

Senator David G. Buxton proposes the following substitute bill:

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;
- ▶ 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;



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

42 **Money Appropriated in this Bill:**

43 None

44 **Other Special Clauses:**

45 None

46 **Utah Code Sections Affected:**

47 AMENDS:

48 **63G-6a-103**, as last amended by Laws of Utah 2019, Chapters 136, 170, 314, and 456

49 **63G-6a-106**, as last amended by Laws of Utah 2018, Second Special Session, Chapter

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51 **63G-6a-109**, as last amended by Laws of Utah 2016, Chapter 355

52 **63G-6a-112**, as last amended by Laws of Utah 2017, Chapter 348

53 **63G-6a-114**, as enacted by Laws of Utah 2016, Chapter 355

54 **63G-6a-115**, as enacted by Laws of Utah 2016, Chapter 355

55 **63G-6a-203**, as last amended by Laws of Utah 2016, Chapter 355

56 **63G-6a-204**, as last amended by Laws of Utah 2019, Chapter 454

- 57 **63G-6a-302**, as last amended by Laws of Utah 2017, Chapter 348
- 58 **63G-6a-303**, as last amended by Laws of Utah 2018, Chapter 200
- 59 **63G-6a-409**, as renumbered and amended by Laws of Utah 2016, Chapter 355
- 60 **63G-6a-410**, as last amended by Laws of Utah 2017, Chapter 348
- 61 **63G-6a-506**, as last amended by Laws of Utah 2017, Chapter 348
- 62 **63G-6a-507**, as last amended by Laws of Utah 2017, Chapter 348
- 63 **63G-6a-602**, as last amended by Laws of Utah 2017, Chapter 348
- 64 **63G-6a-603**, as last amended by Laws of Utah 2017, Chapter 348
- 65 **63G-6a-606**, as last amended by Laws of Utah 2017, Chapter 348
- 66 **63G-6a-702**, as last amended by Laws of Utah 2017, Chapters 348, 376 and last
- 67 amended by Coordination Clause, Laws of Utah 2017, Chapter 348
- 68 **63G-6a-703**, as last amended by Laws of Utah 2017, Chapters 154, 348, and 376
- 69 **63G-6a-707**, as last amended by Laws of Utah 2017, Chapters 154, 348, and 376
- 70 **63G-6a-707.5**, as repealed and reenacted by Laws of Utah 2017, Chapter 348
- 71 **63G-6a-712**, as enacted by Laws of Utah 2018, Chapter 352
- 72 **63G-6a-802**, as last amended by Laws of Utah 2016, Chapter 355
- 73 **63G-6a-802.3**, as enacted by Laws of Utah 2016, Chapter 355
- 74 **63G-6a-802.7**, as last amended by Laws of Utah 2017, Chapter 348
- 75 **63G-6a-803**, as last amended by Laws of Utah 2016, Chapter 355
- 76 **63G-6a-804**, as last amended by Laws of Utah 2019, Chapter 314
- 77 **63G-6a-806**, as last amended by Laws of Utah 2016, Chapter 355
- 78 **63G-6a-902**, as last amended by Laws of Utah 2013, Chapter 445
- 79 **63G-6a-903**, as last amended by Laws of Utah 2017, Chapter 348
- 80 **63G-6a-904**, as last amended by Laws of Utah 2017, Chapter 348
- 81 **63G-6a-1002**, as last amended by Laws of Utah 2017, Chapter 348
- 82 **63G-6a-1003**, as last amended by Laws of Utah 2017, Chapter 348
- 83 **63G-6a-1102**, as last amended by Laws of Utah 2013, Chapter 445
- 84 **63G-6a-1103**, as last amended by Laws of Utah 2014, Chapter 196
- 85 **63G-6a-1105**, as last amended by Laws of Utah 2014, Chapter 196
- 86 **63G-6a-1204.5**, as last amended by Laws of Utah 2017, Chapter 348
- 87 **63G-6a-1205**, as last amended by Laws of Utah 2014, Chapter 196

- 88 **63G-6a-1206**, as last amended by Laws of Utah 2016, Chapter 355
- 89 **63G-6a-1208**, as enacted by Laws of Utah 2013, Chapter 445
- 90 **63G-6a-1302**, as last amended by Laws of Utah 2013, Chapter 445
- 91 **63G-6a-1303**, as last amended by Laws of Utah 2013, Chapter 445
- 92 **63G-6a-1502**, as last amended by Laws of Utah 2016, Chapter 355
- 93 **63G-6a-1503.5**, as last amended by Laws of Utah 2016, Chapter 355
- 94 **63G-6a-1506**, as last amended by Laws of Utah 2015, Chapter 218
- 95 **63G-6a-1603**, as last amended by Laws of Utah 2017, Chapter 348
- 96 **63G-6a-1903**, as last amended by Laws of Utah 2016, Chapter 355
- 97 **63G-6a-1911**, as last amended by Laws of Utah 2013, Chapter 445
- 98 **63G-6a-2002**, as last amended by Laws of Utah 2016, Chapter 355
- 99 **63G-6a-2003**, as last amended by Laws of Utah 2016, Chapter 355
- 100 **63G-6a-2102**, as last amended by Laws of Utah 2013, Chapter 445
- 101 **63G-6a-2103**, as last amended by Laws of Utah 2014, Chapter 196

102 ENACTS:

- 103 **63G-6a-107.2**, Utah Code Annotated 1953
- 104 **63G-6a-107.4**, Utah Code Annotated 1953
- 105 **63G-6a-107.6**, Utah Code Annotated 1953
- 106 **63G-6a-107.7**, Utah Code Annotated 1953
- 107 **63G-6a-107.8**, Utah Code Annotated 1953
- 108 **63G-6a-118**, Utah Code Annotated 1953
- 109 **63G-6a-119**, Utah Code Annotated 1953
- 110 **63G-6a-120**, Utah Code Annotated 1953
- 111 **63G-6a-704.4**, Utah Code Annotated 1953
- 112 **63G-6a-704.6**, Utah Code Annotated 1953

113 REPEALS AND REENACTS:

- 114 **63G-6a-604**, as last amended by Laws of Utah 2016, Chapter 355
- 115 **63G-6a-608**, as last amended by Laws of Utah 2017, Chapter 348
- 116 **63G-6a-704**, as last amended by Laws of Utah 2014, Chapter 196

117 REPEALS:

- 118 **63G-6a-105**, as last amended by Laws of Utah 2016, Chapter 355

- 119 **63G-6a-107**, as last amended by Laws of Utah 2016, Chapter 355
- 120 **63G-6a-110**, as renumbered and amended by Laws of Utah 2016, Chapter 355
- 121 **63G-6a-601**, as enacted by Laws of Utah 2012, Chapter 347
- 122 **63G-6a-605**, as repealed and reenacted by Laws of Utah 2016, Chapter 355
- 123 **63G-6a-607**, as last amended by Laws of Utah 2017, Chapter 348
- 124 **63G-6a-609**, as last amended by Laws of Utah 2016, Chapter 355
- 125 **63G-6a-610**, as last amended by Laws of Utah 2013, Chapter 445
- 126 **63G-6a-611**, as last amended by Laws of Utah 2016, Chapter 355
- 127 **63G-6a-612**, as last amended by Laws of Utah 2017, Chapter 348
- 128 **63G-6a-706**, as repealed and reenacted by Laws of Utah 2016, Chapter 355
- 129 **63G-6a-708**, as last amended by Laws of Utah 2016, Chapter 355
- 130 **63G-6a-709**, as last amended by Laws of Utah 2017, Chapter 348
- 131 **63G-6a-709.5**, as last amended by Laws of Utah 2014, Chapter 196
- 132 **63G-6a-710**, as last amended by Laws of Utah 2013, Chapter 445

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

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

136 **63G-6a-103. Definitions.**

137 As used in this chapter:

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

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

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

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

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

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

146 [~~(C) for the Department of Transportation created in Section **72-1-201**, the executive~~
 147 ~~director of the Department of Transportation; and]~~

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

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

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

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

182 ~~[(3)]~~ (2) "Approved vendor list" means a list of approved vendors established under
183 Section [63G-6a-507](#).

184 ~~[(4)]~~ (3) "Approved vendor list process" means the procurement process described in
185 Section [63G-6a-507](#).

186 ~~[(5)]~~ (4) "Bidder" means a person who submits a bid or price quote in response to an
187 invitation for bids.

188 ~~[(6)]~~ (5) "Bidding process" means the procurement process described in Part 6,
189 Bidding.

190 ~~[(7)]~~ (6) "Board" means the Utah State Procurement Policy Board, created in Section
191 [63G-6a-202](#).

192 ~~[(8)]~~ (7) "Building board" means the State Building Board, created in Section
193 [63A-5-101](#).

194 ~~[(9)]~~ (8) "Change directive" means a written order signed by the procurement officer
195 that directs the contractor to suspend work or make changes, as authorized by contract, without
196 the consent of the contractor.

197 ~~[(10)]~~ (9) "Change order" means a written alteration in specifications, delivery point,
198 rate of delivery, period of performance, price, quantity, or other provisions of a contract, upon
199 mutual agreement of the parties to the contract.

200 ~~[(11)]~~ (10) "Chief procurement officer" means the ~~[chief procurement officer]~~
201 individual appointed under Subsection [63G-6a-302\(1\)](#).

202 ~~[(12)]~~ (11) "Conducting procurement unit" means a procurement unit that conducts all
203 aspects of a procurement:

204 (a) except:

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

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

207 (b) including:

208 (i) preparing any solicitation document;

209 (ii) appointing an evaluation committee;

210 (iii) conducting the evaluation process, except ~~[as provided in Subsection~~

211 [63G-6a-707\(6\)\(b\)\]](#) the process relating to scores calculated for costs of proposals;

- 212 (iv) selecting and recommending the person to be awarded a contract;
- 213 (v) negotiating the terms and conditions of a contract, subject to the issuing
- 214 procurement unit's approval; and
- 215 (vi) contract administration.

216 [~~(13)~~] (12) "Conservation district" means the same as that term is defined in Section
217 17D-3-102.

218 [~~(14)~~] (13) "Construction project":

219 (a) means [~~services, including work, and supplies for~~] a project for the construction,
220 renovation, alteration, improvement, or repair of a public facility on real property, including all
221 services, labor, supplies, and materials for the project; and

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

224 [~~(15)~~] (14) "Construction manager/general contractor":

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

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

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

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

233 [~~(16)~~] (15) "Construction subcontractor":

234 (a) means a person under contract with a contractor or another subcontractor to provide
235 services or labor for the design or construction of a construction project;

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

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

240 [~~(17)~~] (16) "Contract" means an agreement for a procurement.

241 [~~(18)~~] (17) "Contract administration" means all functions, duties, and responsibilities
242 associated with managing, overseeing, and carrying out a contract between a procurement unit

243 and a contractor, including:

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

255 [~~19~~] (18) "Contractor" means a person who is awarded a contract with a procurement
256 unit.

257 [~~20~~] (19) "Cooperative procurement" means procurement conducted by, or on behalf
258 of:

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

261 [~~21~~] (20) "Cooperative purchasing organization" means an organization, association,
262 or alliance of purchasers established to combine purchasing power in order to obtain the best
263 value for the purchasers by engaging in procurements in accordance with Section [63G-6a-2105](#).

264 [~~22~~] (21) "Cost-plus-a-percentage-of-cost contract" means a contract under which the
265 contractor is paid a percentage of the total actual expenses or costs in addition to the
266 contractor's actual expenses or costs.

267 [~~23~~] (22) "Cost-reimbursement contract" means a contract under which a contractor
268 is reimbursed for costs which are allowed and allocated in accordance with the contract terms
269 and the provisions of this chapter, and a fee, if any.

270 [~~24~~] (23) "Days" means calendar days, unless expressly provided otherwise.

271 [~~25~~] (24) "Definite quantity contract" means a fixed price contract that provides for a
272 specified amount of supplies over a specified period, with deliveries scheduled according to a
273 specified schedule.

274 [~~26~~] (25) "Design professional" means:

275 (a) an individual licensed as an architect under Title 58, Chapter 3a, Architects
276 Licensing Act;

277 (b) an individual licensed as a professional engineer or professional land surveyor
278 under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing
279 Act; or

280 (c) an individual certified as a commercial interior designer under Title 58, Chapter 86,
281 State Certification of Commercial Interior Designers Act.

282 [~~27~~] (26) "Design professional procurement process" means the procurement process
283 described in Part 15, Design Professional Services.

284 [~~28~~] (27) "Design professional services" means:

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

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

288 (c) master planning and programming services; or

289 (d) services within the scope of the practice of commercial interior design, as defined
290 in Section 58-86-102.

291 [~~29~~] (28) "Design-build" means the procurement of design professional services and
292 construction by the use of a single contract.

293 [~~30~~] "Director" means the director of the division.]

294 [~~31~~] (29) "Division" means the Division of Purchasing and General Services, created
295 in Section 63A-2-101.

296 [~~32~~] (30) "Educational procurement unit" means:

297 (a) a school district;

298 (b) a public school, including a local school board or a charter school;

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

300 (d) the Utah Education and Telehealth Network;

301 (e) an institution of higher education of the state described in Section 53B-1-102; or

302 (f) the State Board of Education.

303 [~~33~~] (31) "Established catalogue price" means the price included in a catalogue, price
304 list, schedule, or other form that:

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

310 ~~[(34)]~~ (32) "Executive branch procurement unit" means a department, division, office,

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

312 (33) "Facilities division" means the Division of Facilities Construction and

313 Management, created in Section 63A-5-201.

314 ~~[(35)]~~ (34) "Fixed price contract" means a contract that provides a price, for each

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

316 extent that:

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

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

319 (b) an adjustment is required by law.

320 ~~[(36)]~~ (35) "Fixed price contract with price adjustment" means a fixed price contract

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

322 that:

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

324 source, or formula; and

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

326 ~~[(37)]~~ (36) "Grant" means an expenditure of public funds or other assistance, or an

327 agreement to expend public funds or other assistance, for a public purpose authorized by law,

328 without acquiring a procurement item in exchange.

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

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

331 ~~applicable rulemaking authority;]~~

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

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

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

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

- 336 ~~[(i) the Judicial Council; or]~~
- 337 ~~[(ii) any other person designated by the Judicial Council, by rule;]~~
- 338 ~~[(d) for a local government procurement unit.]~~
- 339 ~~[(i) the legislative body of the local government procurement unit; or]~~
- 340 ~~[(ii) any other person designated by the local government procurement unit;]~~
- 341 ~~[(e) for a local district other than a public transit district, the board of trustees of the~~
- 342 ~~local district or a designee of the board of trustees;]~~
- 343 ~~[(f) for a special service district, the governing body of the special service district or a~~
- 344 ~~designee of the governing body;]~~
- 345 ~~[(g) for a local building authority, the board of directors of the local building authority~~
- 346 ~~or a designee of the board of directors;]~~
- 347 ~~[(h) for a conservation district, the board of supervisors of the conservation district or a~~
- 348 ~~designee of the board of supervisors;]~~
- 349 ~~[(i) for a public corporation, the board of directors of the public corporation or a~~
- 350 ~~designee of the board of directors;]~~
- 351 ~~[(j) for a school district or any school or entity within a school district, the board of the~~
- 352 ~~school district, or the board's designee;]~~
- 353 ~~[(k) for a charter school, the individual or body with executive authority over the~~
- 354 ~~charter school, or the individual's or body's designee;]~~
- 355 ~~[(l) for an institution of higher education described in Section [53B-2-101](#), the president~~
- 356 ~~of the institution of higher education, or the president's designee;]~~
- 357 ~~[(m) for a public transit district, the board of trustees or a designee of the board of~~
- 358 ~~trustees;]~~
- 359 ~~[(n) for the State Board of Education, the State Board of Education or a designee of the~~
- 360 ~~State Board of Education; or]~~
- 361 ~~[(o) for the Utah Communications Authority, established in Section [63H-7a-201](#), the~~
- 362 ~~executive director of the Utah Communications Authority or a designee of the executive~~
- 363 ~~director.]~~
- 364 ~~[(39)] (37) "Immaterial error":~~
- 365 (a) means an irregularity or abnormality that is:
- 366 (i) a matter of form that does not affect substance; or

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

369 (b) includes:

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

372 (ii) a typographical error;

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

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

377 [~~(40)~~] (38) "Indefinite quantity contract" means a fixed price contract that:

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

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

381 (ii) provides a maximum purchase limit.

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

384 (39) "Independent procurement unit" means:

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

386 (ii) a judicial branch procurement unit;

387 (iii) an educational procurement unit;

388 (iv) a local government procurement unit;

389 (v) a conservation district;

390 (vi) a local building authority;

391 (vii) a local district;

392 (viii) a public corporation;

393 (ix) a special service district; or

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

395 (b) the building board or the facilities division, but only to the extent of the
396 procurement authority provided under Title 63A, Chapter 5, State Building Board - Division of
397 Facilities Construction and Management;

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

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

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

405 [~~42~~] (40) "Invitation for bids":

406 (a) means a document used to solicit:

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

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

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

410 described in Subsection [~~42~~] (40)(a).

411 [~~43~~] (41) "Issuing procurement unit" means a procurement unit that:

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

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

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

415 [~~44~~] (42) "Judicial procurement unit" means:

416 (a) the Utah Supreme Court;

417 (b) the Utah Court of Appeals;

418 (c) the Judicial Council;

419 (d) a state judicial district; or

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

422 [~~45~~] (43) "Labor hour contract" is a contract under which:

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

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

426 [~~46~~] (44) "Legislative procurement unit" means:

427 (a) the Legislature;

428 (b) the Senate;

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

437 [~~47~~] (45) "Local building authority" means the same as that term is defined in Section
438 17D-2-102.

439 [~~48~~] (46) "Local district" means the same as that term is defined in Section
440 17B-1-102.

441 [~~49~~] (47) "Local government procurement unit" means:

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

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

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

449 [~~50~~] (48) "Multiple award contracts" means the award of a contract for an indefinite
450 quantity of a procurement item to more than one person.

