2614 which shall become binding on the parties upon the execution of the contract:

2615 (a) a performance bond satisfactory to the procurement unit that is in an amount equal
2616 to 100% of the price specified in the contract and is executed by a surety company authorized
2617 to do business in the state or any other form satisfactory to the procurement unit; and

2618 (b) a payment bond satisfactory to the procurement unit that is in an amount equal to
2619 100% of the price specified in the contract and is executed by a surety company authorized to
2620 do business in the state or any other form satisfactory to the procurement unit, which is for the
2621 protection of each person supplying labor, service, equipment, or material for the performance
2622 of the work provided for in the contract.

2623 (2) (a) When a construction contract is awarded under this chapter, the procurement
2624 [~~officer or the head of the issuing procurement unit~~] official responsible for carrying out the
2625 construction project may not require a contractor to whom a contract is awarded to obtain a
2626 bond of the types referred to in Subsection (1) from a specific insurance or surety company,
2627 producer, agent, or broker.

2628 (b) A person who violates Subsection (2)(a) is guilty of an infraction.

2629 (3) Rules of [~~the applicable~~] a rulemaking authority may provide for waiver of the
2630 requirement of a bid, performance, or payment bond for circumstances in which the
2631 procurement [~~officer~~] official considers any or all of the bonds to be unnecessary to protect the

2632 procurement unit.

2633 (4) A person [~~shall have~~] has a right of action on a payment bond under this section for
2634 any unpaid amount due to the person if:

2635 (a) the person has furnished labor, service, equipment, or material for the work
2636 provided for in the contract for which the payment bond is furnished under this section; and

2637 (b) the person has not been paid in full within 90 days after the last day on which the
2638 person performed the labor or service or supplied the equipment or material for which the
2639 claim is made.

2640 (5) An action upon a payment bond may only be brought in a court of competent
2641 jurisdiction in a county where the construction contract was to be performed. The action is
2642 barred if not commenced within one year after the last day on which the claimant performed
2643 the labor or service or supplied the equipment or material on which the claim is based. The
2644 obligee named in the bond need not be joined as a party to the action.

2645 (6) In any suit upon a payment bond, the court shall award reasonable attorney fees to
2646 the prevailing party, which fees shall be taxed as costs in the action.

2647 Section 49. Section **63G-6a-1105** is amended to read:

2648 **63G-6a-1105. Form of bonds -- Effect of certified copy.**

2649 (1) The form of the bonds required by this part shall be established by rule made by the
2650 [~~applicable~~] rulemaking authority.

2651 (2) Any person may obtain from the procurement unit a certified copy of a bond upon
2652 payment of the cost of reproduction of the bond and postage, if any.

2653 (3) A certified copy of a bond is prima facie evidence of the contents, execution, and
2654 delivery of the original.

2655 Section 50. Section **63G-6a-1204.5** is amended to read:

2656 **63G-6a-1204.5. Multiple award contracts.**

2657 (1) (a) Through a standard procurement process, the division or [~~a~~] an independent
2658 procurement unit [~~with independent procurement authority~~] may enter into multiple award
2659 contracts with multiple persons.

2660 (b) The applicable rulemaking authority may make rules, consistent with this section,
2661 regulating the use of multiple award contracts.

2662 (2) Multiple award contracts may be in a procurement unit's best interest if award to

2663 two or more bidders or offerors for similar procurement items is needed or desired for adequate
2664 delivery, service, availability, or product compatibility.

2665 (3) A procurement unit that enters into multiple award contracts under this section
2666 shall:

2667 (a) exercise care to protect and promote competition among bidders or offerors when
2668 seeking to enter into multiple award contracts;

2669 (b) name all eligible users of the multiple award contracts in the invitation for bids or
2670 request for proposals; and

2671 (c) if the procurement unit anticipates entering into multiple award contracts before
2672 issuing the invitation for bids or request for proposals, state in the invitation for bids or request
2673 for proposals that the procurement unit may enter into multiple award contracts at the end of
2674 the procurement process.

2675 (4) A procurement unit that enters into multiple award contracts under this section
2676 shall:

2677 (a) obtain, under the multiple award contracts, all of its normal, recurring requirements
2678 for the procurement items that are the subject of the contracts until the contracts terminate; and

2679 (b) reserve the right to obtain the procurement items described in Subsection (4)(a)
2680 separately from the contracts if:

2681 (i) there is a need to obtain a quantity of the procurement items that exceeds the
2682 amount specified in the contracts; or

2683 (ii) the procurement officer makes a written finding that the procurement items
2684 available under the contract will not effectively or efficiently meet a nonrecurring special need
2685 of a procurement unit.

2686 (5) An applicable rulemaking authority may make rules to further regulate a
2687 procurement under this section.

2688 Section 51. Section **63G-6a-1205** is amended to read:

2689 **63G-6a-1205. Regulation of contract types -- Permitted and prohibited contract**
2690 **types.**

2691 (1) Except as otherwise provided in this section, and subject to rules made under this
2692 section by the [applicable] rulemaking authority, a procurement unit may use any type of
2693 contract that will promote the best interests of the procurement unit.