451 [~~51~~] (49) "Multiyear contract" means a contract that extends beyond a one-year
452 period, including a contract that permits renewal of the contract, without competition, beyond
453 the first year of the contract.

454 [~~52~~] (50) "Municipality" means a city, town, or metro township.

455 [~~53~~] (51) "Nonadopting local government procurement unit" means:

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

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

460 (51)(a).

461 ~~[(54)]~~ (52) "Offeror" means a person who submits a proposal in response to a request
462 for proposals.

463 ~~[(55)]~~ (53) "Preferred bidder" means a bidder that is entitled to receive a reciprocal
464 preference under the requirements of this chapter.

465 ~~[(56)]~~ (54) "Procure" means to acquire a procurement item through a procurement.

466 ~~[(57)]~~ (55) "Procurement"~~[(a) means a procurement unit's]~~ means the acquisition of a
467 procurement item through an expenditure of public funds, or an agreement to expend public
468 funds, including an acquisition through a public-private partnership[;].

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

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

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

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

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

476 ~~[(58)]~~ (56) "Procurement item" means ~~[a supply]~~ an item of personal property, a
477 technology, a service, or a construction project.

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

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

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

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

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

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

485 (57) "Procurement official" means:

486 (a) for a procurement unit other than an independent procurement unit, the chief
487 procurement officer;

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

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

491 designated by the Judicial Council by rule;

492 (d) for a local government procurement unit:

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

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

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

497 (f) for a special service district, the governing body of the special service district or the
498 governing body's designee;

499 (g) for a local building authority, the board of directors of the local building authority
500 or the board of directors' designee;

501 (h) for a conservation district, the board of supervisors of the conservation district or
502 the board of supervisors' designee;

503 (i) for a public corporation, the board of directors of the public corporation or the board
504 of directors' designee;

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

507 (k) for a charter school, the individual or body with executive authority over the charter
508 school or the designee of the individual or body;

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

511 (m) for the State Board of Education, the State Board of Education or the State Board
512 of Education's designee;

513 (n) for the State Board of Regents, the Commissioner of Higher Education or the
514 designee of the Commissioner of Higher Education;

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

517 or

518 (p) (i) for the building board, and only to the extent of procurement activities of the
519 building board as an independent procurement unit under the procurement authority provided
520 under Title 63A, Chapter 5, State Building Board - Division of Facilities Construction and
521 Management, the director of the building board or the director's designee;

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

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

530 (iv) for the Department of Transportation created in Section 72-1-201, and only to the
531 extent of procurement activities of the Department of Transportation as an independent
532 procurement unit under the procurement authority provided under Title 72, Transportation
533 Code, the executive director of the Department of Transportation or the executive director's
534 designee; or

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

541 ~~[(60)]~~ (58) "Procurement unit":

542 (a) means:

543 (i) a legislative procurement unit;

544 (ii) an executive branch procurement unit;

545 (iii) a judicial procurement unit;

546 (iv) an educational procurement unit;

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

548 (vi) a local government procurement unit;

549 (vii) a local district;

550 (viii) a special service district;

551 (ix) a local building authority;

552 (x) a conservation district;

553 [~~(xi)~~] (xi) a public corporation; [~~or~~] and

554 [~~(xii) a public transit district; and~~]

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

557 [~~(61)~~] (59) "Professional service" means labor, effort, or work that requires [~~an~~
558 ~~elevated degree of~~] specialized knowledge, expertise, and discretion, including labor, effort, or
559 work in the field of:

- 560 (a) accounting;
- 561 (b) administrative law judge service;
- 562 (c) architecture;
- 563 (d) construction design and management;
- 564 (e) engineering;
- 565 (f) financial services;
- 566 (g) information technology;
- 567 (h) the law;
- 568 (i) medicine;
- 569 (j) psychiatry; or
- 570 (k) underwriting.

571 [~~(62)~~] (60) "Protest officer" means:

- 572 (a) for the division or [~~a procurement unit with~~] an independent procurement
573 [~~authority~~] unit:
 - 574 (i) the [~~head of the~~] procurement [~~unit~~] official;
 - 575 (ii) the [~~head of the procurement unit's~~] procurement official's designee who is an
576 employee of the procurement unit; or
 - 577 (iii) a person designated by rule made by the [~~applicable~~] rulemaking authority; or
- 578 (b) for a procurement unit [~~without~~] other than an independent procurement [~~authority~~]
579 unit, the chief procurement officer or the chief procurement officer's designee who is an
580 employee of the division.

581 [~~(63)~~] (61) "Public corporation" means the same as that term is defined in Section
582 [63E-1-102](#).

583 [~~(64)~~] (62) "Public entity" means the state or any other government entity [~~of the state~~]

584 ~~or political subdivision of the state, including:]~~ within the state that expends public funds.

585 [~~(a) a procurement unit;~~]

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

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

589 [~~(65)~~] (63) "Public facility" means a building, structure, infrastructure, improvement,
590 or other facility of a public entity.

591 [~~(66)~~] (64) "Public funds" means money, regardless of its source, including from the
592 federal government, that is owned or held by a procurement unit.

593 [~~(67)~~] (65) "Public transit district" means a public transit district organized under Title
594 17B, Chapter 2a, Part 8, Public Transit District Act.

595 [~~(68)~~] (66) "Public-private partnership" means an arrangement or agreement, occurring
596 on or after January 1, 2017, between a procurement unit and one or more contractors to provide
597 for a public need through the development or operation of a project in which the contractor or
598 contractors share with the procurement unit the responsibility or risk of developing, owning,
599 maintaining, financing, or operating the project.

600 [~~(69)~~] (67) "Qualified vendor" means a vendor who:

601 (a) is responsible; and

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

605 [~~(70)~~] (68) "Real property" means land and any building, fixture, improvement,
606 appurtenance, structure, or other development that is permanently affixed to land.

607 [~~(71)~~] (69) "Request for information" means a nonbinding process through which a
608 procurement unit requests information relating to a procurement item.

609 [~~(72)~~] (70) "Request for proposals" means a document used to solicit proposals to
610 provide a procurement item to a procurement unit, including all other documents that are
611 attached to that document or incorporated in that document by reference.

612 [~~(73)~~] (71) "Request for proposals process" means the procurement process described
613 in Part 7, Request for Proposals.

614 [~~(74)~~] (72) "Request for statement of qualifications" means a document used to solicit

615 information about the qualifications of a person interested in responding to a potential
616 procurement, including all other documents attached to that document or incorporated in that
617 document by reference.

618 ~~[(75)]~~ (73) "Requirements contract" means a contract:

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

621 (b) that:

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

623 (ii) provides a maximum purchase limit.

624 ~~[(76)]~~ (74) "Responsible" means being capable, in all respects, of:

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

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

628 ~~[(77)]~~ (75) "Responsive" means conforming in all material respects to the requirements
629 of a solicitation.

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

631 (76) "Rule" includes a policy or regulation adopted by the rulemaking authority, if
632 adopting a policy or regulation is the method the rulemaking authority uses to adopt provisions
633 that govern the applicable procurement unit.

634 (77) "Rulemaking authority" means:

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

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

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

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

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

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

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

- 646 (ii) for each other executive branch procurement unit, the board;
- 647 (d) for a local government procurement unit:
- 648 (i) the governing body of the local government unit; or
- 649 (ii) an individual or body designated by the local government procurement unit;
- 650 (e) for a school district or a public school, the board, except to the extent of a school
- 651 district's own nonadministrative rules that do not conflict with the provisions of this chapter;
- 652 (f) for a state institution of higher education described in Subsection [53B-1-102\(1\)\(a\)](#)
- 653 or (c), the State Board of Regents;
- 654 (g) for a state institution of higher education described in Subsection [53B-1-102\(1\)\(b\)](#),
- 655 the Utah System of Technical Colleges Board of Trustees;
- 656 (h) for the State Board of Education or the Utah Schools for the Deaf and the Blind, the
- 657 State Board of Education;
- 658 (i) for a public transit district, the chief executive of the public transit district;
- 659 (j) for a local district other than a public transit district or for a special service district,
- 660 the board, except to the extent that the board of trustees of the local district or the governing
- 661 body of the special service district makes its own rules:
- 662 (i) with respect to a subject addressed by board rules; or
- 663 (ii) that are in addition to board rules;
- 664 (k) for the Utah Educational Savings Plan, created in Section [53B-8a-103](#), the board of
- 665 directors of the Utah Educational Savings Plan;
- 666 (l) for the School and Institutional Trust Lands Administration, created in Section
- 667 [53C-1-201](#), the School and Institutional Trust Lands Board of Trustees;
- 668 (m) for the School and Institutional Trust Fund Office, created in Section [53D-1-201](#),
- 669 the School and Institutional Trust Fund Board of Trustees;
- 670 (n) for the Utah Communications Authority, established in Section [63H-7a-201](#), the
- 671 Utah Communications Authority Board, created in Section [63H-7a-203](#); or
- 672 (o) for any other procurement unit, the board.
- 673 [(79)] (78) "Service":
- 674 (a) means labor, effort, or work to produce a result that is beneficial to a procurement
- 675 unit;
- 676 (b) includes a professional service; and

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

679 ~~[(80)]~~ (79) "Small purchase process" means the procurement process described in
680 Section [63G-6a-506](#).

681 ~~[(81)]~~ (80) "Sole source contract" means a contract resulting from a sole source
682 procurement.

683 ~~[(82)]~~ (81) "Sole source procurement" means a procurement without competition
684 pursuant to a determination under Subsection [63G-6a-802\(1\)\(a\)](#) that there is only one source
685 for the procurement item.

686 ~~[(83)]~~ (82) "Solicitation" means an invitation for bids, request for proposals, or request
687 for statement of qualifications~~[-or request for information]~~.

688 ~~[(84)]~~ (83) "Solicitation response" means:

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

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

691 (c) a statement of qualifications submitted in response to a request for statement of
692 qualifications.

693 ~~[(85)]~~ (84) "Special service district" means the same as that term is defined in Section
694 [17D-1-102](#).

695 ~~[(86)]~~ (85) "Specification" means any description of the physical or functional
696 characteristics or of the nature of a procurement item included in an invitation for bids or a
697 request for proposals, or otherwise specified or agreed to by a procurement unit, including a
698 description of:

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

700 (b) preparing a procurement item for delivery.

701 ~~[(87)]~~ (86) "Standard procurement process" means:

702 (a) the bidding process;

703 (b) the request for proposals process;

704 (c) the approved vendor list process;

705 (d) the small purchase process; or

706 (e) the design professional procurement process.

707 ~~[(88)]~~ (87) "State cooperative contract" means a contract awarded by the division for

708 and in behalf of all public entities.

709 ~~[(89)]~~ (88) "Statement of qualifications" means a written statement submitted to a
710 procurement unit in response to a request for statement of qualifications.

711 ~~[(90)]~~ (89) "Subcontractor":

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

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

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

720 (90) "Technology" means the same as "information technology," as defined in Section
721 [63F-1-102](#).

722 ~~[(92)]~~ (91) "Tie bid" means that the lowest responsive bids of responsible bidders are
723 identical in price.

724 ~~[(93)]~~ (92) "Time and materials contract" means a contract under which the contractor
725 is paid:

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

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

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

730 ~~[(94)]~~ (93) "Transitional costs":

731 (a) means the costs of changing:

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

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

735 (b) includes:

736 (i) training costs;

737 (ii) conversion costs;

738 (iii) compatibility costs;

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

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

750 ~~[(96)]~~ (94) "Vendor":

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

753 (b) includes:

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

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

760 **63G-6a-106. Independent procurement units.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

847 [~~(5)(a)] (4) The attorney general may, in accordance with the provisions of this~~

848 chapter, but without involvement by the division or the chief procurement officer:

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

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

852 [~~(b) A procurement unit with]~~

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

856 [(i)] (a) retain outside counsel; or

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

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

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

862 (a) deposit services; and

863 (b) services related to issuing bonds.

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

865 **63G-6a-107.2. Application of chapter in general.**

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

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

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

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

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

877 (a) the procurement unit complies with:

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

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

880 and

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

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

885 **63G-6a-107.4. Application of chapter to counties and municipalities and the Utah**
886 **Housing Corporation.**

887 A county or municipality or the Utah Housing Corporation:

888 (1) may adopt:

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

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

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

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

894 **63G-6a-107.6. Exemptions from chapter.**895 (1) Except for this Subsection (1), the provisions of this chapter do not apply to:896 (a) a public entity's acquisition of a procurement item from another public entity; or897 (b) a public entity that is not a procurement unit.898 (2) Unless otherwise provided by statute and except for this Subsection (2), the899 provisions of this chapter do not apply to the acquisition or disposal of real property or an900 interest in real property.901 (3) Except for this Subsection (3) and Part 24, Unlawful Conduct and Penalties, the902 provisions of this chapter do not apply to:903 (a) funds administered under the Percent-for-Art Program of the Utah Percent-for-Art904 Act;905 (b) a grant;906 (c) medical supplies or medical equipment, including service agreements for medical907 equipment, obtained by the University of Utah Hospital through a purchasing consortium if:908 (i) the consortium uses a competitive procurement process; and909 (ii) the chief administrative officer of the hospital makes a written finding that the910 prices for purchasing medical supplies and medical equipment through the consortium are911 competitive with market prices;912 (d) the purchase of firefighting supplies or equipment by the Division of Forestry, Fire,913 and State Lands, created in Section [65A-1-4](#), through the federal General Services914 Administration or the National Fire Cache system;915 (e) supplies purchased for resale to the public; or916 (f) activities related to the management of investments by a public entity granted917 investment authority by law.918 (4) This chapter does not supersede the requirements for retention or withholding of919 construction proceeds and release of construction proceeds as provided in Section [13-8-5](#).920 (5) Except for this Subsection (5), the provisions of this chapter do not apply to a921 procurement unit's hiring a mediator, arbitrator, or arbitration panel member to participate in922 the procurement unit's dispute resolution efforts.923 Section 6. Section **63G-6a-107.7** is enacted to read:924 **63G-6a-107.7. Procurement rules.**

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

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

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

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

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

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

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

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

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

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

951 **63G-6a-107.8. Building board report to legislative interim committee.**

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

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

957 **63G-6a-109. Issuing procurement unit and conducting procurement unit.**

958 (1) With respect to a procurement by an executive branch procurement unit, except for
959 a procurement by an executive branch procurement unit that, under Subsection

960 63G-6a-103(40)(b), (c), (d), or (e), is designated as an independent procurement unit:

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

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

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

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

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

968 **63G-6a-112. Required public notice.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

989 (A) directly impacted by the procurement; or

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

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

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

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

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

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

1000 [~~(ii) in a newspaper of local circulation in the area;~~]

1001 [~~(A) directly impacted by the procurement; or]~~

1002 [~~(B) over which the procurement unit has jurisdiction;~~]

1003 [~~(iii) on the main website for the procurement unit acquiring the procurement item; or]~~

1004 [~~(iv) on a state website that is owned by, managed by, or provided under contract with,~~
1005 ~~the division for posting a procurement notice.]~~

1006 [~~(4) An issuing]~~

1007 (2) A procurement unit may reduce the seven-day period described in Subsection [(2)

1008 ~~or (3)] (1), if the procurement [officer or the procurement officer's designee] unit's procurement
1009 official signs a written statement that:~~

1010 (a) states that a shorter time is needed; and

1011 (b) determines that competition from multiple sources may be obtained within the
1012 shorter period of time.

1013 [~~(5) (a) An issuing procurement unit shall make a copy of the solicitation documents~~
1014 ~~available for public inspection at the main office of the issuing procurement unit or on the~~
1015 ~~website described in Subsection (2)(b) until the award of the contract or the cancellation of the~~
1016 ~~procurement.]~~

1017 [(b) A procurement unit issuing a procurement under Section 63G-6a-802 shall make a

1018 copy of information related to the procurement available for public inspection at the main
1019 office of the procurement unit or on the website described in Subsection (3)(b) until the award
1020 of the contract or the cancellation of the procurement.]

1021 [~~(c) A procurement unit shall maintain all records in accordance with Part 20,
1022 Records.~~]

1023 [~~(6) A procurement unit that issues a request for statement of qualifications as part of
1024 an approved vendor list process that results in the establishment of an open-ended vendor list,
1025 as defined in Section 63G-6a-507, shall keep the request for statement of qualifications posted
1026 on a website described in Subsection (2)(b)(iii) or (iv) during the entire period of the
1027 open-ended vendor list.~~]

1028 [~~(7)~~] (3) (a) It is the responsibility of a person seeking information provided by a
1029 [~~public~~] notice published under this section to seek out, find, and respond to [~~a public~~] the
1030 notice [~~issued by a procurement unit~~].

1031 (b) As a courtesy and in order to promote competition, a procurement unit may
1032 provide, but is not required to provide, individual notice.

1033 Section 10. Section **63G-6a-114** is amended to read:

1034 **63G-6a-114. Correcting an immaterial error in a solicitation response.**

1035 (1) [~~The chief procurement officer or the head of a procurement unit with independent
1036 procurement authority.~~] (a) A procurement unit may allow a vendor to correct an immaterial
1037 error in a responsive solicitation response as provided in this section[~~;~~ and].

1038 [~~(b) may not allow a vendor to:~~]

1039 [~~(i) correct a deficiency, inaccuracy, or mistake in a responsive solicitation response
1040 that is not an immaterial error;~~]

1041 [~~(ii) correct an incomplete submission of documents that the solicitation required to be
1042 submitted with the solicitation response;~~]

1043 [~~(iii) correct a failure to submit a timely solicitation response;~~]

1044 [~~(iv) substitute or alter a required form or other document specified in the solicitation;~~]

1045 [~~(v) remedy a cause for a vendor being considered to be not responsible or a
1046 solicitation response not responsive; or~~]

1047 [~~(vi) correct a defect or inadequacy resulting in a determination that a vendor's
1048 solicitation response does not meet the mandatory minimum requirements, evaluation criteria,~~

1049 ~~or applicable score thresholds established in the solicitation.]~~

1050 ~~[(2) (a) The chief procurement officer or the head of a procurement unit with~~
 1051 ~~independent procurement authority shall establish a deadline by which a vendor is required to~~
 1052 ~~submit a correction under this section.]~~

1053 ~~[(b) The chief procurement officer or the head of a procurement unit with independent~~
 1054 ~~procurement authority may not allow a vendor to correct an immaterial error in a solicitation~~
 1055 ~~response if the vendor submits the correction after the deadline established under Subsection~~
 1056 ~~(2)(a).]~~

1057 ~~[(3) If the chief procurement officer or the head of a procurement unit with~~
 1058 ~~independent procurement authority allows a vendor to correct an immaterial error in a~~
 1059 ~~solicitation response, the chief procurement officer or head shall prepare and sign a written~~
 1060 ~~document supporting the reason for allowing the correction.]~~

1061 (2) (a) A procurement unit that allows a vendor to correct an immaterial error in a
 1062 responsive solicitation response shall:

1063 (i) require the vendor to submit the correction in writing; and

1064 (ii) establish a deadline by which the vendor is required to correct the immaterial error.

1065 (b) A procurement unit may not allow a vendor to correct an immaterial error in a
 1066 responsive solicitation response after the deadline established under Subsection (2)(a).

1067 Section 11. Section **63G-6a-115** is amended to read:

1068 **63G-6a-115. Clarifying information in a solicitation response.**

1069 (1) A procurement unit may at any time make a written request to a vendor to:

1070 (a) clarify information contained in a responsive solicitation response[-]; or

1071 (b) provide additional information that the procurement unit determines the

1072 procurement unit needs to determine whether the vendor is responsible.

1073 ~~[(2) A procurement unit may allow a vendor to respond to a request under Subsection~~
 1074 ~~(1):]~~

1075 ~~[(a) in writing; or]~~

1076 ~~[(b) by submitting a printed document.]~~

1077 ~~[(3)]~~ (2) (a) A procurement unit that requests a vendor to clarify or provide additional

1078 information [contained in a responsive solicitation response] under this section shall establish a

1079 deadline by which the vendor is required to submit the clarifying or additional information.

1080 (b) A procurement unit may not allow a vendor to submit clarifying or additional
1081 information after the deadline established under Subsection ~~[(3)]~~ (2)(a).
1082 ~~[(4) A vendor's response to a request under this section:]~~
1083 ~~[(a) may only explain, illustrate, or interpret the contents of the vendor's original~~
1084 ~~solicitation response;]~~
1085 ~~[(b) may not be used to address criteria or specifications not contained in the vendor's~~
1086 ~~original solicitation response; and]~~
1087 ~~[(c) may not be used to:]~~
1088 ~~[(i) correct a deficiency, inaccuracy, or mistake in a solicitation response that is not an~~
1089 ~~immaterial error;]~~
1090 ~~[(ii) correct an incomplete submission of documents that the solicitation required to be~~
1091 ~~submitted with the solicitation response;]~~
1092 ~~[(iii) correct a failure to submit a timely solicitation response;]~~
1093 ~~[(iv) substitute or alter a required form or other document specified in the solicitation;]~~
1094 ~~[(v) remedy a cause for a vendor being considered to be not responsible or a~~
1095 ~~solicitation response not responsive; or]~~
1096 ~~[(vi) correct a defect or inadequacy resulting in a determination that a vendor does not~~
1097 ~~meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds~~
1098 ~~established in the solicitation.]~~

1099 Section 12. Section **63G-6a-118** is enacted to read:

1100 **63G-6a-118. Adoption of ordinance, resolution, rule, or policy relating to the**
1101 **procurement of design professional services.**

1102 Each of the following shall adopt a rule relating to the procurement of design
1103 professional services, not inconsistent with the provisions of Part 15, Design Professional
1104 Services:

- 1105 (1) an educational procurement unit;
- 1106 (2) a conservation district;
- 1107 (3) a local building authority;
- 1108 (4) a local district;
- 1109 (5) a special service district; and
- 1110 (6) a public corporation.

1111 Section 13. Section **63G-6a-119** is enacted to read:

1112 **63G-6a-119. Cancelling a solicitation.**

1113 (1) A procurement unit may cancel a solicitation if the procurement official determines
1114 that cancellation is in the best interests of the procurement unit.

1115 (2) If a procurement unit cancels a solicitation:

1116 (a) the procurement official shall explain in writing the reasons for the cancellation;

1117 and

1118 (b) the procurement unit shall make the written explanation described in Subsection

1119 (2)(a) available to the public for a period of one year after the cancellation.

1120 Section 14. Section **63G-6a-120** is enacted to read:

1121 **63G-6a-120. Rejecting a solicitation response.**

1122 (1) A procurement unit may reject a solicitation response if:

1123 (a) the solicitation response:

1124 (i) is not responsive;

1125 (ii) violates a requirement of the solicitation; or

1126 (iii) is not submitted before the deadline specified in the solicitation;

1127 (b) the vendor who submitted the solicitation response:

1128 (i) is not responsible;

1129 (ii) is in violation of a provision of this chapter;

1130 (iii) has had a previous contract with the procurement unit canceled;

1131 (iv) has engaged in unethical conduct;

1132 (v) is subject to an outstanding tax lien; or

1133 (vi) fails to sign a contract awarded as a result of the solicitation response within:

1134 (A) 90 days after the contract award, if the solicitation does not specify a deadline for
1135 the signing of the contract; or

1136 (B) the time specified in the solicitation, if the solicitation specifies a deadline for the
1137 signing of the contract; or

1138 (c) after the vendor submits a solicitation response there is a change in the vendor's
1139 circumstances that, if known at the time the solicitation response was submitted, would have
1140 caused the procurement unit to reject the solicitation response.

1141 (2) A procurement unit that rejects a solicitation response under Subsection (1) shall

1142 provide the vendor who submitted the rejected solicitation response a written statement of the
1143 reasons for the rejection.

1144 Section 15. Section **63G-6a-203** is amended to read:

1145 **63G-6a-203. Powers and duties of board.**

1146 (1) In addition to making rules in accordance with Section [~~63G-6a-110~~] 63G-6a-107.7
1147 and the other provisions of this chapter, the board shall consider and decide matters of policy
1148 within the provisions of this chapter, including those referred to it by the chief procurement
1149 officer.

1150 (2) (a) The board may:

1151 (i) audit and monitor the implementation of its rules and the requirements of this
1152 chapter;

1153 (ii) upon the request of a procurement unit with [~~an applicable~~] a rulemaking authority
1154 other than the board, review the procurement unit's proposed rules to ensure that they are not
1155 inconsistent with the provisions of this chapter or rules made by the board; and

1156 (iii) approve the use of innovative procurement processes.

1157 (b) Except as provided in Section 63G-6a-1702, the board may not exercise authority
1158 over:

1159 (i) the award or administration of any particular contract; or

1160 (ii) any dispute, claim, or litigation pertaining to any particular contract.

1161 (3) Except as otherwise expressly provided in this chapter, the board does not have
1162 authority over a matter involving [~~a~~] an independent procurement unit [~~with independent~~
1163 procurement authority].

1164 Section 16. Section **63G-6a-204** is amended to read:

1165 **63G-6a-204. Applicability of rules and regulations of Utah State Procurement**
1166 **Policy Board and State Building Board -- Report to interim committee.**

1167 (1) Except as provided in Subsection (2), rules made by the board under this chapter
1168 shall govern all procurement units for which the board is the [~~applicable~~] rulemaking authority.

1169 (2) The building board rules governing procurement of construction, design
1170 professional services, and leases apply to the procurement of construction, design professional
1171 services, and leases of real property by the [~~Division of Facilities Construction and~~
1172 Management] facilities division.

1173 (3) ~~[An applicable]~~ A rulemaking authority may make its own rules, consistent with
1174 this chapter, governing procurement by a person over which the ~~[applicable]~~ rulemaking
1175 authority has rulemaking authority.

1176 (4) The board shall make a report on or before July 1 of each year to a legislative
1177 interim committee, designated by the Legislative Management Committee created under
1178 Section ~~36-12-6~~, on the establishment, implementation, and enforcement of the rules made
1179 under Section ~~63G-6a-203~~.

1180 ~~[(5) Notwithstanding Subsection ~~63G-3-301~~(15)(b), an applicable rulemaking authority~~
1181 ~~is required to initiate rulemaking proceedings, for rules required to be made under this chapter,~~
1182 ~~on or before:]~~

1183 ~~[(a) May 13, 2014, if the applicable rulemaking authority is the board; or]~~

1184 ~~[(b) January 1, 2015, for each other applicable rulemaking authority.]~~

1185 Section 17. Section ~~63G-6a-302~~ is amended to read:

1186 **63G-6a-302. Chief procurement officer -- Appointment -- Qualifications --**

1187 **Authority.**

1188 (1) The executive director of the Department of Administrative Services, with the
1189 consent of the governor, shall appoint the chief procurement officer after considering
1190 recommendations from the board.

1191 (2) The chief procurement officer shall:

1192 (a) have a minimum of eight years' experience:

1193 (i) (A) in the large-scale procurement of supplies, services, or construction; or

1194 (B) negotiating contract terms and conditions; and

1195 (ii) at least five years of which shall have been in public or comparable private
1196 procurement within 12 years preceding the date of appointment; and

1197 (b) be a person with demonstrated executive and organizational ability.

1198 (3) The chief procurement officer appointed under Subsection (1) is also the director of
1199 the Division of Purchasing and General Services.

1200 (4) The chief procurement officer has authority over a procurement by a procurement
1201 unit, except:

1202 (a) ~~[a]~~ an independent procurement unit ~~[with independent procurement authority];~~ or

1203 (b) as otherwise expressly provided in this chapter.

1204 Section 18. Section **63G-6a-303** is amended to read:

1205 **63G-6a-303. Duties and authority of chief procurement officer.**

1206 (1) The chief procurement officer:

1207 (a) is the director of the division;

1208 (b) serves as the central procurement officer of the state;

1209 (c) serves as a voting member of the board; and

1210 (d) serves as the protest officer for a protest relating to a procurement of an executive

1211 branch procurement [~~unit without independent procurement authority~~], except an executive

1212 branch procurement unit designated under Subsection [63G-6a-103\(40\)\(b\), \(c\), \(d\), or \(e\)](#) as an

1213 independent procurement unit, or a state cooperative contract procurement, unless the chief

1214 procurement officer designates another to serve as protest officer, as authorized in this chapter.

1215 (2) Except as otherwise provided in this chapter, the chief procurement officer shall:

1216 (a) develop procurement policies and procedures supporting ethical procurement

1217 practices, fair and open competition among vendors, and transparency within the state's

1218 procurement process;

1219 (b) administer the state's cooperative purchasing program, including state cooperative

1220 contracts and associated administrative fees;

1221 (c) enter into an agreement with a public entity for services provided by the division, if

1222 the agreement is in the best interest of the state;

1223 (d) ensure the division's compliance with any applicable law, rule, or policy, including

1224 a law, rule, or policy applicable to the division's role as an issuing procurement unit or

1225 conducting procurement unit, or as the state's central procurement organization;

1226 (e) manage the division's electronic procurement system;

1227 (f) oversee the recruitment, training, career development, certification requirements,

1228 and performance evaluation of the division's procurement personnel;

1229 (g) make procurement training available to procurement units and persons who do

1230 business with procurement units;

1231 (h) provide exemplary customer service and continually improve the division's

1232 procurement operations;

1233 (i) exercise all other authority, fulfill all other duties and responsibilities, and perform

1234 all other functions authorized under this chapter; and

1235 (j) ensure that any training described in this Subsection (2) complies with Title 63G,
1236 Chapter 22, State Training and Certification Requirements.

1237 (3) With respect to a procurement or contract over which the chief procurement officer
1238 has authority under this chapter, the chief procurement officer, except as otherwise provided in
1239 this chapter:

1240 (a) shall:

1241 (i) manage and supervise a procurement to ensure to the extent practicable that
1242 taxpayers receive the best value;

1243 (ii) prepare and issue standard specifications for procurement items;

1244 (iii) review contracts, coordinate contract compliance, conduct contract audits, and
1245 approve change orders;

1246 (iv) in accordance with Section 63F-1-205, coordinate with the Department of
1247 Technology Services, created in Section 63F-1-103, with respect to the procurement of
1248 information technology services by an executive branch procurement unit;

1249 (v) correct, amend, or cancel a procurement at any stage of the procurement process if
1250 the procurement is out of compliance with this chapter or a board rule;

1251 (vi) after consultation with the attorney general's office, correct, amend, or cancel a
1252 contract at any time during the term of the contract if:

1253 (A) the contract is out of compliance with this chapter or a board rule; and

1254 (B) the chief procurement officer determines that correcting, amending, or canceling
1255 the contract is in the best interest of the state; and

1256 (vii) make a reasonable attempt to resolve a contract dispute, in coordination with the
1257 attorney general's office; and

1258 (b) may:

1259 (i) delegate limited purchasing authority to a state agency, with appropriate oversight
1260 and control to ensure compliance with this chapter;

1261 (ii) delegate duties and authority to an employee of the division, as the chief
1262 procurement officer considers appropriate;

1263 (iii) negotiate and settle contract overcharges, undercharges, and claims, in accordance
1264 with the law and after consultation with the attorney general's office;

1265 (iv) authorize a procurement unit to make a procurement pursuant to a regional

1266 solicitation, as defined in Subsection [63G-6a-2105](#)(7), even if the procurement item is also
1267 offered under a state cooperative contract, if the chief procurement officer determines that the
1268 procurement pursuant to a regional solicitation is in the best interest of the acquiring
1269 procurement unit; and

1270 (v) remove an individual from the procurement process or contract administration for:

1271 (A) having a conflict of interest or the appearance of a conflict of interest with a person
1272 responding to a solicitation or with a contractor;

1273 (B) having a bias or the appearance of bias for or against a person responding to a
1274 solicitation or for or against a contractor;

1275 (C) making an inconsistent or unexplainable score for a solicitation response;

1276 (D) having inappropriate contact or communication with a person responding to a
1277 solicitation;

1278 (E) socializing inappropriately with a person responding to a solicitation or with a
1279 contractor;

1280 (F) engaging in any other action or having any other association that causes the chief
1281 procurement officer to conclude that the individual cannot fairly evaluate a solicitation
1282 response or administer a contract; or

1283 (G) any other violation of a law, rule, or policy.

1284 (4) The chief procurement officer may not delegate to an individual outside the
1285 division the chief procurement officer's authority over a procurement described in Subsection
1286 (3)(a)(iv).

1287 (5) The chief procurement officer has final authority to determine whether an executive
1288 branch procurement unit's anticipated expenditure of public funds, anticipated agreement to
1289 expend public funds, or provision of a benefit constitutes a procurement that is subject to this
1290 chapter.

1291 (6) Except as otherwise provided in this chapter, the chief procurement officer shall
1292 review, monitor, and audit the procurement activities and delegated procurement authority of
1293 an executive branch procurement unit [~~without independent procurement authority~~], except to
1294 the extent that an executive branch procurement unit is designated under Subsection
1295 [63G-6a-103](#)(40)(b), (c), (d), or (e) as an independent procurement unit, to ensure compliance
1296 with this chapter, rules made by the applicable rulemaking authority, and division policies.

1297 Section 19. Section **63G-6a-409** is amended to read:

1298 **63G-6a-409. Request for information.**

1299 (1) ~~[The purpose of]~~ A procurement unit may issue a request for information ~~[is]~~

1300 to~~:(a)]~~ obtain information, comments, or suggestions ~~[from potential bidders or offerors]~~

1301 before issuing ~~[an invitation for bids or request for proposals;]~~ a solicitation.

1302 ~~[(b) determine whether to issue an invitation for bids or a request for proposals; and]~~

1303 ~~[(c) generate interest in a potential invitation for bids or request for proposals.]~~

1304 ~~[(2) A request for information may be useful in order to:]~~

1305 ~~[(a) prepare to issue an invitation for bids or request for proposals for an unfamiliar or~~
1306 ~~complex procurement;]~~

1307 ~~[(b) determine the market availability of a procurement item; or]~~

1308 ~~[(c) determine best practices, industry standards, performance standards, product~~
1309 ~~specifications, and innovations relating to a procurement item.]~~

1310 ~~[(3)]~~ (2) (a) A request for information is not a procurement process and may not be
1311 used to:

1312 ~~[(i) solicit cost, pricing, or rate information;]~~

1313 ~~[(ii)]~~ (i) negotiate fees;

1314 ~~[(iii)]~~ (ii) make a purchase; ~~[or]~~

1315 (iii) determine whether a procurement may be made under Part 8, Exceptions to
1316 Procurement Requirements; or

1317 (iv) enter into a contract.

1318 (b) To make a purchase or enter into a contract, a procurement unit is required to:

1319 (i) use a standard procurement process; or

1320 (ii) comply with an exception to the requirement to use a standard procurement
1321 process, as described in Part 8, Exceptions to Procurement Requirements.

1322 ~~[(4)]~~ (3) A response to a request for information is not an offer and may not be
1323 accepted to form a binding contract.

1324 ~~[(5) A request for information may seek a wide range of information, including:]~~

1325 ~~[(a) availability of a procurement item;]~~

1326 ~~[(b) delivery schedules;]~~

1327 ~~[(c) industry standards and practices;]~~

1328 [~~(d)~~ product specifications;]

1329 [~~(e)~~ training;]

1330 [~~(f)~~ new technologies;]

1331 [~~(g)~~ capabilities of potential providers of a procurement item; and]

1332 [~~(h)~~ alternate solutions.]

1333 (4) A procurement unit that receives pricing information in response to a request for
1334 information shall ensure that an individual who serves on an evaluation committee to evaluate
1335 proposals that include a proposal as to which the pricing information applies does not have
1336 access to the pricing information, except as provided in Subsection 63G-6a-707(7).

1337 [~~(6)~~] (5) A record containing information submitted to or by a governmental entity in
1338 response to a request for information is a protected record under Section 63G-2-305.