- 2694 (2) ~~[An applicable]~~ A rulemaking authority:
- 2695 (a) may make rules governing, placing restrictions on, or prohibiting the use of any
- 2696 type of contract; and
- 2697 (b) may not make rules that permit the use of a contract:
- 2698 (i) that is prohibited under this section; or
- 2699 (ii) in a manner that is prohibited under this section.
- 2700 (3) A procurement ~~[officer, the head of an issuing procurement unit, or a designee of~~
- 2701 ~~either,]~~ official may not use a type of contract, other than a firm fixed price contract, unless the
- 2702 procurement ~~[officer]~~ official makes a written determination that:
- 2703 (a) the proposed contractor's accounting system will permit timely development of all
- 2704 necessary cost data in the form required by the specific contract type contemplated;
- 2705 (b) the proposed contractor's accounting system is adequate to allocate costs in
- 2706 accordance with generally accepted accounting principles; and
- 2707 (c) the use of a specified type of contract, other than a firm fixed price contract, is in
- 2708 the best interest of the procurement unit, taking into consideration the following criteria:
- 2709 (i) the type and complexity of the procurement item;
- 2710 (ii) the difficulty of estimating performance costs at the time the contract is entered
- 2711 into, due to factors that may include:
- 2712 (A) the difficulty of determining definitive specifications;
- 2713 (B) the difficulty of determining the risks, to the contractor, that are inherent in the
- 2714 nature of the work to be performed; or
- 2715 (C) the difficulty to clearly determine other factors necessary to enter into an accurate
- 2716 firm fixed price contract;
- 2717 (iii) the administrative costs to the procurement unit and the contractor;
- 2718 (iv) the degree to which the procurement unit is required to provide technical
- 2719 coordination during performance of the contract;
- 2720 (v) the impact that the choice of contract type may have upon the level of competition
- 2721 for award of the contract;
- 2722 (vi) the stability of material prices, commodity prices, and wage rates in the applicable
- 2723 market;
- 2724 (vii) the impact of the contract type on the level of urgency related to obtaining the

2725 procurement item;

2726 (viii) the impact of any applicable governmental regulation relating to the contract; and

2727 (ix) other criteria that the procurement officer determines may relate to determining the

2728 contract type that is in the best interest of the procurement unit.

2729 (4) Contract types that, subject to the provisions of this section and rules made under

2730 this section, may be used by a procurement unit include the following:

2731 (a) a fixed price contract;

2732 (b) a fixed price contract with price adjustment;

2733 (c) a time and materials contract;

2734 (d) a labor hour contract;

2735 (e) a definite quantity contract;

2736 (f) an indefinite quantity contract;

2737 (g) a requirements contract;

2738 (h) a contract based on a rate table in accordance with industry standards; or

2739 (i) a contract that includes one of the following construction delivery methods:

2740 (i) design-build;

2741 (ii) design-bid-build; or

2742 (iii) construction manager/general contractor.

2743 (5) Except as it applies to a change order, a procurement unit may not enter into a

2744 cost-plus-percentage-of-cost contract, unless:

2745 (a) use of a cost-plus-percentage-of-cost contract is approved by the procurement

2746 officer;

2747 (b) it is standard practice in the industry to obtain the procurement item through a

2748 cost-plus-percentage-of-cost contract; and

2749 (c) the percentage and the method of calculating costs in the contract are in accordance

2750 with industry standards.

2751 (6) A procurement unit may not enter into a cost-reimbursement contract, unless the

2752 procurement [~~officer~~] official makes a written determination that:

2753 (a) (i) a cost-reimbursement contract is likely to cost less than any other type of

2754 permitted contract; or

2755 (ii) it is impracticable to obtain the procurement item under any other type of permitted

2756 contract; and

2757 (b) the proposed contractor's accounting system:

2758 (i) will timely develop the cost data in the form necessary for the procurement unit to
2759 timely and accurately make payments under the contract; and

2760 (ii) will allocate costs in accordance with generally accepted accounting principles.

2761 Section 52. Section **63G-6a-1206** is amended to read:

2762 **63G-6a-1206. Rules and regulations to determine allowable incurred costs --**
2763 **Required information.**

2764 (1) (a) [~~The applicable~~] A rulemaking authority may, by rule, establish the cost
2765 principles to be included in a cost-reimbursement contract to determine incurred costs for the
2766 purpose of calculating a reimbursement.

2767 (b) The cost principles established by rule under Subsection (1)(a) may be modified, by
2768 contract, if the procurement [~~officer or the head of the issuing procurement unit~~] official
2769 approves the modification.

2770 (2) Except as provided in Subsection (5), a person who seeks to be, or is, a party in a
2771 cost-based contract with a procurement unit shall:

2772 (a) submit cost or pricing data relating to determining the cost or pricing amount; and

2773 (b) certify that, to the best of the contractor's knowledge and belief, the cost or pricing
2774 data submitted is accurate and complete as of the date specified by the procurement unit.

2775 (3) The procurement [~~officer~~] official shall ensure that the date specified under
2776 Subsection (2)(b) is before:

2777 (a) the pricing of any contract awarded by a standard procurement process or pursuant
2778 to a sole source procurement, if the total contract price is expected to exceed an amount
2779 established by rule made by the [~~applicable~~] rulemaking authority; or

2780 (b) the pricing of any change order that is expected to exceed an amount established by
2781 rule made by the [~~applicable~~] rulemaking authority.