1339 Section 20. Section **63G-6a-410** is amended to read:

1340 **63G-6a-410. Request for statement of qualifications -- Process.**

1341 (1) (a) A procurement unit may use the process described in this section:

1342 (i) as one of the stages of a multiple-stage[+] standard procurement process; and

1343 [~~(A)~~ bidding process;]

1344 [~~(B)~~ request for proposals process; or]

1345 [~~(C)~~ design professional procurement process; and]

1346 (ii) to identify qualified vendors to participate in other stages of the multiple-stage
1347 procurement process.

1348 (b) A procurement unit shall use the process described in this section as part of the
1349 approved vendor list process, if the procurement unit intends to establish an approved vendor
1350 list.

1351 (2) A procurement unit may not:

1352 (a) award a contract based solely on the process described in this section; or

1353 (b) solicit costs, pricing, or rates or negotiate fees through the process described in this
1354 section.

1355 (3) The process of identifying qualified vendors in a multiple-stage standard
1356 procurement process or of establishing an approved vendor list under Section 63G-6a-507 is
1357 initiated by a procurement unit issuing a request for statement of qualifications.

1358 (4) A request for statement of qualifications in a multiple-stage standard procurement

1359 process shall include:

1360 (a) a statement indicating that participation in other stages of the multiple-stage

1361 standard procurement process will be limited to qualified vendors;

1362 (b) the minimum mandatory requirements, evaluation criteria, and applicable score

1363 thresholds that will be used to identify qualified vendors, including, as applicable:

1364 (i) experience and work history;

1365 (ii) management and staff requirements or standards;

1366 (iii) licenses, certifications, and other qualifications;

1367 (iv) performance ratings or references;

1368 (v) financial stability; and

1369 (vi) other information pertaining to vendor qualifications that the [~~chief procurement~~

1370 ~~officer or the head of a procurement unit with independent procurement authority~~] procurement

1371 official considers relevant or important; and

1372 (c) the deadline by which a vendor is required to submit a statement of qualifications.

1373 (5) A request for statement of qualifications in an approved vendor list process under

1374 Section [63G-6a-507](#) shall include:

1375 (a) a general description of, as applicable:

1376 (i) the procurement item that the procurement unit seeks to acquire;

1377 (ii) the type of project or scope or category of work that will be the subject of a

1378 procurement by the procurement unit;

1379 (iii) the procurement process the procurement unit will use to acquire the procurement

1380 item; and

1381 (iv) the type of vendor the procurement unit seeks to provide the procurement item;

1382 (b) the minimum mandatory requirements, evaluation criteria, and applicable score

1383 thresholds that vendors are required to meet to be included on the approved vendor list;

1384 (c) a statement indicating that the approved vendor list will include only responsible

1385 vendors that:

1386 (i) submit a responsive statement of qualifications; and

1387 (ii) meet the minimum mandatory requirements, evaluation criteria, and applicable

1388 score thresholds described in the request for statement of qualifications;

1389 (d) a statement indicating that only vendors on the approved vendor list will be able to

1390 participate in the procurements identified in the request for statement of qualifications;

1391 (e) a statement indicating whether the procurement unit will use a performance rating
1392 system for evaluating the performance of vendors on the approved vendor list, including
1393 whether a vendor on the approved vendor list may be disqualified and removed from the list;

1394 (f) (i) a statement indicating whether the procurement unit uses a closed-ended
1395 approved vendor list, as defined in Section 63G-6a-507, or an open-ended approved vendor
1396 list, as defined in Section 63G-6a-507; and

1397 (ii) (A) if the procurement unit uses a closed-ended approved vendor list, the deadline
1398 by which a vendor is required to submit a statement of qualifications and a specified period of
1399 time after which the approved vendor list will expire; or

1400 (B) if the procurement unit uses an open-ended approved vendor list, the deadline by
1401 which a vendor is required to submit a statement of qualifications to be considered for the
1402 initial approved vendor list, a schedule indicating when a vendor not on the initial approved
1403 vendor list may submit a statement of qualifications to be considered to be added to the
1404 approved vendor list, and the specified period of time after which a vendor is required to
1405 submit a new statement of qualifications for evaluation before the vendor's status as an
1406 approved vendor on the approved vendor list may be renewed; and

1407 (g) a description of any other criteria or requirements specific to the procurement item
1408 or scope of work that is the subject of the procurement.

1409 (6) A procurement unit issuing a request for statement of qualifications shall publish
1410 the request as provided in Section 63G-6a-112.

1411 (7) After the deadline for submitting a statement of qualifications, the [~~chief~~
1412 ~~procurement officer or the head of a procurement unit with independent procurement authority]~~
1413 procurement official] may allow a vendor to correct an immaterial error in a statement of
1414 qualifications, as provided in Section 63G-6a-114.

1415 (8) (a) A conducting procurement unit may reject a statement of qualifications if the
1416 conducting procurement unit determines that:

1417 (i) the vendor who submitted the statement of qualifications:

1418 (A) is not responsible;

1419 (B) is in violation of a provision of this chapter;

1420 (C) has engaged in unethical conduct; or

1421 (D) receives a performance rating below the satisfactory performance threshold
1422 specified in the request for statement of qualifications;

1423 (ii) there has been a change in the vendor's circumstances after the vendor submits a
1424 statement of qualifications that, if the change had been known at the time the statement of
1425 qualifications was evaluated, would have caused the statement of qualifications not to have
1426 received a qualifying score; or

1427 (iii) the statement of qualifications:

1428 (A) is not responsive; or

1429 (B) does not meet the mandatory minimum requirements, evaluation criteria, or
1430 applicable score thresholds stated in the request for statement of qualifications.

1431 (b) A procurement unit that rejects a statement of qualifications under Subsection
1432 (8)(a) shall:

1433 (i) make a written finding, stating the reasons for the rejection; and

1434 (ii) provide a copy of the written finding to the vendor that submitted the rejected
1435 statement of qualifications.

1436 (9) (a) (i) After the issuance of a request for statement of qualifications, the conducting
1437 procurement unit shall appoint an evaluation committee consisting, subject to Subsection
1438 (9)(b), of at least three individuals with at least a general familiarity with or basic
1439 understanding of:

1440 (A) the technical requirements relating to the type of procurement item that is the
1441 subject of the request for statement of qualifications; or

1442 (B) the need that the procurement item is intended to address.

1443 (ii) The conducting procurement unit shall ensure that each member of an evaluation
1444 committee and each individual participating in the evaluation committee process:

1445 (A) does not have a conflict of interest with any vendor that submits a statement of
1446 qualifications;

1447 (B) can fairly evaluate each statement of qualifications;

1448 (C) does not contact or communicate with a vendor concerning the evaluation process
1449 or procurement outside the official evaluation committee process; and

1450 (D) conducts or participates in the evaluation in a manner that ensures a fair and
1451 competitive process and avoids the appearance of impropriety.

1452 (b) A procurement unit may reduce the number of individuals appointed to an
1453 evaluation committee if the procurement official determines in writing that the evaluation
1454 criteria:

- 1455 (i) consist of only objective criteria; and
- 1456 (ii) do not include any subjective criterion that requires analysis, assessment, or
1457 deliberation.

1458 ~~[(b)]~~ (c) A conducting procurement unit may authorize an evaluation committee to
1459 receive assistance:

- 1460 (i) from an expert or consultant who:
 - 1461 (A) is not a member of the evaluation committee; and
 - 1462 (B) does not participate in the evaluation scoring; and
- 1463 (ii) to better understand a technical issue involved in the procurement.

1464 ~~[(c)]~~ (d) An evaluation committee appointed under this Subsection (9):

- 1465 (i) shall evaluate and score statements of qualifications submitted in response to a
1466 request for statement of qualifications using the minimum mandatory requirements, evaluation
1467 criteria, and applicable score thresholds set forth in the request for statement of qualifications;
- 1468 (ii) may not evaluate or score a statement of qualifications using criteria not included in
1469 the request for statement of qualifications; and

1470 (iii) may, with the approval of the ~~[head of the conducting procurement unit]~~
1471 procurement official, enter into discussions or conduct interviews with or attend presentations
1472 by vendors, for the purpose of clarifying information contained in statements of qualifications.

1473 ~~[(d)]~~ (e) In a discussion, interview, or presentation under Subsection (9)(c)(iii), a
1474 vendor:

- 1475 (i) may only explain, illustrate, or interpret the contents of the vendor's original
1476 statement of qualifications; and
- 1477 (ii) may not:
 - 1478 (A) address criteria or specifications not contained in the vendor's original statement of
1479 qualifications;
 - 1480 (B) correct a deficiency, inaccuracy, or mistake in a statement of qualifications that is
1481 not an immaterial error;
 - 1482 (C) correct an incomplete submission of documents that the request for statement of

1483 qualifications required to be submitted with the statement of qualifications;

1484 (D) correct a failure to submit a timely statement of qualifications;

1485 (E) substitute or alter a required form or other document specified in the statement of
1486 qualifications;

1487 (F) remedy a cause for a vendor being considered to be not responsible or a statement
1488 of qualifications not responsive; or

1489 (G) correct a defect or inadequacy resulting in a determination that a vendor does not
1490 meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds
1491 established in the statement of qualifications.

1492 ~~[(e)]~~ (f) After the evaluation committee completes its evaluation and scoring of the
1493 statements of qualifications, the evaluation committee shall submit the statements of
1494 qualifications and evaluation scores to the ~~[head of the procurement unit]~~ procurement official
1495 for review and final determination of:

1496 (i) qualified vendors, if the request for statement of qualifications process is used as
1497 one of the stages of a multiple-stage process; or

1498 (ii) vendors to be included on an approved vendor list, if the request for statement of
1499 qualifications process is used as part of the approved vendor list process.

1500 ~~[(f)]~~ (g) The issuing procurement unit shall review the evaluation committee's scores
1501 and correct any errors, scoring inconsistencies, and reported noncompliance with this chapter.

1502 ~~[(g)]~~ (h) (i) The deliberations of an evaluation committee under this Subsection (9)
1503 may be held in private.

1504 (ii) If the evaluation committee is a public body, as defined in Section [52-4-103](#), the
1505 evaluation committee shall comply with Section [52-4-205](#) in closing a meeting for its
1506 deliberations.

1507 (10) A procurement unit may at any time request a vendor to clarify information
1508 contained in a statement of qualifications, as provided in Section [63G-6a-115](#).

1509 (11) A vendor may voluntarily withdraw a statement of qualifications at any time
1510 before a contract is awarded with respect to which the statement of qualifications was
1511 submitted.

1512 (12) If only one vendor meets the minimum qualifications, evaluation criteria, and
1513 applicable score thresholds set forth in the request for statement of qualifications that the

1514 procurement unit is using as part of an approved vendor list process, the conducting
1515 procurement unit may:

1516 (a) [~~shall~~] cancel the request for statement of qualifications; [~~and~~] or
1517 [~~(b) may not establish an approved vendor list based on the canceled request for~~
1518 ~~statement of qualifications or on statements of qualifications submitted in response to the~~
1519 ~~request for statement of qualifications.]~~

1520 (b) establish an approved vendor list that includes the one vendor if the procurement
1521 unit continues to try to identify more vendors to be included on the approved vendor list by:

1522 (i) keeping the request for statement of qualifications open; or

1523 (ii) immediately reissuing the request for statement of qualifications and repeating the
1524 process under this section.

1525 (13) If a conducting procurement unit cancels a request for statement of qualifications,
1526 the conducting procurement unit shall make available for public inspection a written
1527 justification for the cancellation.

1528 (14) After receiving and reviewing the statements of qualifications and evaluation
1529 scores submitted by the evaluation committee, the [~~head~~] procurement official of the
1530 procurement unit using the request for statement of qualifications process under this section as
1531 one of the stages of a multiple-stage procurement process shall identify those vendors meeting
1532 the minimum mandatory requirements, evaluation criteria, and applicable score thresholds as
1533 qualified vendors who are allowed to participate in the remaining stages of the multiple-stage
1534 procurement process.

1535 (15) The [~~applicable~~] rulemaking authority may make rules pertaining to the request
1536 for statement of qualifications and the process described in this section.

1537 Section 21. Section **63G-6a-506** is amended to read:

1538 **63G-6a-506. Small purchases.**

1539 (1) As used in this section:

1540 (a) "Annual cumulative threshold" means the maximum total annual amount,
1541 established by the [~~applicable~~] rulemaking authority under Subsection (2), that a procurement
1542 unit may expend to obtain procurement items from the same source under this section.

1543 (b) "Individual procurement threshold" means the maximum amount, established by
1544 the [~~applicable~~] rulemaking authority under Subsection (2), for which a procurement unit may

1545 purchase a procurement item under this section.

1546 (c) "Single procurement aggregate threshold" means the maximum total amount,
1547 established by the [applicable] rulemaking authority under Subsection (2), that a procurement
1548 unit may expend to obtain multiple procurement items from one source at one time under this
1549 section.

1550 (2) (a) The [applicable] rulemaking authority may make rules governing small
1551 purchases of any procurement item, including construction, job order contracting, design
1552 professional services, other professional services, information technology, and goods.

1553 (b) Rules under Subsection (2)(a) may include provisions:

1554 (i) establishing expenditure thresholds, including:

1555 (A) an annual cumulative threshold;

1556 (B) an individual procurement threshold; and

1557 (C) a single procurement aggregate threshold;

1558 (ii) establishing procurement requirements relating to the thresholds described in
1559 Subsection (2)(b)(i); and

1560 (iii) providing for the use of electronic, telephone, or written quotes.

1561 (c) If a procurement unit obtains administrative law judge service through a small
1562 purchase standard procurement process, rules made under Subsection (2)(a) shall provide that
1563 the process for the procurement of administrative law judge service include an evaluation
1564 committee described in Subsection 63G-6a-116(3).

1565 (3) Expenditures made under this section by a procurement unit may not exceed a
1566 threshold established by the [applicable] rulemaking authority, unless the [~~chief procurement
1567 officer or the head of a procurement unit with independent procurement authority~~] procurement
1568 official gives written authorization to exceed the threshold that includes the reasons for
1569 exceeding the threshold.

1570 (4) Except as provided in Subsection (5), an executive branch procurement unit may
1571 not obtain a procurement item through a small purchase standard procurement process if the
1572 procurement item may be obtained through a state cooperative contract or a contract awarded
1573 by the chief procurement officer under Subsection 63G-6a-2105(1).

1574 (5) Subsection (4) does not apply if:

1575 (a) the procurement item is obtained for an unanticipated, urgent, or emergency

1576 condition, including:

1577 (i) an item needed to avoid stopping a public construction project;

1578 (ii) an immediate repair to a facility or equipment; or

1579 (iii) another emergency condition; or

1580 (b) the chief procurement officer or the ~~[head]~~ procurement official of a procurement
1581 unit that is an executive branch procurement unit with independent procurement authority:

1582 (i) determines in writing that it is in the best interest of the procurement unit to obtain
1583 an individual procurement item outside of the state contract, comparing:

1584 (A) the contract terms and conditions applicable to the procurement item under the
1585 state contract with the contract terms and conditions applicable to the procurement item if the
1586 procurement item is obtained outside of the state contract;

1587 (B) the maintenance and service applicable to the procurement item under the state
1588 contract with the maintenance and service applicable to the procurement item if the
1589 procurement item is obtained outside of the state contract;

1590 (C) the warranties applicable to the procurement item under the state contract with the
1591 warranties applicable to the procurement item if the procurement item is obtained outside of
1592 the state contract;

1593 (D) the quality of the procurement item under the state contract with the quality of the
1594 procurement item if the procurement item is obtained outside of the state contract; and

1595 (E) the ~~[cost of the procurement item]~~ ability of the vendor under the state contract
1596 ~~[with the]~~ to match the quoted cost of the procurement item if the procurement item is obtained
1597 outside of the state contract;

1598 (ii) for a procurement item that, if defective in its manufacture, installation, or
1599 performance, may result in serious physical injury, death, or substantial property damage,
1600 determines in writing that the terms and conditions, relating to liability for injury, death, or
1601 property damage, available from the source other than the contractor who holds the state
1602 contract, are similar to, or better than, the terms and conditions available under the state
1603 contract; and

1604 (iii) grants an exception, in writing, to the requirement described in Subsection (4).

1605 (6) Except as otherwise expressly provided in this section, a procurement unit:

1606 (a) may not use the small purchase standard procurement process described in this

1607 section for ongoing, continuous, and regularly scheduled procurements that exceed the annual
1608 cumulative threshold; and

1609 (b) shall make its ongoing, continuous, and regularly scheduled procurements that
1610 exceed the annual cumulative threshold through a contract awarded through another standard
1611 procurement process described in this chapter or an applicable exception to another standard
1612 procurement process, described in Part 8, Exceptions to Procurement Requirements.

1613 (7) This section does not prohibit regularly scheduled payments for a procurement item
1614 obtained under another provision of this chapter.

1615 (8) (a) It is unlawful for a person knowingly to divide a single procurement into
1616 multiple smaller procurements, including by dividing an invoice or purchase order into
1617 multiple invoices or purchase orders, if:

1618 (i) the single procurement would not have qualified as a small purchase under this
1619 section;

1620 (ii) one or more of the multiple smaller procurements qualify as a small purchase under
1621 this section; and

1622 (iii) the division is done with the intent to:

1623 (A) avoid having to use a standard procurement process, other than the small purchase
1624 process, that the person would otherwise be required to use for the single procurement; or

1625 (B) make one or more of the multiple smaller procurements fall below a small
1626 purchase expenditure threshold established by rule under Subsection (2)(b) that the single
1627 procurement would not have fallen below without the division.

1628 (b) A violation of Subsection (8)(a) is subject to penalties as provided in Subsection
1629 [63G-6a-2404.3\(2\)](#).

1630 (9) The Division of Finance within the Department of Administrative Services may
1631 conduct an audit of an executive branch procurement unit to verify compliance with the
1632 requirements of this section.

1633 (10) An executive branch procurement unit may not make a small purchase after
1634 January 1, 2014, unless the chief procurement officer certifies that the person responsible for
1635 procurements in the procurement unit has satisfactorily completed training on this section and
1636 the rules made under this section.