2782 (4) A contract or change order that requires a certification described in Subsection (2)
2783 shall include a provision that the price to the procurement unit, including profit or fee, shall be
2784 adjusted to exclude any significant sums by which the procurement unit finds that the price was
2785 increased because the contractor provided cost or pricing data that was inaccurate, incomplete,
2786 or not current as of the date specified by the procurement officer.

- 2787 (5) A procurement unit is not required to comply with Subsection (2) if:
- 2788 (a) the contract price is based on adequate price competition;
- 2789 (b) the contract price is based on established catalogue prices or market prices;
- 2790 (c) the contract price is set by law or rule; or
- 2791 (d) the procurement states, in writing:
- 2792 (i) that, in accordance with rules made by the ~~[applicable]~~ rulemaking authority, the
- 2793 requirements of Subsection (2) may be waived; and
- 2794 (ii) the reasons for the waiver.
- 2795 Section 53. Section **63G-6a-1208** is amended to read:
- 2796 **63G-6a-1208. Installment payments -- Contract prepayments.**
- 2797 (1) A contract entered into by a procurement unit may provide for installment
- 2798 payments, including interest charges, over a period of time, if the procurement ~~[officer]~~ official
- 2799 makes a written finding that:
- 2800 (a) the use of installment payments are in the interest of the procurement unit;
- 2801 (b) installment payments are not used as a method of avoiding budgetary constraints;
- 2802 (c) the procurement unit has obtained all budgetary approvals and other approvals
- 2803 required for making the installment payments;
- 2804 (d) all aspects of the installment payments required in the contract are in accordance
- 2805 with the requirements of law; and
- 2806 (e) for a contract awarded through an invitation for bids or a request for proposals, the
- 2807 invitation for bids or request for proposals indicates that installment payments are required or
- 2808 permitted.
- 2809 (2) (a) A procurement unit may not pay for a procurement item before the procurement
- 2810 unit receives the procurement item ~~[is received by the procurement unit]~~, unless the
- 2811 procurement ~~[officer makes a written finding]~~ official determines that it is necessary or
- 2812 beneficial for the procurement unit to pay for the procurement item before the procurement unit
- 2813 receives the procurement item ~~[is received by the procurement unit]~~.
- 2814 (b) A procurement official's determination under Subsection (2)(a) shall be in writing,
- 2815 unless:
- 2816 (i) the rulemaking authority has adopted a rule describing one or more circumstances
- 2817 under which a written determination is not necessary; and

2818 (ii) the procurement official's determination is under one of those circumstances.

2819 (3) Circumstances where prepayment may be necessary for, or beneficial to, the
2820 procurement unit include:

2821 (a) when it is customary in the industry to prepay for the procurement item;

2822 (b) if the procurement unit will receive an identifiable benefit by prepaying, including
2823 reduced costs, additional procurement items, early delivery, better service, or better contract
2824 terms; or

2825 (c) other circumstances permitted by rule made by the ~~[applicable]~~ rulemaking
2826 authority.

2827 (4) The ~~[applicable]~~ rulemaking authority may make rules governing prepayments.

2828 (5) A prepaid expenditure shall be supported by documentation indicating:

2829 (a) the amount of the prepayment;

2830 (b) the prepayment schedule;

2831 (c) the procurement items to which each prepayment relates;

2832 (d) the remedies for a contractor's noncompliance with requirements relating to the
2833 provision of the procurement items; and

2834 (e) all other terms and conditions relating to the payments and the procurement items.

2835 (6) The procurement ~~[officer]~~ official or the procurement ~~[officer's]~~ official's designee
2836 may require a performance bond, of up to 100% of the prepayment amount, from the person to
2837 whom the prepayments are made.

2838 Section 54. Section **63G-6a-1302** is amended to read:

2839 **63G-6a-1302. Alternative methods of construction contracting management.**

2840 (1) ~~[The applicable]~~ A rulemaking authority shall, by rule provide as many alternative
2841 methods of construction contracting management as determined to be feasible.

2842 (2) The rules described in Subsection (1) shall:

2843 (a) grant to the procurement ~~[officer or the head of the issuing procurement unit]~~

2844 official responsible for carrying out the construction project the discretion to select the
2845 appropriate method of construction contracting management for a particular project; and

2846 (b) require the procurement ~~[officer]~~ official to execute and include in the contract file
2847 a written statement describing the facts that led to the selection of a particular method of
2848 construction contracting management for each project.

2849 (3) Before choosing a construction contracting management method, the procurement
2850 [~~officer or the head of the issuing procurement unit~~] official responsible for carrying out the
2851 construction project shall consider the following factors:

2852 (a) when the project must be ready to be occupied;

2853 (b) the type of project;

2854 (c) the extent to which the requirements of the procurement unit, and the way they are
2855 to be met are known;

2856 (d) the location of the project;

2857 (e) the size, scope, complexity, and economics of the project;

2858 (f) the source of funding and any resulting constraints necessitated by the funding
2859 source;

2860 (g) the availability, qualification, and experience of public personnel to be assigned to
2861 the project and the amount of time that the public personnel can devote to the project; and

2862 (h) the availability, qualifications, and experience of outside consultants and
2863 contractors to complete the project under the various methods being considered.

2864 (4) [~~An applicable~~] A rulemaking authority may make rules that authorize the use of a
2865 construction manager/general contractor as one method of construction contracting
2866 management.

2867 (5) The rules described in Subsection (2) shall require that:

2868 (a) the construction manager/general contractor be selected using:

2869 (i) a standard procurement process; or

2870 (ii) an exception to the requirement to use a standard procurement process, described in
2871 Part 8, Exceptions to Procurement Requirements; and

2872 (b) when entering into a subcontract that was not specifically included in the
2873 construction manager/general contractor's cost proposal, the construction manager/general
2874 contractor shall procure the subcontractor by using a standard procurement process, or an
2875 exception to the requirement to use a standard procurement process, described in Part 8,
2876 Exceptions to Procurement Requirements, in the same manner as if the subcontract work was
2877 procured directly by the procurement unit.

2878 (6) Procurement rules adopted by the [~~State Building Board~~] building board under
2879 Subsections (1) through (3) for state building construction projects may authorize the use of a

2880 design-build provider as one method of construction contracting management.

2881 (7) A design-build contract may include a provision for obtaining the site for the
2882 construction project.

2883 (8) A design-build contract or a construction manager/general contractor contract may
2884 include provision by the contractor of operations, maintenance, or financing.

2885 Section 55. Section **63G-6a-1303** is amended to read:

2886 **63G-6a-1303. Drug and alcohol testing required for state construction contracts.**

2887 (1) As used in this section:

2888 (a) "Contractor" means a person who is or may be awarded a state construction
2889 contract.

2890 (b) "Covered individual" means an individual who:

2891 (i) on behalf of a contractor or subcontractor provides services directly related to
2892 design or construction under a state construction contract; and

2893 (ii) is in a safety sensitive position, including a design position that has responsibilities
2894 that directly affect the safety of an improvement to real property that is the subject of a state
2895 construction contract.

2896 (c) "Drug and alcohol testing policy" means a policy under which a contractor or
2897 subcontractor tests a covered individual to establish, maintain, or enforce the prohibition of:

2898 (i) the manufacture, distribution, dispensing, possession, or use of drugs or alcohol,
2899 except the medically prescribed possession and use of a drug; or

2900 (ii) the impairment of judgment or physical abilities due to the use of drugs or alcohol.

2901 (d) "Random testing" means that a covered individual is subject to periodic testing for
2902 drugs and alcohol:

2903 (i) in accordance with a drug and alcohol testing policy; and

2904 (ii) on the basis of a random selection process.

2905 (e) "State executive entity" means:

2906 (i) a state executive branch:

2907 (A) department;

2908 (B) division;

2909 (C) agency;

2910 (D) board;

2911 (E) commission;

2912 (F) council;

2913 (G) committee; or

2914 (H) institution; or

2915 (ii) a state institution of higher education, as defined in Section [53B-3-102](#).

2916 (f) "State construction contract" means a contract for design or construction entered
2917 into by a state executive entity.

2918 (2) Except as provided in Subsection (7), a state executive entity may not enter into a
2919 state construction contract unless the public construction contract requires that the contractor
2920 demonstrate to the state executive entity that the contractor:

2921 (a) has and will maintain a drug and alcohol testing policy during the period of the state
2922 construction contract that applies to the covered individuals hired by the contractor;

2923 (b) posts in one or more conspicuous places notice to covered individuals hired by the
2924 contractor that the contractor has the drug and alcohol testing policy described in Subsection
2925 (2)(a);

2926 (c) subjects the covered individuals to random testing under the drug and alcohol
2927 testing policy described in Subsection (2)(a) if at any time during the period of the state
2928 construction contract there are 10 or more individuals who are covered individuals hired by the
2929 contractor; and

2930 (d) requires that as a condition of contracting with the contractor, a subcontractor:

2931 (i) has and will maintain a drug and alcohol testing policy during the period of the state
2932 construction contract that applies to the covered individuals hired by the subcontractor;

2933 (ii) posts in one or more conspicuous places notice to covered individuals hired by the
2934 subcontractor that the subcontractor has the drug and alcohol testing policy described in
2935 Subsection (2)(d)(i); and

2936 (iii) subjects the covered individuals hired by the subcontractor to random testing under
2937 the drug and alcohol testing policy described in Subsection (2)(d)(i) if at any time during the
2938 period of the state construction contract there are 10 or more individuals who are covered
2939 individuals hired by the subcontractor.

2940 (3) (a) Except as otherwise provided in this Subsection (3), if a contractor or
2941 subcontractor fails to comply with Subsection (2), the contractor or subcontractor may be

2942 suspended or debarred in accordance with this chapter.

2943 (b) A state executive entity shall include in a state construction contract:

2944 (i) a reference to the rules described in Subsection (4)(b); or

2945 (ii) if the ~~[applicable]~~ rulemaking authority has not made the rules described in
2946 Subsection (4)(b), a process that provides a contractor or subcontractor reasonable notice and
2947 opportunity to cure a violation of this section before suspension or debarment of the contractor
2948 or subcontractor in light of the circumstances of the state construction contract or the violation.