1637 Section 22. Section **63G-6a-507** is amended to read:

1638 **63G-6a-507. Approved vendor list procurement process.**

1639 (1) As used in this section:

1640 (a) "Closed-ended approved vendor list" means an approved vendor list that is subject
1641 to:

1642 (i) a short period of time, specified by the procurement unit, during which vendors may
1643 be added to the list; and

1644 (ii) a specified period of time after which the list will expire.

1645 (b) "Open-ended approved vendor list" means an approved vendor list that is subject
1646 to:

1647 (i) an indeterminate period of time during which vendors may be added to the list;

1648 (ii) the addition of vendors to the list throughout the term of the list; and

1649 (iii) a specified period of time after which ~~[a vendor on the list is required to submit the~~
1650 ~~vendor's qualifications for evaluation before the vendor may be renewed as an approved~~
1651 ~~vendor]~~ the procurement unit is required to verify that vendors on the list continue to meet the
1652 minimum mandatory requirements, evaluation criteria, and applicable score thresholds.

1653 (2) A procurement unit may not establish an approved vendor list unless the
1654 procurement unit has first completed the statement of qualifications process described in
1655 Section [63G-6a-410](#).

1656 (3) (a) A procurement unit may establish an approved vendor list for:

1657 (i) a specific, fully defined procurement item; or

1658 (ii) a future procurement item that is not specifically and fully defined, if the request
1659 for statement of qualifications contains a general description of:

1660 (A) the procurement item; and

1661 (B) the type of vendor that the procurement unit seeks to provide the procurement item.

1662 (b) A procurement unit may not award a contract to a vendor on an approved vendor
1663 list for a procurement item that is outside the scope of the general description of the
1664 procurement item contained in the request for statement of qualifications.

1665 (4) After receiving the statements of qualifications and evaluation scores submitted by
1666 the evaluation committee under Subsection [63G-6a-410\(9\)\(e\)](#)~~(f)~~, the ~~[head of the conducting]~~
1667 procurement official of the procurement unit using the request for statement of qualifications
1668 process under Section [63G-6a-410](#) as part of an approved vendor list process shall:

1669 (a) include on an approved vendor list those vendors meeting the minimum mandatory
1670 requirements, evaluation criteria, and applicable score thresholds; and

1671 (b) reject any vendor not meeting the minimum mandatory requirements, evaluation
1672 criteria, and applicable score thresholds as ineligible for inclusion on the approved vendor list.

1673 (5) (a) A procurement unit shall include approved vendors on a closed-ended approved
1674 vendor list or an open-ended approved vendor list.

1675 (b) (i) A closed-ended approved vendor list shall expire no later than 18 months after
1676 the publication of the closed-ended approved vendor list.

1677 (ii) A procurement unit shall [~~require a vendor on an open-ended approved vendor list,~~
1678 ~~in order to remain on the approved vendor list, to submit an updated statement of qualifications~~
1679 ~~for evaluation no later than 18 months after the vendor was added to the list as an approved~~
1680 ~~vendor]~~ verify, no less frequently than every 18 months, by a method approved by the
1681 procurement official, that each vendor on an open-ended approved vendor list continues to
1682 meet the minimum mandatory requirements, evaluation criteria, and applicable score
1683 thresholds.

1684 (6) A procurement unit may:

1685 (a) (i) using a bidding process, request for proposals process, small purchase process,
1686 or design professional procurement process, award a contract to a vendor on an approved
1687 vendor list for any procurement item or type of procurement item specified by the procurement
1688 unit in the request for statement of qualifications, including procurement items that the
1689 procurement unit intends to acquire in a series of future procurements described in the request
1690 for statement of qualifications; and

1691 (ii) limit participation in a bidding process, request for proposals process, small
1692 purchase process, or design professional procurement process to vendors on an approved
1693 vendor list; or

1694 (b) award a contract to a vendor on an approved vendor list at a price established as
1695 provided in Section [63G-6a-113](#).

1696 (7) (a) After establishing an approved vendor list as provided in this section, [~~the~~] a
1697 conducting procurement unit shall, before using the approved vendor list, submit the approved
1698 vendor list to the issuing procurement unit [~~for publication by the issuing procurement unit~~].

1699 (b) An issuing procurement unit that receives an approved vendor list under Subsection

1700 (7)(a) shall make the approved vendor list available to the public.

1701 (8) A conducting procurement unit administering an open-ended approved vendor list
1702 shall:

1703 (a) require a vendor seeking inclusion on the approved vendor list to submit a
1704 statement of qualifications that complies with all requirements applicable at the time of the
1705 initial request for statement of qualifications; and

1706 (b) if modifying the requirements for inclusion on the approved vendor list, apply any
1707 new or additional requirement to all vendors equally, whether a vendor is seeking inclusion on
1708 the approved vendor list for the first time or is already included on the approved vendor list[;
1709 ~~and~~].

1710 [~~(c) keep the request for statement of qualifications posted on a website as required~~
1711 ~~under Subsection 63G-6a-112(6).~~]

1712 (9) [~~The applicable~~] A rulemaking authority shall make rules pertaining to an approved
1713 vendor list process, including:

1714 (a) procedures to ensure that all vendors on an approved vendor list have a fair and
1715 equitable opportunity to compete for a contract for a procurement item; and

1716 (b) requirements for using an approved vendor list with the small purchase process.

1717 Section 23. Section **63G-6a-602** is amended to read:

1718 **63G-6a-602. Contracts awarded by bidding.**

1719 [~~(1) The division or a~~] A procurement unit [~~with independent procurement authority~~]
1720 may award a contract for a procurement item by the bidding process, in accordance with the
1721 rules of the [~~applicable~~] rulemaking authority.

1722 [~~(2) The bidding standard procurement process is appropriate to use when cost is the~~
1723 ~~major factor in determining the award of a procurement.~~]

1724 Section 24. Section **63G-6a-603** is amended to read:

1725 **63G-6a-603. Invitation for bids -- Requirements -- Publication.**

1726 [~~(1) The bidding standard procurement process begins when the issuing procurement~~
1727 ~~unit issues an invitation for bids.~~]

1728 [~~(2) An invitation for bids shall:~~]

1729 [~~(a) state the period of time during which bids will be accepted;~~]

1730 [~~(b) describe the manner in which a bid shall be submitted;~~]

1731 ~~[(c) state the place where a bid shall be submitted; and]~~
 1732 ~~[(d) include, or incorporate by reference:]~~
 1733 ~~[(i) to the extent practicable, a full description of the procurement items sought and the~~
 1734 ~~full scope of work;]~~
 1735 ~~[(ii) the objective criteria that will be used to evaluate the bids; and]~~
 1736 ~~[(iii) the required contractual terms and conditions:]~~
 1737 (1) A procurement unit that intends to award a contract for a procurement item using
 1738 the bidding process shall issue an invitation for bids.

1739 (2) A procurement unit shall include in an invitation for bids:
 1740 (a) a description of the procurement item that the procurement unit seeks;
 1741 (b) instructions for submitting a bid, including the deadline for submitting a bid;
 1742 (c) the objective criteria that the procurement unit will use to evaluate bids;
 1743 (d) information about the time and manner of opening bids; and
 1744 (e) terms and conditions that the procurement unit intends to include in a contract
 1745 resulting from the bidding process.

1746 (3) ~~[An issuing]~~ A procurement unit shall publish an invitation for bids in accordance
 1747 with the requirements of Section 63G-6a-112.

1748 Section 25. Section **63G-6a-604** is repealed and reenacted to read:

1749 **63G-6a-604. Processing of bids -- Changes to bids not allowed.**

1750 (1) A procurement unit:

1751 (a) shall accept bids as provided in the invitation for bids; and

1752 (b) may not open a bid until after the deadline for submitting bids.

1753 (2) A person who submits a bid may not, after the deadline for submitting bids, make a
 1754 change to the bid if the change is prejudicial to:

1755 (a) the interest of the procurement unit; or

1756 (b) fair competition.

1757 Section 26. Section **63G-6a-606** is amended to read:

1758 **63G-6a-606. Evaluation of bids -- Award -- Cancellation.**

1759 (1) A procurement unit that conducts a procurement using a bidding process shall
 1760 evaluate each bid using the objective criteria described in the invitation for bids~~[- which may~~
 1761 ~~include:].~~

- 1762 [~~(a) experience;~~]
- 1763 [~~(b) performance ratings;~~]
- 1764 [~~(c) inspection;~~]
- 1765 [~~(d) testing;~~]
- 1766 [~~(e) quality;~~]
- 1767 [~~(f) workmanship;~~]
- 1768 [~~(g) time and manner of delivery;~~]
- 1769 [~~(h) references;~~]
- 1770 [~~(i) financial stability;~~]
- 1771 [~~(j) cost;~~]
- 1772 [~~(k) suitability for a particular purpose;~~]
- 1773 [~~(l) the contractor's work site safety program, including any requirement that the~~
- 1774 ~~contractor imposes on subcontractors for a work site safety program; or]~~
- 1775 [~~(m) other objective criteria specified in the invitation for bids.]~~
- 1776 (2) Criteria not described in the invitation for bids may not be used to evaluate a bid.
- 1777 [~~(3) The conducting procurement unit shall:]~~
- 1778 [~~(a) subject to the provisions of Section [63G-6a-1204.5](#) for multiple award contracts,~~
- 1779 ~~award the contract as soon as practicable to:]~~
- 1780 [~~(i) the responsible bidder who submits the lowest responsive bid that meets the~~
- 1781 ~~objective criteria described in the invitation for bids; or]~~
- 1782 [~~(ii) if, in accordance with Subsection (4), the procurement officer or the head of the~~
- 1783 ~~conducting procurement unit rejects a bid described in Subsection (3)(a)(i), the responsible~~
- 1784 ~~bidder who submits the next lowest responsive bid that meets the objective criteria described in~~
- 1785 ~~the invitation for bids; or]~~
- 1786 [~~(b) cancel the invitation for bids without awarding a contract.]~~
- 1787 [~~(4) In accordance with Subsection (5), the procurement officer or the head of the~~
- 1788 ~~conducting procurement unit may reject a bid for:]~~
- 1789 [~~(a) a violation of this chapter by the bidder who submitted the bid;]~~
- 1790 [~~(b) a violation of a requirement of the invitation for bids;]~~
- 1791 [~~(c) unlawful or unethical conduct by the bidder who submitted the bid; or]~~
- 1792 [~~(d) a change in a bidder's circumstance that, had the change been known at the time~~

1793 ~~the bid was submitted, would have caused the bid to be rejected.]~~

1794 ~~[(5) A procurement officer or head of a conducting procurement unit who rejects a bid~~
1795 ~~under Subsection (4) shall:]~~

1796 ~~[(a) make a written finding, stating the reasons for the rejection; and]~~

1797 ~~[(b) provide a copy of the written finding to the bidder who submitted the rejected bid.]~~

1798 ~~[(6) If a conducting procurement unit cancels an invitation for bids without awarding a~~
1799 ~~contract, the conducting procurement unit shall make available for public inspection a written~~
1800 ~~justification for the cancellation.]~~

1801 (3) After evaluating bids, the procurement unit shall:

1802 (a) (i) award a contract as soon as practicable to the responsible bidder who submits the
1803 lowest responsive bid; and

1804 (ii) publish the name and bid amount of the bidder to whom the contract is awarded; or

1805 (b) (i) cancel the invitation for bids without awarding a contract; and

1806 (ii) publish a notice of the cancellation that includes an explanation of the reasons for
1807 cancelling the invitation for bids.

1808 Section 27. Section **63G-6a-608** is repealed and reenacted to read:

1809 **63G-6a-608. Tie bids.**

1810 A procurement unit shall resolve a tie bid in a fair manner, as determined in writing by
1811 the procurement official.

1812 Section 28. Section **63G-6a-702** is amended to read:

1813 **63G-6a-702. Contracts awarded by request for proposals.**

1814 (1) ~~[The division or a]~~ A procurement unit ~~[with independent procurement authority]~~
1815 may award a contract for a procurement item by the request for proposals process, in
1816 accordance with ~~[the rules of the applicable]~~ rulemaking authority rules.

1817 ~~[(2) (a) The request for proposals process is appropriate for a procurement unit to use~~
1818 ~~in selecting the proposal that provides the best value or is the most advantageous to the~~
1819 ~~procurement unit, including when:]~~

1820 ~~[(i) the procurement involves a contract whose terms and conditions are to be~~
1821 ~~negotiated in order to achieve the result that is the most advantageous to the procurement unit;]~~

1822 ~~[(ii) cost is not the most important factor to be considered in making the selection that~~
1823 ~~is most advantageous to the procurement unit;]~~

1824 ~~[(iii) factors, apart from or in addition to cost, are highly significant in making the~~
1825 ~~selection that is most advantageous to the procurement unit; or]~~

1826 ~~[(iv) the procurement unit anticipates entering into a public-private partnership.]~~

1827 ~~[(b) The types of procurements for which it is appropriate to use the request for~~
1828 ~~proposals process include:]~~

1829 ~~[(i) a procurement of professional services; and]~~

1830 ~~[(ii) a procurement of design-build or construction manager/general contractor~~
1831 ~~services:]~~

1832 ~~[(3)]~~ (2) The procurement of architect-engineer services is governed by Part 15, Design
1833 Professional Services.

1834 Section 29. Section **63G-6a-703** is amended to read:

1835 **63G-6a-703. Request for proposals -- Requirements -- Publication of request.**

1836 (1) ~~[The request for proposals standard procurement process begins when the division~~
1837 ~~or a procurement unit with independent procurement authority issues] A procurement unit that~~
1838 ~~intends to award a contract for a procurement item using the request for proposals process shall~~
1839 ~~issue a request for proposals.~~

1840 ~~[(2) A request for proposals shall:]~~

1841 ~~[(a) state the period of time during which a proposal will be accepted;]~~

1842 ~~[(b) describe the manner in which a proposal shall be submitted;]~~

1843 ~~[(c) state the place where a proposal shall be submitted;]~~

1844 ~~[(d) include, or incorporate by reference:]~~

1845 ~~[(i) to the extent practicable, a full description of the procurement items sought and the~~
1846 ~~full scope of work;]~~

1847 ~~[(ii) a description of the subjective and objective criteria that will be used to evaluate~~
1848 ~~the proposal; and]~~

1849 ~~[(iii) the standard contractual terms and conditions required by the authorized~~
1850 ~~purchasing entity;]~~

1851 ~~[(e) if the request for proposals is for a construction project, require each offeror to~~
1852 ~~include in a proposal a description of the offeror's company safety plan and the offeror's safety~~
1853 ~~plan for the specific project that is the subject of the proposal;]~~

1854 ~~[(f) state the relative weight that will be given to each score for the criteria described in~~

1855 Subsection (2)(d)(ii), including cost;]

1856 [~~(g) state the formula that will be used to determine the score awarded for the cost of~~
1857 ~~each proposal;~~]

1858 [~~(h) if the request for proposals will be conducted in multiple stages, as described in~~
1859 ~~Section 63G-6a-710, include a description of the stages and the criteria and scoring that will be~~
1860 ~~used to screen offerors at each stage;~~]

1861 [~~(i) state that best and final offers may be allowed, as provided in Section~~
1862 ~~63G-6a-707.5, from responsible offerors who submit responsive proposals that meet minimum~~
1863 ~~qualifications, evaluation criteria, or applicable score thresholds identified in the request for~~
1864 ~~proposals; and]~~

1865 [~~(j) if the procurement unit anticipates the procurement process to result in a~~
1866 ~~public-private partnership, state that the procurement unit anticipates entering into a~~
1867 ~~public-private partnership.]~~

1868 (2) A procurement unit shall include in a request for proposals:

1869 (a) a description of the procurement item that the procurement unit seeks;

1870 (b) instructions for submitting a proposal, including the deadline for submitting a
1871 proposal;

1872 (c) the objective criteria, including, if applicable, cost, and subjective criteria that the
1873 procurement unit will use to evaluate proposals;

1874 (d) information about the time and manner of opening proposals; and

1875 (e) terms and conditions that the procurement unit intends to include in a contract
1876 resulting from the request for proposals process.

1877 (3) [~~The division or a~~ A procurement unit [~~with independent procurement authority~~]
1878 shall publish a request for proposals in accordance with the requirements of Section
1879 63G-6a-112.

1880 Section 30. Section 63G-6a-704 is repealed and reenacted to read:

1881 **63G-6a-704. Processing of proposals -- Changes to proposals not allowed.**

1882 (1) A procurement unit:

1883 (a) shall accept proposals as provided in the request for proposals;

1884 (b) may not open a proposal until after the deadline for submitting proposals; and

1885 (c) may not disclose the contents of a proposal to the public or to another offeror,

1886 except as provided in Subsection 63G-2-305(6).

1887 (2) A person who submits a proposal may not, after the deadline for submitting
1888 proposals, make a change to the proposal if the change is prejudicial to:

1889 (a) the interest of the procurement unit; or

1890 (b) fair competition.

1891 Section 31. Section **63G-6a-704.4** is enacted to read:

1892 **63G-6a-704.4. Limited addenda to requests for proposals.**

1893 After the deadline for submitting proposals, a procurement unit may, at the discretion of
1894 the procurement official, issue a request for proposals addendum that has limited application
1895 only to offerors that have submitted proposals, if the addendum does not change the request for
1896 proposals in a way that, in the opinion of the procurement official, would likely have affected
1897 the number of proposals submitted in response to the request for proposals had the addendum
1898 been included in the original request for proposals.

1899 Section 32. Section **63G-6a-704.6** is enacted to read:

1900 **63G-6a-704.6. Discussions with persons who submit a proposal.**

1901 (1) A procurement unit may have discussions with an offeror to obtain a more
1902 complete understanding of whether the offeror is responsible or the offeror's proposal is
1903 responsive.

1904 (2) A procurement unit may reject a proposal following discussions under Subsection
1905 (1) if the procurement unit determines that the offeror is not responsible or the proposal is not
1906 responsive.

1907 Section 33. Section **63G-6a-707** is amended to read:

1908 **63G-6a-707. Evaluation committee -- Evaluation of proposals.**

1909 (1) A procurement unit shall appoint an evaluation committee of at least three members
1910 to evaluate proposals received in response to a request for proposals issued by the procurement
1911 unit.

1912 (2) The evaluation committee shall evaluate proposals in accordance with the process
1913 described in the request for proposals.

1914 ~~[(1)(a)]~~ (3) To determine which proposal provides the best value to the procurement
1915 unit, the evaluation committee shall evaluate each responsible offeror's responsive proposal
1916 that has not been disqualified from consideration under the provisions of this chapter, using the

1917 evaluation criteria described in the request for proposals.

1918 ~~[(b) The criteria in a request for proposals may include:]~~

1919 ~~[(i) experience;]~~

1920 ~~[(ii) performance ratings;]~~

1921 ~~[(iii) inspection;]~~

1922 ~~[(iv) testing;]~~

1923 ~~[(v) quality;]~~

1924 ~~[(vi) workmanship;]~~

1925 ~~[(vii) time, manner, or schedule of delivery;]~~

1926 ~~[(viii) references;]~~

1927 ~~[(ix) financial solvency;]~~

1928 ~~[(x) suitability for a particular purpose;]~~

1929 ~~[(xi) management plans;]~~

1930 ~~[(xii) cost;]~~

1931 ~~[(xiii) if applicable, the offeror's willingness and capability to enter into a~~

1932 ~~public-private partnership; or]~~

1933 ~~[(xiv) other subjective or objective criteria specified in the request for proposals.]~~

1934 ~~[(c) The criteria in a request for proposals for a construction project shall include the~~

1935 ~~existence and quality of:]~~

1936 ~~[(i) an offeror's company safety plan; and]~~

1937 ~~[(ii) the offeror's safety plan for the specific project that is the subject of the proposal.]~~

1938 ~~[(2)] (4) Criteria not described in the request for proposals may not be used to evaluate~~

1939 a proposal.

1940 ~~[(3) The conducting]~~

1941 (5) A procurement unit shall:

1942 (a) appoint ~~[an]~~ evaluation committee ~~[consisting of at least three individuals with]~~

1943 members who have at least a general familiarity with or basic understanding of:

1944 (i) the technical requirements relating to the type of procurement item that is the

1945 subject of the procurement; or

1946 (ii) the need that the procurement item is intended to address; and

1947 (b) ensure that the evaluation committee and each individual participating in the

1948 evaluation committee process:

1949 (i) does not have a conflict of interest with any of the offerors;

1950 (ii) can fairly evaluate each proposal;

1951 (iii) does not contact or communicate with an offeror concerning the procurement

1952 outside the official evaluation committee process; and

1953 (iv) conducts or participates in the evaluation in a manner that ensures a fair and

1954 competitive process and avoids the appearance of impropriety.

1955 ~~[(4) A conducting]~~

1956 (6) A procurement unit may authorize an evaluation committee to receive assistance[:

1957 ~~(a)] from an expert or consultant [who: (i) is not a member of the evaluation committee; and~~

1958 ~~(ii) does not participate in the evaluation scoring; and (b)] to better understand a technical~~

1959 issue involved in the procurement.

1960 ~~[(5) (a) An evaluation committee may, with the approval of the head of the conducting~~

1961 ~~procurement unit, enter into discussions or conduct interviews with, or attend presentations by,~~

1962 ~~the offerors, for the purpose of clarifying information contained in proposals.]~~

1963 ~~[(b) In a discussion, interview, or presentation under Subsection (5)(a), an offeror:]~~

1964 ~~[(i) may only explain, illustrate, or interpret the contents of the offeror's original~~

1965 ~~proposal; and]~~

1966 ~~[(ii) may not:]~~

1967 ~~[(A) address criteria or specifications not contained in the offeror's original proposal;]~~

1968 ~~[(B) correct a deficiency, inaccuracy, or mistake in a proposal that is not an immaterial~~
1969 ~~error;]~~

1970 ~~[(C) correct an incomplete submission of documents that the solicitation required to be~~
1971 ~~submitted with the proposal;]~~

1972 ~~[(D) correct a failure to submit a timely proposal;]~~

1973 ~~[(E) substitute or alter a required form or other document specified in the solicitation;]~~

1974 ~~[(F) remedy a cause for an offeror being considered to be not responsible or a proposal~~
1975 ~~not responsive; or]~~

1976 ~~[(G) correct a defect or inadequacy resulting in a determination that an offeror does not~~
1977 ~~meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds~~
1978 ~~established in the solicitation.]~~

1979 ~~[(6) (a) Except as provided in Subsection (7)(b) relating to access to management fee~~
 1980 ~~information, and except as provided in Subsection (9), each member of the evaluation~~
 1981 ~~committee is prohibited from knowing, or having access to, any information relating to the~~
 1982 ~~cost, or the scoring of the cost, of a proposal until after the evaluation committee submits its~~
 1983 ~~final recommended scores on all other criteria to the issuing procurement unit.]~~

1984 ~~[(b) The issuing procurement unit shall:]~~

1985 ~~[(i) if applicable, assign an individual who is not a member of the evaluation~~
 1986 ~~committee to calculate scores for cost based on the applicable scoring formula, weighting, and~~
 1987 ~~other scoring procedures contained in the request for proposals;]~~

1988 ~~[(ii) review the evaluation committee's scores and correct any errors, scoring~~
 1989 ~~inconsistencies, and reported noncompliance with this chapter;]~~

1990 ~~[(iii) add the scores calculated for cost, if applicable, to the evaluation committee's~~
 1991 ~~final recommended scores on criteria other than cost to derive the total combined score for each~~
 1992 ~~responsive proposal from a responsible offeror; and]~~

1993 ~~[(iv) provide to the evaluation committee the total combined score calculated for each~~
 1994 ~~responsive proposal from a responsible offeror, including any applicable cost formula,~~
 1995 ~~weighting, and scoring procedures used to calculate the total combined scores.]~~

1996 (7) (a) Except as provided in Subsection (7)(b), an evaluation committee member is
 1997 prohibited from knowing or having access to information relating to the cost of a proposal until
 1998 after the evaluation committee submits its recommendation to the procurement unit based on
 1999 the scores of all criteria other than cost.

2000 (b) A procurement official may waive the prohibition of Subsection (7)(a) by signing a
 2001 written statement indicating why waiving the prohibition is in the best interests of the
 2002 procurement unit.

2003 ~~[(c) The] (8) An evaluation committee may [not: (i)] change its final recommended~~
 2004 ~~scores [described in Subsection (6)(a)] after the evaluation committee has submitted those~~
 2005 ~~scores to the [issuing] procurement unit[; or].~~

2006 ~~[(ii) change cost scores calculated by the issuing procurement unit.]~~

2007 ~~[(7) (a) As used in this Subsection (7), "management fee" includes only the following~~
 2008 ~~fees of the construction manager/general contractor:]~~

2009 ~~[(i) preconstruction phase services;]~~

2010 ~~[(ii) monthly supervision fees for the construction phase; and]~~
2011 ~~[(iii) overhead and profit for the construction phase.]~~
2012 ~~[(b) When selecting a construction manager/general contractor for a construction~~
2013 ~~project, the evaluation committee:]~~
2014 ~~[(i) may score a construction manager/general contractor based upon criteria contained~~
2015 ~~in the solicitation, including qualifications, performance ratings, references, management plan,~~
2016 ~~certifications, and other project specific criteria described in the solicitation;]~~
2017 ~~[(ii) may, as described in the solicitation, weight and score the management fee as a~~
2018 ~~fixed rate or as a fixed percentage of the estimated contract value;]~~
2019 ~~[(iii) may, at any time after the opening of the responses to the request for proposals,~~
2020 ~~have access to, and consider, the management fee proposed by the offerors; and]~~
2021 ~~[(iv) except as provided in Subsection (9), may not know or have access to any other~~
2022 ~~information relating to the cost of construction submitted by the offerors, until after the~~
2023 ~~evaluation committee submits its final recommended scores on all other criteria to the issuing~~
2024 ~~procurement unit.]~~
2025 ~~[(8)] (9) (a) The deliberations and other proceedings of an evaluation committee may~~
2026 ~~be held in private.~~
2027 (b) If the evaluation committee is a public body, as defined in Section [52-4-103](#), the
2028 evaluation committee shall comply with Section [52-4-205](#) in closing a meeting for its
2029 deliberations and other proceedings.
2030 ~~[(9) An issuing procurement unit is not required to comply with Subsection (6) or~~
2031 ~~(7)(b)(iv), as applicable, if the head of the issuing procurement unit or a person designated by~~
2032 ~~rule made by the applicable rulemaking authority:]~~
2033 ~~[(a) signs a written statement:]~~
2034 ~~[(i) indicating that, due to the nature of the proposal or other circumstances, it is in the~~
2035 ~~best interest of the procurement unit to waive compliance with Subsection (6) or (7)(b)(iv), as~~
2036 ~~the case may be; and]~~
2037 ~~[(ii) describing the nature of the proposal and the other circumstances relied upon to~~
2038 ~~waive compliance with Subsection (6) or (7)(b)(iv); and]~~
2039 ~~[(b) makes the written statement available to the public, upon request.]~~
2040 (10) (a) At the conclusion of the evaluation process, an evaluation committee shall

2041 prepare and submit to the procurement unit a written statement that:

2042 (i) recommends a proposal for an award of a contract, if the evaluation committee
2043 decides to recommend a proposal;

2044 (ii) contains the score awarded to the recommended proposal based on the criteria
2045 stated in the request for proposals; and

2046 (iii) explains how the recommended proposal provides the best value to the
2047 procurement unit.

2048 (b) A procurement unit is not required to comply with Subsection (10)(a) for a contract
2049 with a construction manager/general contractor if the contract is awarded based solely on:

2050 (i) the qualifications of the construction manager/general contractor; and

2051 (ii) the management fee to be paid to the construction manager/general contractor.

2052 Section 34. Section **63G-6a-707.5** is amended to read:

2053 **63G-6a-707.5. Best and final offers.**

2054 (1) The best and final offer process described in this section:

2055 (a) may be used only in a request for proposals process, whether the request for
2056 proposals process is used independently or after the establishment of an approved vendor list
2057 through the approved vendor list process; and

2058 (b) may not be used in any other standard procurement process, whether the other
2059 standard procurement process is used independently or after the establishment of an approved
2060 vendor list through the approved vendor list process.

2061 (2) Subject to Subsection (3), a conducting procurement unit may request best and final
2062 offers from responsible offerors:

2063 (a) only with the approval of the [~~chief procurement officer or the head of the issuing~~
2064 ~~procurement unit~~] procurement official; and

2065 (b) if:

2066 (i) no single proposal adequately addresses all the specifications stated in the request
2067 for proposals;

2068 (ii) all proposals are unclear or deficient in one or more respects;

2069 (iii) all cost proposals exceed the identified budget or the procurement unit's available
2070 funding; or

2071 (iv) two or more proposals receive an identical evaluation score that is the highest

2072 score.

2073 (3) A conducting procurement unit may request a best and final offer from, and a best
2074 and final offer may be submitted to the conducting procurement unit by, only a responsible
2075 offeror that has submitted a responsive proposal that meets the minimum mandatory criteria
2076 stated in the request for proposals required to be considered in the stage of the procurement
2077 process at which best and final offers are being requested.

2078 (4) The best and final offer process may not be used to change:

2079 (a) a determination that an offeror is not responsible to a determination that the offeror
2080 is responsible; or

2081 (b) a determination that a proposal is not responsive to a determination that the
2082 proposal is responsive.

2083 (5) (a) This Subsection (5) applies if a request for best and final offers is issued
2084 because all cost proposals exceed the identified budget or the procurement unit's available
2085 funding.

2086 (b) (i) The conducting procurement unit may, in the request for best and final offers:

2087 (A) specify the scope of work reductions the procurement unit is making in order to
2088 generate proposals that are within the identified budget or the procurement unit's available
2089 funding; or

2090 (B) invite offerors submitting best and final offers to specify the scope of work
2091 reductions being made so that the reduced cost proposal is within the identified budget or the
2092 procurement unit's available funding.

2093 (ii) The conducting procurement unit is not required to accept a scope of work
2094 reduction that an offeror has specified in the offeror's best and final offer.

2095 (c) A best and final offer submitted with a reduced cost proposal shall include an
2096 itemized list identifying specific reductions in the offeror's proposed scope of work that
2097 correspond to the offeror's reduced cost proposal.

2098 (d) A reduction in the scope of work may not:

2099 (i) eliminate a component identified in the request for proposals as a minimum
2100 mandatory requirement; or

2101 (ii) alter the nature of the original request for proposals to the extent that a request for
2102 proposals for the reduced scope of work would have likely attracted a significantly different set

2103 of offerors submitting proposals in response to the request for proposals.

2104 (6) If a request for best and final offers is issued because two or more proposals
2105 received an identical evaluation score that is the highest score:

2106 (a) the request may be issued only to offerors who submitted a proposal receiving the
2107 highest score; and

2108 (b) an offeror submitting a best and final offer may revise:

2109 (i) the technical aspects of the offeror's proposal;

2110 (ii) the offeror's cost proposal, as provided in Subsection (5); or

2111 (iii) both the technical aspects of the offeror's proposal and, as provided in Subsection
2112 (5), the offeror's cost proposal.

2113 (7) In a request for best and final offers, the conducting procurement unit shall:

2114 (a) clearly specify:

2115 (i) the issues that the procurement unit requests the offerors to address in their best and
2116 final offers; and

2117 (ii) how best and final offers will be evaluated and scored in accordance with Section
2118 [~~63G-6a-707~~] [63G-6a-707.5](#);

2119 (b) establish a deadline for an offeror to submit a best and final offer; and

2120 (c) if applicable, establish a schedule and procedure for conducting discussions with
2121 offerors concerning the best and final offers.

2122 (8) In conducting a best and final offer process under this section, a conducting
2123 procurement unit shall:

2124 (a) maintain confidential the information the procurement unit receives from an
2125 offeror, including any cost information, until a contract has been awarded or the request for
2126 proposals canceled;

2127 (b) ensure that each offeror receives fair and equal treatment; and

2128 (c) safeguard the integrity of the scope of the original request for proposals, except as
2129 specifically provided otherwise in this section.

2130 (9) In a best and final offer, an offeror:

2131 (a) may address only the issues described in the request for best and final offers; and

2132 (b) may not correct a material error or deficiency in the offeror's proposal or address
2133 any issue not described in the request for best and final offers.

2134 (10) If an offeror fails to submit a best and final offer, the conducting procurement unit
2135 shall treat the offeror's original proposal as the offeror's best and final offer.

2136 (11) After the deadline for submitting best and final offers has passed, the evaluation
2137 committee shall evaluate the best and final offers submitted using the criteria described in the
2138 request for proposals.

2139 (12) An offeror may not make and a conducting procurement unit may not consider a
2140 best and final offer that the conducting procurement unit has not requested under this section.

2141 (13) To implement the best and final offer process described in this section, ~~an~~
2142 ~~applicable~~ a rulemaking authority may make rules consistent with this section and the other
2143 provisions of this chapter.

2144 Section 35. Section ~~63G-6a-712~~ is amended to read:

2145 **63G-6a-712. Unsolicited proposals.**

2146 (1) As used in this section, "unsolicited proposal"~~[(a)]~~ means a written proposal:

2147 ~~[(i)]~~ (a) for a public-private partnership for:

2148 ~~[(A)]~~ (i) an infrastructure project; or

2149 ~~[(B)]~~ (ii) a project to collect, analyze, and distribute health data to improve health and
2150 health care and to facilitate interaction regarding health and health care issues; and

2151 ~~[(ii)]~~ (b) that is not submitted in response to a solicitation~~[-and]~~.

2152 ~~[(b) does not include an initial proposal, as defined in Section 63G-6a-711.]~~

2153 (2) (a) Subject to Subsection (2)(b), a person may submit an unsolicited proposal to a
2154 procurement unit at any time.

2155 (b) An unsolicited proposal may not be used to seek a procurement unit's consideration
2156 of a proposal after the expiration of the time for submitting proposals in response to a request
2157 for proposals.

2158 (3) An unsolicited proposal shall include:

2159 (a) a reference to this section and a statement that the unsolicited proposal is submitted
2160 under this section;

2161 (b) a conceptual description of the project that constitutes the procurement item that is
2162 the subject of the proposed public-private partnership;

2163 (c) a description of the economic benefit of the project to the state and the procurement
2164 unit;

2165 (d) information concerning the services or facilities currently being provided by the
2166 state or procurement unit that are similar to the project;

2167 (e) an estimate of the project costs for:

2168 (i) design;

2169 (ii) implementation;

2170 (iii) operation and maintenance; and

2171 (iv) any other related project cost; and

2172 (f) the name, address, telephone number, and email address of an individual who may
2173 be contacted for further information concerning the unsolicited proposal.

2174 (4) A procurement unit is not required to consider an unsolicited proposal.

2175 (5) A procurement unit may charge a person submitting an unsolicited proposal a fee to
2176 cover the actual cost of processing, considering, and evaluating the unsolicited proposal.

2177 (6) A procurement unit that receives an unsolicited proposal may not award a contract
2178 for the procurement item described in the unsolicited proposal unless:

2179 (a) the procurement unit first engages in a standard procurement process for proposals
2180 to provide the procurement item described in the unsolicited proposal; or

2181 (b) awarding the contract without the procurement unit engaging in a standard
2182 procurement process is allowed under Section [63G-6a-802](#).

2183 (7) If a procurement unit engages in a standard procurement process pursuant to
2184 Subsection (6)(a):

2185 (a) the procurement unit shall treat an unsolicited proposal as though it were submitted
2186 as a proposal in response to the solicitation; and

2187 (b) a person who has submitted an unsolicited proposal may, within the time provided
2188 in the solicitation for the submission of proposals, modify the unsolicited proposal to the extent
2189 necessary to address matters raised in the solicitation that were not addressed in the initial
2190 unsolicited proposal.

2191 (8) ~~[An applicable]~~ A rulemaking authority may make rules to govern the submission,
2192 processing, consideration, and evaluation of an unsolicited proposal, including fees relating to
2193 the unsolicited proposal.