2949 (c) (i) A contractor is not subject to penalties for the failure of a subcontractor to
2950 comply with Subsection (2).

2951 (ii) A subcontractor is not subject to penalties for the failure of a contractor to comply
2952 with Subsection (2).

2953 (4) ~~[An applicable]~~ A rulemaking authority:

2954 (a) may make rules that establish the requirements and procedures a contractor is
2955 required to follow to comply with Subsection (2); and

2956 (b) shall make rules that establish:

2957 (i) the penalties that may be imposed in accordance with Subsection (3); and

2958 (ii) a process that provides a contractor or subcontractor reasonable notice and
2959 opportunity to cure a violation of this section before suspension or debarment of the contractor
2960 or subcontractor in light of the circumstances of the state construction contract or the violation.

2961 (5) The failure of a contractor or subcontractor to meet the requirements of Subsection
2962 (2):

2963 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
2964 or contractor under Part 17, Procurement Appeals Board, or Part 18, Appeals to Court and
2965 Court Proceedings; and

2966 (b) may not be used by a state executive entity, a prospective bidder, an offeror, a
2967 contractor, or a subcontractor as a basis for an action that would suspend, disrupt, or terminate
2968 the design or construction under a state construction contract.

2969 (6) (a) After a state executive entity enters into a state construction contract in
2970 compliance with this section, the state is not required to audit, monitor, or take any other action
2971 to ensure compliance with this section.

2972 (b) The state is not liable in any action related to this section, including not being liable

2973 in relation to:

2974 (i) a contractor or subcontractor having or not having a drug and alcohol testing policy;

2975 (ii) failure to test for a drug or alcohol under a contractor's or subcontractor's drug and
2976 alcohol testing policy;

2977 (iii) the requirements of a contractor's or subcontractor's drug and alcohol testing
2978 policy;

2979 (iv) a contractor's or subcontractor's implementation of a drug and alcohol testing
2980 policy, including procedures for:

2981 (A) collection of a sample;

2982 (B) testing of a sample;

2983 (C) evaluation of a test; or

2984 (D) disciplinary or rehabilitative action on the basis of a test result;

2985 (v) an individual being under the influence of drugs or alcohol; or

2986 (vi) an individual under the influence of drugs or alcohol harming another person or
2987 causing property damage.

2988 (7) This section does not apply if the state executive entity determines that the
2989 application of this section would severely disrupt the operation of a procurement unit to the
2990 detriment of the procurement unit or the general public, including:

2991 (a) jeopardizing the receipt of federal funds;

2992 (b) causing the state construction contract to be a sole source contract; or

2993 (c) causing the state construction contract to be an emergency procurement.

2994 (8) If a contractor or subcontractor meets the requirements of this section, this section
2995 may not be construed to restrict the contractor's or subcontractor's ability to impose or
2996 implement an otherwise lawful provision as part of a drug and alcohol testing policy.

2997 Section 56. Section **63G-6a-1502** is amended to read:

2998 **63G-6a-1502. Requirements regarding procurement of design professional**
2999 **services.**

3000 (1) A procurement unit seeking to procure design professional services shall:

3001 (a) publicly announce all requirements for those services through a request for
3002 statement of qualifications, as provided in this part; and

3003 (b) negotiate contracts for design professional services:

3004 (i) on the basis of demonstrated competence and qualification for the type of services
3005 required; and

3006 (ii) at fair and reasonable prices.

3007 (2) A procurement unit shall procure design professional services as provided in this
3008 part, except as otherwise provided in Sections 63G-6a-506, 63G-6a-802, and 63G-6a-803.

3009 (3) A procurement unit may procure professional services, other than design
3010 professional services, as provided in this part.

3011 ~~[(3)]~~ (4) This part does not affect the authority of, and does not apply to procedures
3012 undertaken by, a procurement unit to obtain the services of architects or engineers in the
3013 capacity of employees of the procurement unit.

3014 Section 57. Section 63G-6a-1503.5 is amended to read:

3015 **63G-6a-1503.5. Evaluation of statements of qualifications.**

3016 (1) An evaluation committee appointed under Section 63G-6a-1503 shall evaluate and
3017 score each responsive statement of qualifications that has not been eliminated from
3018 consideration under this chapter, using the criteria described in the request for statement of
3019 qualifications.

3020 (2) Criteria not described in the request for statement of qualifications may not be used
3021 to evaluate a statement of qualifications.

3022 (3) An evaluation committee may enter into discussions or conduct interviews with, or
3023 attend presentations by, the design professionals whose statements of qualifications are under
3024 consideration.

3025 (4) An evaluation committee shall rank the top three highest scoring design
3026 professionals, in order of their scores, for the purpose of entering into fee negotiations as
3027 provided in Section 63G-6a-1505.

3028 (5) If fewer than three responsible design professionals submit statements of
3029 qualifications that are determined to be responsive, the ~~[chief procurement officer or head of a~~
3030 ~~procurement unit with independent procurement authority]~~ procurement official shall issue a
3031 written determination explaining why it is in the best interest of the procurement unit to
3032 continue the fee negotiation and the contracting process with less than three design
3033 professionals.