2194 (9) An unsolicited proposal is subject to Chapter 2, Government Records Access and
2195 Management Act, including, if applicable, provisions relating to a written claim of business

2196 confidentiality, as provided in Section [63G-2-309](#), for trade secrets, commercial information, or
2197 nonindividual financial information described in Subsection [63G-2-305](#)(1) or (2).

2198 Section 36. Section **63G-6a-802** is amended to read:

2199 **63G-6a-802. Award of contract without engaging in a standard procurement**
2200 **process -- Notice -- Duty to negotiate contract terms in best interest of procurement unit.**

2201 (1) [~~The chief procurement officer or the head of a procurement unit with independent~~
2202 ~~procurement authority~~] A procurement unit may award a contract for a procurement item
2203 without engaging in a standard procurement process if the [~~chief procurement officer or the~~
2204 ~~head of the procurement unit with independent procurement authority~~] procurement official
2205 determines in writing that:

2206 (a) there is only one source for the procurement item;

2207 (b) (i) transitional costs are a significant consideration in selecting a procurement item;

2208 and

2209 (ii) the results of a cost-benefit analysis demonstrate that transitional costs are
2210 unreasonable or cost-prohibitive, and that the award of a contract without engaging in a
2211 standard procurement process is in the best interest of the procurement unit; or

2212 (c) the award of a contract is under circumstances, described in rules adopted by the
2213 [~~applicable~~] rulemaking authority, that make awarding the contract through a standard
2214 procurement process impractical and not in the best interest of the procurement unit.

2215 (2) Transitional costs associated with a trial use or testing of a procurement item under
2216 a trial use contract awarded under Section [63G-6a-802.3](#) may not be included in a
2217 consideration of transitional costs under Subsection (1)(b).

2218 (3) (a) Subject to Subsection (3)(b), [~~the applicable~~] a rulemaking authority shall make
2219 rules regarding the publication of notice for a procurement under this section that, at a
2220 minimum, require publication of notice of the procurement, in accordance with Section
2221 [63G-6a-112](#), if the cost of the procurement exceeds \$50,000.

2222 (b) Publication of notice under Section [63G-6a-112](#) is not required for:

2223 (i) the procurement of public utility services pursuant to a sole source contract; or

2224 (ii) other procurements under this section for which an applicable rule provides that
2225 notice is not required.

2226 (4) [~~The chief procurement officer or the head of a procurement unit with independent~~

2227 ~~procurement authority]~~ A procurement official who awards a contract under this section shall
 2228 negotiate with the contractor to ensure that the terms of the contract, including price and
 2229 delivery, are in the best interest of the procurement unit.

2230 Section 37. Section **63G-6a-802.3** is amended to read:

2231 **63G-6a-802.3. Trial use contracts.**

2232 (1) A procurement unit may award a trial use contract without engaging in a standard
 2233 procurement process if:

2234 (a) the purpose of the contract is to:

2235 (i) determine whether the procurement item will benefit the procurement unit;

2236 (ii) assess the feasibility of a procurement item that:

2237 (A) is new or innovative; or

2238 (B) has a proposed use or application that is novel or unproven; or

2239 (iii) evaluate whether to conduct a standard procurement process for the procurement
 2240 item being tested; and

2241 (b) the contract is:

2242 ~~[(a)]~~ (i) awarded for a procurement item that is not already available to the

2243 procurement unit under an existing contract;

2244 ~~[(b)]~~ (ii) restricted to the procurement of a procurement item in the minimum quantity

2245 and for the minimum period of time necessary to test the procurement item;

2246 ~~[(c)]~~ (iii) the only trial use contract for that procurement unit for the same procurement

2247 item; and

2248 ~~[(d)]~~ (iv) not used to circumvent the purposes and policies of this chapter as set forth in

2249 Section **63G-6a-102**.

2250 (2) The period of trial use or testing of a procurement item under a trial use contract
 2251 may not exceed ~~[+8]~~ 24 months, unless the procurement ~~[officer]~~ official provides a written
 2252 exception documenting the reason for a longer period.

2253 (3) A trial use contract shall:

2254 (a) state that the contract is strictly for the trial use or testing of a procurement item;

2255 (b) state that the contract terminates upon completion of the trial use or testing period;

2256 (c) state that the procurement unit is not obligated to purchase or enter into a contract

2257 for the procurement item, regardless of the trial use or testing result;

2258 (d) state that any purchase of the procurement item that is the subject of the trial use
2259 contract will be made in accordance with this chapter; and

2260 (e) include, as applicable:

2261 (i) test schedules;

2262 (ii) deadlines and a termination date;

2263 (iii) measures that will be used to evaluate the performance of the procurement item;

2264 (iv) any fees and associated expenses or an explanation of the circumstances

2265 warranting a waiver of those fees and expenses;

2266 (v) the obligations of the procurement unit and vendor;

2267 (vi) provisions regarding the ownership of the procurement item during and after the
2268 trial use or testing period;

2269 (vii) an explanation of the grounds upon which the contract may be terminated;

2270 (viii) a provision relating to any required bond or security deposit; and

2271 (ix) other requirements unique to the procurement item for trial use or testing.

2272 (4) Publication of notice under Section [63G-6a-112](#) is not required for a trial use
2273 contract.

2274 (5) ~~[The applicable]~~ A rulemaking authority may make rules pertaining to a trial use
2275 contract.

2276 Section 38. Section **63G-6a-802.7** is amended to read:

2277 **63G-6a-802.7. Extension of a contract without engaging in a standard**
2278 **procurement process.**

2279 ~~[The chief procurement officer or the head of a procurement unit with independent~~
2280 ~~procurement authority]~~ A procurement official may extend an existing contract without
2281 engaging in a standard procurement process:

2282 (1) for a period of time not to exceed 120 days, if:

2283 (a) an extension of the contract is necessary to:

2284 (i) avoid a lapse in a critical government service; or

2285 (ii) to mitigate a circumstance that is likely to have a negative impact on public health,
2286 safety, welfare, or property; and

2287 (b) (i) (A) the procurement unit is engaged in a standard procurement process for a
2288 procurement item that is the subject of the contract being extended; and

- 2289 (B) the standard procurement process is delayed due to an unintentional error;
2290 (ii) a change in an industry standard requires one or more significant changes to
2291 specifications for the procurement item; or
2292 (iii) an extension is necessary:
2293 (A) to prevent the loss of federal funds;
2294 (B) to mitigate the effects of a delay of a state or federal appropriation;
2295 (C) to enable the procurement unit to continue to receive a procurement item during a
2296 delay in the implementation of a contract awarded pursuant to a procurement that has already
2297 been conducted; or
2298 (D) to enable the procurement unit to continue to receive a procurement item during a
2299 period of time during which negotiations with a vendor under a new contract for the
2300 procurement item are being conducted;
2301 (2) for the period of a protest, appeal, or court action, if the protest, appeal, or court
2302 action is the reason for delaying the award of a new contract; or
2303 (3) for a period of time exceeding 120 days, if, after consulting with the attorney
2304 general or the procurement unit's attorney, the [~~chief procurement officer or head of a~~
2305 ~~procurement unit with independent procurement authority~~] procurement official determines in
2306 writing that the contract extension does not violate state or federal antitrust laws and is
2307 consistent with the purpose of ensuring the fair and equitable treatment of all persons who deal
2308 with the procurement system.

2309 Section 39. Section **63G-6a-803** is amended to read:

2310 **63G-6a-803. Emergency procurement.**

- 2311 (1) Notwithstanding any other provision of this chapter, [~~the chief procurement officer~~
2312 ~~or the head of a procurement unit with independent procurement authority~~] a procurement
2313 official may authorize a procurement unit to engage in an emergency procurement without
2314 using a standard procurement process if the procurement is necessary to:
2315 (a) avoid a lapse in a critical government service;
2316 (b) mitigate a circumstance that is likely to have a negative impact on public health,
2317 safety, welfare, or property; or
2318 (c) protect the legal interests of a public entity.
2319 (2) A procurement unit conducting an emergency procurement under Subsection (1)

2320 shall:

2321 (a) ensure that the procurement is made with as much competition as reasonably
2322 practicable while:

2323 (i) avoiding a lapse in a critical government service;

2324 (ii) avoiding harm, or a risk of harm, to the public health, safety, welfare, or property;

2325 or

2326 (iii) protecting the legal interests of a public entity; and

2327 (b) after the emergency has abated, prepare a written document explaining the
2328 emergency condition that necessitated the emergency procurement under Subsection (1).

2329 Section 40. Section **63G-6a-804** is amended to read:

2330 **63G-6a-804. Purchase of prison industry goods.**

2331 (1) As used in this section[~~,"applicable"]:~~

2332 (a) "Applicable procurement unit" means a procurement unit that is not:

2333 [~~(a)~~] (i) a political subdivision of the state; or

2334 [~~(b)~~] (ii) the Utah Schools for the Deaf and the Blind.

2335 (b) "Correctional industries division" means the Division of Correctional Industries,
2336 created in Section 64-13a-4.

2337 (c) "Correctional industries director" means the director of the correctional industries
2338 division, appointed under Section 64-13a-4.

2339 (2) (a) An applicable procurement unit shall purchase goods and services produced by
2340 the [~~Utah Correctional Industries Division~~] correctional industries division as provided in this
2341 section.

2342 (b) A procurement unit that is not an applicable procurement unit may, and is
2343 encouraged to, purchase goods and services under this section.

2344 (c) A procurement unit is not required to use a standard procurement process to
2345 purchase goods or services under this section.

2346 (3) On or before July 1 of each year, the correctional industries director [~~of the Utah~~
2347 ~~Correctional Industries~~] shall:

2348 (a) publish and distribute to all procurement units and other interested public entities a
2349 catalog of goods and services [~~provided~~] produced by the [~~Correctional Industries Division~~]
2350 correctional industries division, including a description and price of each item offered for sale;

2351 and

2352 (b) update and revise the catalog described in Subsection (3)(a) during the year as the
2353 correctional industries director considers necessary.

2354 (4) (a) An applicable procurement unit may not purchase any goods or services
2355 provided by the [~~Correctional Industries Division~~] correctional industries division from any
2356 other source unless [~~it has been determined in writing by the director of Correctional Industries~~
2357 ~~and by the~~] the correctional industries director and the procurement [officer] official or, in the
2358 case of institutions of higher education, the institutional procurement officer, determine in
2359 writing that purchase from the [~~Correctional Industries Division~~] correctional industries
2360 division is not feasible due to one of the following circumstances:

2361 (i) the good or service offered by the correctional industries division does not meet the
2362 reasonable requirements of the procurement unit;

2363 (ii) the good or service cannot be supplied within a reasonable time by the correctional
2364 industries division; or

2365 (iii) the cost of the good or service, including basic price, transportation costs, and
2366 other expenses of acquisition, is not competitive with the cost of procuring the item from
2367 another source.

2368 (b) In cases of disagreement under Subsection (4)(a):

2369 (i) the decision may be appealed to a board consisting of:

2370 (A) the director of the Department of Corrections;

2371 (B) the director of Administrative Services; and

2372 (C) a neutral third party agreed upon by the other two members of the board;

2373 (ii) in the case of an institution of higher education of the state, the president of the
2374 institution, or the president's designee, shall make the final decision; or

2375 (iii) in the case of any of the following entities, a person designated by the [~~applicable~~]
2376 rulemaking authority shall make the final decision:

2377 (A) a legislative procurement unit;

2378 (B) a judicial procurement unit; or

2379 (C) a public transit district.

2380 Section 41. Section **63G-6a-806** is amended to read:

2381 **63G-6a-806. Exception for public transit district contracting with a county or**

2382 **municipality.**

2383 A public transit district, organized under Title 17B, Chapter 2a, Part 8, Public Transit
2384 District Act, may, without going through a standard procurement process or another exception
2385 to a standard procurement process described in this part:

2386 (1) contract with a county or municipality to receive money from the county or
2387 municipality; and

2388 (2) use the money described in Subsection (1) to fund a transportation project or a
2389 transit-related program in accordance with rules made by the [applicable] rulemaking authority.

2390 Section 42. Section **63G-6a-902** is amended to read:

2391 **63G-6a-902. Cancellation and rejection of bids and proposals.**

2392 (1) An issuing procurement unit may cancel an invitation for bids, a request for
2393 proposals, or other solicitation or reject any or all bids or proposal responses, in whole or in
2394 part, as may be specified in the solicitation, when it is in the best interests of the procurement
2395 unit in accordance with the rules of the [applicable] rulemaking authority.

2396 (2) The reasons for a cancellation or rejection described in Subsection (1) shall be
2397 made part of the contract file.

2398 Section 43. Section **63G-6a-903** is amended to read:

2399 **63G-6a-903. Determination of nonresponsibility.**

2400 (1) A determination of nonresponsibility of a person made by an issuing procurement
2401 unit shall be made in writing, in accordance with the rules of the [applicable] rulemaking
2402 authority.

2403 (2) A person's unreasonable failure to promptly supply information in connection with
2404 an inquiry with respect to responsibility may be grounds for a determination of
2405 nonresponsibility with respect to the person.

2406 (3) Subject to Title 63G, Chapter 2, Government Records Access and Management
2407 Act, information furnished by a person pursuant to this section may not be disclosed outside of
2408 a procurement unit without the person's prior written consent.

2409 Section 44. Section **63G-6a-904** is amended to read:

2410 **63G-6a-904. Debarment or suspension from consideration for award of contracts**

2411 **-- Process -- Causes for debarment -- Judicial review.**

2412 (1) (a) Subject to Subsection (1)(b), [~~the chief procurement officer or the head of a~~

2413 ~~procurement unit with independent procurement authority]~~ a procurement official may:

2414 (i) debar a person for cause from consideration for award of contracts for a period not
2415 to exceed three years; or

2416 (ii) suspend a person from consideration for award of contracts if there is cause to
2417 believe that the person has engaged in any activity that might lead to debarment.

2418 (b) Before debarring or suspending a person under Subsection (1)(a), ~~[the chief~~
2419 ~~procurement officer or head of a procurement unit with independent procurement authority]~~ a
2420 procurement official shall:

2421 (i) consult with:

2422 (A) the procurement unit involved in the matter for which debarment or suspension is
2423 sought; and

2424 (B) the attorney general, if the procurement unit is in the state executive branch, or the
2425 procurement unit's attorney, if the procurement unit is not in the state executive branch;

2426 (ii) give the person at least 10 days' prior written notice of:

2427 (A) the reasons for which debarment or suspension is being considered; and

2428 (B) the hearing under Subsection (1)(b)(iii); and

2429 (iii) hold an informal hearing in accordance with Subsection (1)(c).

2430 (c) (i) At an informal hearing under Subsection (1)(b)(iii), ~~[the chief procurement~~
2431 ~~officer or head of a procurement unit with independent procurement authority]~~ a procurement
2432 official may:

2433 (A) subpoena witnesses and compel their attendance at the hearing;

2434 (B) subpoena documents for production at the hearing;

2435 (C) obtain additional factual information; and

2436 (D) obtain testimony from experts, the person who is the subject of the proposed
2437 debarment or suspension, representatives of the procurement unit, or others to assist the ~~[chief~~
2438 ~~procurement officer or head of a procurement unit with independent procurement authority]~~
2439 procurement official to make a decision on the proposed debarment or suspension.

2440 (ii) The Rules of Evidence do not apply to an informal hearing under Subsection
2441 (1)(b)(iii).

2442 ~~[(iii) The chief procurement officer or head of a procurement unit with independent~~
2443 ~~procurement authority]~~

2444 (iii) A procurement official shall:

2445 (A) record a hearing under Subsection (1)(b)(iii); and

2446 (B) preserve all records and other evidence relied upon in reaching a decision until the
2447 decision becomes final.

2448 (iv) The holding of an informal hearing under Subsection (1)(b)(iii) or the issuing of a
2449 decision under Subsection (1)(c)(v) does not affect a person's right to later question or
2450 challenge the jurisdiction of the [~~chief procurement officer or head of a procurement unit with~~
2451 ~~independent procurement authority~~] procurement official to hold a hearing or issue a decision.

2452 [~~(v) The chief procurement officer or head of a procurement unit with independent~~
2453 ~~procurement authority~~]

2454 (v) A procurement official shall:

2455 (A) promptly issue a written decision regarding a proposed debarment or suspension,
2456 unless the matter is settled by mutual agreement; and

2457 (B) mail, email, or otherwise immediately furnish a copy of the decision to the person
2458 who is the subject of the decision.

2459 (vi) A written decision under Subsection (1)(c)(v) shall:

2460 (A) state the reasons for the debarment or suspension, if debarment or suspension is
2461 ordered; and

2462 (B) inform the person who is debarred or suspended of the right to judicial review as
2463 provided in this chapter.

2464 (vii) A decision of debarment or suspension is final and conclusive unless the decision
2465 is overturned by a court under Subsection (4).

2466 (2) A suspension under this section may not be for a period exceeding three months,
2467 unless an indictment has been issued for an offense which would be a cause for debarment
2468 under Subsection (3), in which case the suspension shall, at the request of the attorney general,
2469 if the procurement unit is in the state executive branch, or the procurement unit's attorney, if
2470 the procurement unit is not in the state executive branch, remain in effect until after the trial of
2471 the suspended person.

2472 (3) The causes for debarment include the following:

2473 (a) conviction of a criminal offense as an incident to obtaining or attempting to obtain a
2474 public or private contract or subcontract or in the performance of a public or private contract or

2475 subcontract;

2476 (b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery,
2477 falsification or destruction of records, receiving stolen property, or any other offense indicating
2478 a lack of business integrity or business honesty which currently, seriously, and directly affects
2479 responsibility as a contractor for the procurement unit;

2480 (c) conviction under state or federal antitrust statutes;

2481 (d) failure without good cause to perform in accordance with the terms of the contract;

2482 (e) a violation of this chapter; or

2483 (f) any other cause that the [~~chief procurement officer or the head of a procurement unit~~
2484 ~~with independent procurement authority~~] procurement official determines to be so serious and
2485 compelling as to affect responsibility as a contractor for the procurement unit, including
2486 debarment by another governmental entity.