3034 (6) (a) The deliberations of an evaluation committee may be held in private.

3035 (b) If the evaluation committee is a public body, as defined in Section 52-4-103, the
3036 evaluation committee shall comply with Section 52-4-205 in closing a meeting for its
3037 deliberations.

3038 Section 58. Section 63G-6a-1506 is amended to read:

3039 **63G-6a-1506. Restrictions on procurement of design professional services.**

3040 (1) Except as provided in Subsection (2), if the division or [a] an independent
3041 procurement unit [~~with independent procurement authority~~], in accordance with Section
3042 63G-6a-1502, issues a request for statement of qualifications to procure design professional
3043 services and provides public notice of the request for statement of qualifications:

3044 (a) a public entity inside or outside the state may not submit a proposal in response to
3045 the procurement unit's request for statement of qualifications; and

3046 (b) the procurement unit may not award a contract to a public entity inside or outside
3047 the state to perform the design professional services solicited in the request for statement of
3048 qualifications.

3049 (2) Subsection (1) does not apply when the procurement unit is procuring design
3050 professional services for contracts related to research activities and technology transfer.

3051 Section 59. Section 63G-6a-1603 is amended to read:

3052 **63G-6a-1603. Protest officer responsibilities and authority -- Proceedings on**
3053 **protest -- Effect of decision.**

3054 (1) After a protest is filed, the protest officer shall determine whether the protest is
3055 timely filed and complies fully with the requirements of Section 63G-6a-1602.

3056 (2) If the protest officer determines that the protest is not timely filed or that the protest
3057 does not fully comply with Section 63G-6a-1602, the protest officer shall dismiss the protest
3058 without holding a hearing.

3059 (3) If the protest officer determines that the protest is timely filed and complies fully
3060 with Section 63G-6a-1602, the protest officer shall:

3061 (a) dismiss the protest without holding a hearing if the protest officer determines that
3062 the protest alleges facts that, if true, do not provide an adequate basis for the protest;

3063 (b) uphold the protest without holding a hearing if the protest officer determines that
3064 the undisputed facts of the protest indicate that the protest should be upheld; or

3065 (c) hold a hearing on the protest if there is a genuine issue of material fact or law that

- 3066 needs to be resolved in order to determine whether the protest should be upheld.
- 3067 (4) (a) If a hearing is held on a protest, the protest officer may:
- 3068 (i) subpoena witnesses and compel their attendance at the protest hearing;
- 3069 (ii) subpoena documents for production at the protest hearing;
- 3070 (iii) obtain additional factual information; and
- 3071 (iv) obtain testimony from experts, the person filing the protest, representatives of the
- 3072 procurement unit, or others to assist the protest officer to make a decision on the protest.
- 3073 (b) The Rules of Evidence do not apply to a protest hearing.
- 3074 (c) [~~The applicable~~] A rulemaking authority shall make rules relating to intervention in
- 3075 a protest, including designating:
- 3076 (i) who may intervene; and
- 3077 (ii) the time and manner of intervention.
- 3078 (d) A protest officer shall:
- 3079 (i) record each hearing held on a protest under this section;
- 3080 (ii) regardless of whether a hearing on a protest is held under this section, preserve all
- 3081 records and other evidence relied upon in reaching the protest officer's written decision until
- 3082 the decision, and any appeal of the decision, becomes final; and
- 3083 (iii) if the protestor appeals the protest officer's decision, submit the protest appeal
- 3084 record to the procurement policy board chair within seven days after receiving:
- 3085 (A) notice that an appeal of the protest officer's decision has been filed under Section
- 3086 [63G-6a-1702](#); or
- 3087 (B) a request for the protest appeal record from the chair of the procurement policy
- 3088 board.
- 3089 (e) A protest officer's holding a hearing, considering a protest, or issuing a written
- 3090 decision under this section does not affect a person's right to later question or challenge the
- 3091 protest officer's jurisdiction to hold the hearing, consider the protest, or issue the decision.
- 3092 (5) (a) The deliberations of a protest officer may be held in private.
- 3093 (b) If the protest officer is a public body, as defined in Section [52-4-103](#), the protest
- 3094 officer shall comply with Section [52-4-205](#) in closing a meeting for its deliberations.
- 3095 (6) (a) A protest officer shall promptly issue a written decision regarding any protest,
- 3096 unless the protest is settled by mutual agreement.

3097 (b) The decision shall:
3098 (i) state the reasons for the action taken;
3099 (ii) inform the protestor of the right to judicial or administrative review as provided in
3100 this chapter; and
3101 (iii) indicate the amount of the security deposit or bond required under Section
3102 [63G-6a-1703](#).
3103 (c) A person who issues a decision under Subsection (6)(a) shall mail, email, or
3104 otherwise immediately furnish a copy of the decision to the protestor.
3105 (7) A decision described in this section is effective until stayed or reversed on appeal,
3106 except to the extent provided in Section [63G-6a-1903](#).
3107 (8) (a) A decision described in Subsection (6)(a) that is issued in relation to a
3108 procurement unit other than a legislative procurement unit, a judicial procurement unit, a
3109 nonadopting local government procurement unit, or a public transit district is final and
3110 conclusive unless the protestor files an appeal under Section [63G-6a-1702](#).
3111 (b) A decision described in Subsection (6)(a) that is issued in relation to a legislative
3112 procurement unit, a judicial procurement unit, a nonadopting local government procurement
3113 unit, or a public transit district is final and conclusive unless the protestor files an appeal under
3114 Section [63G-6a-1802](#).
3115 (9) If the protest officer does not issue the written decision regarding a protest within
3116 30 calendar days after the day on which the protest was filed with the protest officer, or within
3117 a longer period as may be agreed upon by the parties, the protestor may proceed as if an adverse
3118 decision had been received.
3119 (10) A determination under this section by the protest officer regarding an issue of fact
3120 may not be overturned on appeal unless the decision is arbitrary and capricious or clearly
3121 erroneous.
3122 (11) An individual is not precluded from acting, and may not be disqualified or
3123 required to be recused from acting, as a protest officer because the individual also acted in
3124 another capacity during the procurement process, as required or allowed in this chapter.
3125 Section 60. Section [63G-6a-1903](#) is amended to read:
3126 **63G-6a-1903. Effect of timely protest or appeal.**
3127 A procurement unit, other than a legislative procurement unit, a judicial procurement

3128 unit, a nonadopting local government procurement unit, or a public transit district, may not
3129 proceed further with a solicitation or with the award of a contract:

3130 (1) during the pendency of a timely:

3131 (a) protest under Section 63G-6a-1602;

3132 (b) appeal of a protest under Section 63G-6a-1702; or

3133 (c) appeal of a procurement appeals panel decision under Section 63G-6a-1802; and

3134 (2) until:

3135 (a) all administrative and judicial remedies are exhausted;

3136 (b) for a protest under Section 63G-6a-1602 or an appeal under Section 63G-6a-1702:

3137 (i) the chief procurement officer, after consultation with the attorney general's office

3138 and the head of the using agency, makes a written determination that award of the contract

3139 without delay is in the best interest of the procurement unit or the state;

3140 (ii) the ~~[head of a procurement unit with independent procurement authority]~~

3141 procurement official of an independent procurement unit, after consultation with the

3142 procurement unit's attorney, makes a written determination that award of the contract without

3143 delay is in the best interest of the procurement unit or the state; or

3144 (iii) for a procurement unit that is not represented by the attorney general's office, the

3145 procurement ~~[unit]~~ official, after consulting with the attorney for the procurement unit, makes a

3146 written determination that award of the contract without delay is in the best interest of the

3147 procurement unit or the state; or

3148 (c) for an appeal under Section 63G-6a-1802, or an appeal to a higher court than

3149 district court:

3150 (i) the chief procurement officer, after consultation with the attorney general's office

3151 and the head of the using agency, makes a written determination that award of the contract

3152 without delay is in the best interest of the procurement unit or the state;

3153 (ii) the ~~[head of a procurement unit with independent procurement authority]~~

3154 procurement official of an independent procurement unit, after consultation with the

3155 procurement unit's attorney, makes a written determination that award of the contract without

3156 delay is in the best interest of the procurement unit or the state; or

3157 (iii) for a procurement unit that is not represented by the attorney general's office, the

3158 procurement ~~[unit]~~ official, after consulting with the attorney for the procurement unit, makes a

3159 written determination that award of the contract without delay is necessary to protect the best
3160 interest of the procurement unit or the state.

3161 Section 61. Section **63G-6a-1911** is amended to read:

3162 **63G-6a-1911. Determinations final except when arbitrary and capricious.**

3163 The determinations required under the following provisions are final and conclusive
3164 unless they are arbitrary and capricious or clearly erroneous:

3165 (1) Section [~~63G-6a-605~~] 63G-6a-114;

3166 (2) Section 63G-6a-115;

3167 [~~(2)~~] (3) Section 63G-6a-702;

3168 [~~(3)~~] ~~Section 63G-6a-708~~;

3169 [~~(4)~~] ~~Subsection 63G-6a-709(1)~~;

3170 (4) Section 63G-6a-707;

3171 (5) Section 63G-6a-803;

3172 (6) Section 63G-6a-804;

3173 (7) Section 63G-6a-903;

3174 (8) Subsection 63G-6a-1204(1) or (2);

3175 (9) Subsection 63G-6a-1204(5);

3176 (10) Section 63G-6a-1205; or

3177 (11) Subsection 63G-6a-1206(5).

3178 Section 62. Section **63G-6a-2002** is amended to read:

3179 **63G-6a-2002. Records -- Retention.**

3180 (1) All procurement records shall be retained and disposed of in accordance with Title
3181 63G, Chapter 2, Government Records Access and Management Act.

3182 (2) Written determinations required by this chapter shall be retained in the appropriate
3183 official contract file of:

3184 (a) the division;

3185 (b) except as provided in Subsection (2)(c), the independent procurement unit [~~with~~
3186 ~~independent procurement authority~~]; or

3187 (c) for a legislative procurement unit or a judicial procurement unit, the person
3188 designated by rule made by the [~~applicable~~] rulemaking authority.

3189 (3) A procurement unit shall keep, and make available to the public, upon request,

3190 written records of procurements for which an expenditure of [~~\$50~~] \$100 or more is made, for
3191 the longer of:

- 3192 (a) six years;
- 3193 (b) the time otherwise required by law; or
- 3194 (c) the time period provided by rule made by the [~~applicable~~] rulemaking authority.
- 3195 (4) The written record described in Subsection (3) shall include:
- 3196 (a) the name of the provider from whom the procurement was made;
- 3197 (b) a description of the procurement item;
- 3198 (c) the date of the procurement; and
- 3199 (d) the expenditure made for the procurement.

3200 Section 63. Section **63G-6a-2003** is amended to read:

3201 **63G-6a-2003. Record of contracts made.**

3202 [~~The chief procurement officer, the procurement officer, or the head of a procurement~~
3203 ~~unit with independent procurement authority]~~ A procurement official shall maintain a record of
3204 all contracts made under Section 63G-6a-506, 63G-6a-802, or 63G-6a-803, in accordance with
3205 Title 63G, Chapter 2, Government Records Access and Management Act. The record shall
3206 contain each contractor's name, the amount and type of each contract, and a listing of the
3207 procurement items to which the contract relates.

3208 Section 64. Section **63G-6a-2102** is amended to read:

3209 **63G-6a-2102. Agreements between public entities.**

3210 A [~~procurement unit~~] public entity may enter into an agreement with one or more other
3211 [~~procurement units~~] public entities to:

- 3212 (1) sponsor, conduct, or administer a cooperative agreement for:
- 3213 (a) the procurement of a procurement item, in accordance with the requirements of
3214 Section 63G-6a-2105; or
- 3215 (b) the disposal of a procurement item;
- 3216 (2) cooperatively use a procurement item;
- 3217 (3) commonly use or share warehousing facilities, capital equipment, and other
3218 facilities;
- 3219 (4) provide personnel, if the receiving [~~procurement unit~~] public entity pays the
3220 [~~procurement unit~~] public entity providing the personnel the direct and indirect cost of

3221 providing the personnel, in accordance with the agreement; or
 3222 ~~[(5) make available informational, technical, and other services, if:]~~
 3223 ~~[(a) the requirements of the procurement unit tendering the services have precedence~~
 3224 ~~over the procurement unit that receives the services; and]~~
 3225 ~~[(b) the receiving procurement unit pays the expenses of the services provided, in~~
 3226 ~~accordance with the agreement.]~~

3227 (5) purchase from, contribute to, or otherwise participate in a pooled governmental
 3228 funds program for the purpose of acquiring or sharing information, data, reports, or other
 3229 services in accordance with the terms of the agreement.

3230 Section 65. Section **63G-6a-2103** is amended to read:

3231 **63G-6a-2103. Purchases between public entities.**

3232 ~~[(1)(a) A procurement unit may, without using a standard procurement process;~~
 3233 ~~purchase from another procurement unit]~~

3234 (1) (a) (i) A public entity may purchase a procurement item [that the other procurement
 3235 unit itself produces or provides] from another public entity.

3236 (ii) Subsection (1)(a)(i) may not be construed to require a public entity to sell a
 3237 procurement item to another public entity.

3238 (b) As provided in Subsection 63G-6a-107.6(1)(a), a purchase under Subsection (1)(a)
 3239 is not subject to the procurement requirements of this chapter.

3240 ~~[(b)]~~ (c) (i) Subsection (1)(a) does not authorize a [procurement unit] public entity to
 3241 obtain a procurement item under a contract of another [procurement unit] public entity.

3242 (ii) Subsection (1)[(b)](c)(i) does not affect the authority of a procurement unit relating
 3243 to a cooperative procurement under Subsection 63G-6a-2105(4)(b).

3244 (2) A [procurement unit] public entity may publish a schedule of costs or fees for
 3245 procurement items available for purchase by another [procurement unit] public entity.

3246 Section 66. **Repealer.**

3247 This bill repeals:

3248 Section **63G-6a-105, Application of chapter -- Ordinances or resolutions relating to**
 3249 **procurement of design professional services -- Rules.**

3250 Section **63G-6a-107, Exemptions from chapter -- Compliance with other**
 3251 **provisions.**

- 3252 Section **63G-6a-110**, Procurement unit required to comply with Utah Procurement
- 3253 **Code and applicable rules -- Rulemaking authority -- Reporting.**
- 3254 Section **63G-6a-601**, Title.
- 3255 Section **63G-6a-605**, Correction or clarification of bids.
- 3256 Section **63G-6a-607**, Action if all bids exceed available funds -- Exemption.
- 3257 Section **63G-6a-609**, Multiple stage bidding process.
- 3258 Section **63G-6a-610**, Contracts awarded by reverse auction.
- 3259 Section **63G-6a-611**, Invitation for bids for reverse auction -- Requirements --
- 3260 **Publication of invitation.**
- 3261 Section **63G-6a-612**, Conduct of reverse auction.
- 3262 Section **63G-6a-706**, Correction or clarification of proposal.
- 3263 Section **63G-6a-708**, Justification statement -- Cost-benefit analysis.
- 3264 Section **63G-6a-709**, Award of contract -- Cancellation -- Rejection of proposal.
- 3265 Section **63G-6a-709.5**, Publication of award and scores.
- 3266 Section **63G-6a-710**, Multiple stage process.