2487 (4) (a) A person who is debarred or suspended under this section may seek judicial
2488 review of the debarment or suspension by filing a petition for judicial review in district court.

2489 (b) A petition under Subsection (4)(a):

2490 (i) is a complaint governed by the Utah Rules of Civil Procedure;

2491 (ii) shall name the procurement unit as respondent;

2492 (iii) shall be accompanied by a copy of the written decision as to which judicial review
2493 is sought; and

2494 (iv) is barred unless filed in district court within 30 days after the date of the issuance
2495 of the written decision of suspension or debarment under Subsection (1)(c)(v).

2496 (c) A district court's review of a petition under Subsection (4)(a) shall be de novo.

2497 (d) A district court shall, without a jury, determine all questions of fact and law,
2498 including any constitutional issue, presented in the pleadings.

2499 (5) A procurement unit may consider a cause for debarment under Subsection (3) as the
2500 basis for determining that a person responding to a solicitation is not responsible:

2501 (a) independent of any effort or proceeding under this section to debar or suspend the
2502 person; and

2503 (b) even if the procurement unit does not choose to seek debarment or suspension.

2504 (6) [~~An applicable~~] A rulemaking authority may make rules pertaining to the
2505 suspension and debarment process under this section, including rules governing an informal

2506 hearing under Subsection (1)(b)(iii).

2507 Section 45. Section **63G-6a-1002** is amended to read:

2508 **63G-6a-1002. Reciprocal preference for providers of state products.**

2509 (1) (a) An issuing procurement unit shall, for all procurements, give a reciprocal
2510 preference to those bidders offering procurement items that are produced, manufactured,
2511 mined, grown, or performed in Utah over those bidders offering procurement items that are
2512 produced, manufactured, mined, grown, or performed in any state that gives or requires a
2513 preference to procurement items that are produced, manufactured, mined, grown, or performed
2514 in that state.

2515 (b) The amount of reciprocal preference shall be equal to the amount of the preference
2516 applied by the other state for that particular procurement item.

2517 (c) In order to receive a reciprocal preference under this section, the bidder shall certify
2518 on the bid that the procurement items offered are produced, manufactured, mined, grown, or
2519 performed in Utah.

2520 (d) The reciprocal preference is waived if the certification described in Subsection
2521 (1)(c) does not appear on the bid.

2522 (2) (a) If the responsible bidder submitting the lowest responsive bid offers
2523 procurement items that are produced, manufactured, mined, grown, or performed in a state that
2524 gives or requires a preference, and if another responsible bidder has submitted a responsive bid
2525 offering procurement items that are produced, manufactured, mined, grown, or performed in
2526 Utah, and with the benefit of the reciprocal preference, the bid of the other bidder is equal to or
2527 less than the original lowest bid, the issuing procurement unit shall:

2528 (i) give notice to the bidder offering procurement items that are produced,
2529 manufactured, mined, grown, or performed in Utah that the bidder qualifies as a preferred
2530 bidder; and

2531 (ii) make the purchase from the preferred bidder if the bidder agrees, in writing, to
2532 meet the low bid within 72 hours after notification that the bidder is a preferred bidder.

2533 (b) The issuing procurement unit shall include the exact price submitted by the lowest
2534 bidder in the notice the issuing procurement unit submits to the preferred bidder.

2535 (c) The issuing procurement unit may not enter into a contract with any other bidder for
2536 the purchase until 72 hours have elapsed after notification to the preferred bidder.

2537 (3) (a) If there is more than one preferred bidder, the issuing procurement unit shall
2538 award the contract to the willing preferred bidder who was the lowest preferred bidder
2539 originally.

2540 (b) If there were two or more equally low preferred bidders, the issuing procurement
2541 unit shall comply with the rules of the [applicable] rulemaking authority to determine which
2542 bidder should be awarded the contract.

2543 (4) The provisions of this section do not apply if application of this section might
2544 jeopardize the receipt of federal funds.

2545 Section 46. Section **63G-6a-1003** is amended to read:

2546 **63G-6a-1003. Preference for resident contractors.**

2547 (1) As used in this section, "resident contractor" means a person, partnership,
2548 corporation, or other business entity that:

2549 (a) either has its principal place of business in Utah or that employs workers who are
2550 residents of this state when available; and

2551 (b) was transacting business on the date when bids for the public contract were first
2552 solicited.

2553 (2) (a) When awarding contracts for construction, an issuing procurement unit shall
2554 grant a resident contractor a reciprocal preference over a nonresident contractor from any state
2555 that gives or requires a preference to contractors from that state.

2556 (b) The amount of the reciprocal preference shall be equal to the amount of the
2557 preference applied by the state of the nonresident contractor.

2558 (3) (a) In order to receive the reciprocal preference under this section, the bidder shall
2559 certify on the bid that the bidder qualifies as a resident contractor.

2560 (b) The reciprocal preference is waived if the certification described in Subsection
2561 (2)(a) does not appear on the bid.

2562 (4) (a) If the responsible contractor submitting the lowest responsive bid is not a
2563 resident contractor whose principal place of business is in a state that gives or requires a
2564 preference to contractors from that state, and if a resident responsible contractor has also
2565 submitted a responsive bid, and, with the benefit of the reciprocal preference, the resident
2566 contractor's bid is equal to or less than the original lowest bid, the issuing procurement unit
2567 shall:

2568 (i) give notice to the resident contractor that the resident contractor qualifies as a
2569 preferred resident contractor; and

2570 (ii) issue the contract to the resident contractor if the resident contractor agrees, in
2571 writing, to meet the low bid within 72 hours after notification that the resident contractor is a
2572 preferred resident contractor.

2573 (b) The issuing procurement unit shall include the exact price submitted by the lowest
2574 bidder in the notice that the issuing procurement unit submits to the preferred resident
2575 contractor.

2576 (c) The issuing procurement unit may not enter into a contract with any other bidder for
2577 the construction until 72 hours have elapsed after notification to the preferred resident
2578 contractor.

2579 (5) (a) If there is more than one preferred resident contractor, the issuing procurement
2580 unit shall award the contract to the willing preferred resident contractor who was the lowest
2581 preferred resident contractor originally.

2582 (b) If there were two or more equally low preferred resident contractors, the issuing
2583 procurement unit shall comply with the rules of the [applicable] rulemaking authority to
2584 determine which bidder should be awarded the contract.

2585 (6) The provisions of this section do not apply if application of this section might
2586 jeopardize the receipt of federal funds.

2587 Section 47. Section **63G-6a-1102** is amended to read:

2588 **63G-6a-1102. Bid security requirements -- Directed suretyship prohibited --**
2589 **Penalty.**

2590 (1) Bid security in an amount equal to at least 5% of the amount of the bid shall be
2591 required for all competitive bidding for construction contracts. Bid security shall be a bond
2592 provided by a surety company authorized to do business in this state, the equivalent in cash, or
2593 any other form satisfactory to the state.

2594 (2) When a bidder fails to comply with the requirement for bid security described in the
2595 invitation for bids, the bid shall be rejected unless, pursuant to rules of the [applicable]
2596 rulemaking authority, the issuing procurement unit determines that the failure to comply with
2597 the security requirements is nonsubstantial.

2598 (3) After the bids are opened, they shall be irrevocable for the period specified in the

2599 invitation for bids[, ~~except as provided in Section 63G-6a-605~~]. If a bidder is permitted to
2600 withdraw a bid before award, no action shall be taken against the bidder or the bid security.

2601 (4) (a) When issuing an invitation for a bid under this chapter, the procurement [~~officer~~
2602 ~~or the head of an issuing procurement unit~~] official responsible for carrying out a construction
2603 project may not require a person or entity who is bidding for a contract to obtain a bond of the
2604 type described in Subsection (1) from a specific insurance or surety company, producer, agent,
2605 or broker.

2606 (b) A person who violates Subsection (4)(a) is guilty of an infraction.

2607 Section 48. Section **63G-6a-1103** is amended to read:

2608 **63G-6a-1103. Bonds or security necessary when contract is awarded -- Waiver --**
2609 **Action -- Attorney fees.**

2610 (1) When a construction contract is awarded under this chapter, the contractor to whom
2611 the contract is awarded shall deliver the following bonds or security to the procurement unit,
2612 which shall become binding on the parties upon the execution of the contract:

2613 (a) a performance bond satisfactory to the procurement unit that is in an amount equal
2614 to 100% of the price specified in the contract and is executed by a surety company authorized
2615 to do business in the state or any other form satisfactory to the procurement unit; and

2616 (b) a payment bond satisfactory to the procurement unit that is in an amount equal to
2617 100% of the price specified in the contract and is executed by a surety company authorized to
2618 do business in the state or any other form satisfactory to the procurement unit, which is for the
2619 protection of each person supplying labor, service, equipment, or material for the performance
2620 of the work provided for in the contract.

2621 (2) (a) When a construction contract is awarded under this chapter, the procurement
2622 [~~officer or the head of the issuing procurement unit~~] official responsible for carrying out the
2623 construction project may not require a contractor to whom a contract is awarded to obtain a
2624 bond of the types referred to in Subsection (1) from a specific insurance or surety company,
2625 producer, agent, or broker.

2626 (b) A person who violates Subsection (2)(a) is guilty of an infraction.

2627 (3) Rules of [~~the applicable~~] a rulemaking authority may provide for waiver of the
2628 requirement of a bid, performance, or payment bond for circumstances in which the
2629 procurement [~~officer~~] official considers any or all of the bonds to be unnecessary to protect the

2630 procurement unit.

2631 (4) A person [~~shall have~~] has a right of action on a payment bond under this section for
2632 any unpaid amount due to the person if:

2633 (a) the person has furnished labor, service, equipment, or material for the work
2634 provided for in the contract for which the payment bond is furnished under this section; and

2635 (b) the person has not been paid in full within 90 days after the last day on which the
2636 person performed the labor or service or supplied the equipment or material for which the
2637 claim is made.

2638 (5) An action upon a payment bond may only be brought in a court of competent
2639 jurisdiction in a county where the construction contract was to be performed. The action is
2640 barred if not commenced within one year after the last day on which the claimant performed
2641 the labor or service or supplied the equipment or material on which the claim is based. The
2642 obligee named in the bond need not be joined as a party to the action.

2643 (6) In any suit upon a payment bond, the court shall award reasonable attorney fees to
2644 the prevailing party, which fees shall be taxed as costs in the action.

2645 Section 49. Section **63G-6a-1105** is amended to read:

2646 **63G-6a-1105. Form of bonds -- Effect of certified copy.**

2647 (1) The form of the bonds required by this part shall be established by rule made by the
2648 [~~applicable~~] rulemaking authority.

2649 (2) Any person may obtain from the procurement unit a certified copy of a bond upon
2650 payment of the cost of reproduction of the bond and postage, if any.

2651 (3) A certified copy of a bond is prima facie evidence of the contents, execution, and
2652 delivery of the original.

2653 Section 50. Section **63G-6a-1204.5** is amended to read:

2654 **63G-6a-1204.5. Multiple award contracts.**

2655 (1) (a) Through a standard procurement process, the division or [~~a~~] an independent
2656 procurement unit [~~with independent procurement authority~~] may enter into multiple award
2657 contracts with multiple persons.

2658 (b) The applicable rulemaking authority may make rules, consistent with this section,
2659 regulating the use of multiple award contracts.

2660 (2) Multiple award contracts may be in a procurement unit's best interest if award to

2661 two or more bidders or offerors for similar procurement items is needed or desired for adequate
2662 delivery, service, availability, or product compatibility.

2663 (3) A procurement unit that enters into multiple award contracts under this section
2664 shall:

2665 (a) exercise care to protect and promote competition among bidders or offerors when
2666 seeking to enter into multiple award contracts;

2667 (b) name all eligible users of the multiple award contracts in the invitation for bids or
2668 request for proposals; and

2669 (c) if the procurement unit anticipates entering into multiple award contracts before
2670 issuing the invitation for bids or request for proposals, state in the invitation for bids or request
2671 for proposals that the procurement unit may enter into multiple award contracts at the end of
2672 the procurement process.

2673 (4) A procurement unit that enters into multiple award contracts under this section
2674 shall:

2675 (a) obtain, under the multiple award contracts, all of its normal, recurring requirements
2676 for the procurement items that are the subject of the contracts until the contracts terminate; and

2677 (b) reserve the right to obtain the procurement items described in Subsection (4)(a)
2678 separately from the contracts if:

2679 (i) there is a need to obtain a quantity of the procurement items that exceeds the
2680 amount specified in the contracts; or

2681 (ii) the procurement officer makes a written finding that the procurement items
2682 available under the contract will not effectively or efficiently meet a nonrecurring special need
2683 of a procurement unit.

2684 (5) An applicable rulemaking authority may make rules to further regulate a
2685 procurement under this section.

2686 Section 51. Section **63G-6a-1205** is amended to read:

2687 **63G-6a-1205. Regulation of contract types -- Permitted and prohibited contract**
2688 **types.**

2689 (1) Except as otherwise provided in this section, and subject to rules made under this
2690 section by the [applicable] rulemaking authority, a procurement unit may use any type of
2691 contract that will promote the best interests of the procurement unit.

- 2692 (2) [~~An applicable~~] A rulemaking authority:
- 2693 (a) may make rules governing, placing restrictions on, or prohibiting the use of any
- 2694 type of contract; and
- 2695 (b) may not make rules that permit the use of a contract:
- 2696 (i) that is prohibited under this section; or
- 2697 (ii) in a manner that is prohibited under this section.
- 2698 (3) A procurement [~~officer, the head of an issuing procurement unit, or a designee of~~
- 2699 ~~either,~~] official may not use a type of contract, other than a firm fixed price contract, unless the
- 2700 procurement [~~officer~~] official makes a written determination that:
- 2701 (a) the proposed contractor's accounting system will permit timely development of all
- 2702 necessary cost data in the form required by the specific contract type contemplated;
- 2703 (b) the proposed contractor's accounting system is adequate to allocate costs in
- 2704 accordance with generally accepted accounting principles; and
- 2705 (c) the use of a specified type of contract, other than a firm fixed price contract, is in
- 2706 the best interest of the procurement unit, taking into consideration the following criteria:
- 2707 (i) the type and complexity of the procurement item;
- 2708 (ii) the difficulty of estimating performance costs at the time the contract is entered
- 2709 into, due to factors that may include:
- 2710 (A) the difficulty of determining definitive specifications;
- 2711 (B) the difficulty of determining the risks, to the contractor, that are inherent in the
- 2712 nature of the work to be performed; or
- 2713 (C) the difficulty to clearly determine other factors necessary to enter into an accurate
- 2714 firm fixed price contract;
- 2715 (iii) the administrative costs to the procurement unit and the contractor;
- 2716 (iv) the degree to which the procurement unit is required to provide technical
- 2717 coordination during performance of the contract;
- 2718 (v) the impact that the choice of contract type may have upon the level of competition
- 2719 for award of the contract;
- 2720 (vi) the stability of material prices, commodity prices, and wage rates in the applicable
- 2721 market;
- 2722 (vii) the impact of the contract type on the level of urgency related to obtaining the

2723 procurement item;

2724 (viii) the impact of any applicable governmental regulation relating to the contract; and

2725 (ix) other criteria that the procurement officer determines may relate to determining the

2726 contract type that is in the best interest of the procurement unit.

2727 (4) Contract types that, subject to the provisions of this section and rules made under

2728 this section, may be used by a procurement unit include the following:

2729 (a) a fixed price contract;

2730 (b) a fixed price contract with price adjustment;

2731 (c) a time and materials contract;

2732 (d) a labor hour contract;

2733 (e) a definite quantity contract;

2734 (f) an indefinite quantity contract;

2735 (g) a requirements contract;

2736 (h) a contract based on a rate table in accordance with industry standards; or

2737 (i) a contract that includes one of the following construction delivery methods:

2738 (i) design-build;

2739 (ii) design-bid-build; or

2740 (iii) construction manager/general contractor.

2741 (5) Except as it applies to a change order, a procurement unit may not enter into a

2742 cost-plus-percentage-of-cost contract, unless:

2743 (a) use of a cost-plus-percentage-of-cost contract is approved by the procurement

2744 officer;

2745 (b) it is standard practice in the industry to obtain the procurement item through a

2746 cost-plus-percentage-of-cost contract; and

2747 (c) the percentage and the method of calculating costs in the contract are in accordance

2748 with industry standards.

2749 (6) A procurement unit may not enter into a cost-reimbursement contract, unless the

2750 procurement [~~officer~~] official makes a written determination that:

2751 (a) (i) a cost-reimbursement contract is likely to cost less than any other type of

2752 permitted contract; or

2753 (ii) it is impracticable to obtain the procurement item under any other type of permitted

2754 contract; and

2755 (b) the proposed contractor's accounting system:

2756 (i) will timely develop the cost data in the form necessary for the procurement unit to
2757 timely and accurately make payments under the contract; and

2758 (ii) will allocate costs in accordance with generally accepted accounting principles.

2759 Section 52. Section **63G-6a-1206** is amended to read:

2760 **63G-6a-1206. Rules and regulations to determine allowable incurred costs --**

2761 **Required information.**

2762 (1) (a) [~~The applicable~~] A rulemaking authority may, by rule, establish the cost
2763 principles to be included in a cost-reimbursement contract to determine incurred costs for the
2764 purpose of calculating a reimbursement.

2765 (b) The cost principles established by rule under Subsection (1)(a) may be modified, by
2766 contract, if the procurement [~~officer or the head of the issuing procurement unit~~] official
2767 approves the modification.

2768 (2) Except as provided in Subsection (5), a person who seeks to be, or is, a party in a
2769 cost-based contract with a procurement unit shall:

2770 (a) submit cost or pricing data relating to determining the cost or pricing amount; and

2771 (b) certify that, to the best of the contractor's knowledge and belief, the cost or pricing
2772 data submitted is accurate and complete as of the date specified by the procurement unit.

2773 (3) The procurement [~~officer~~] official shall ensure that the date specified under
2774 Subsection (2)(b) is before:

2775 (a) the pricing of any contract awarded by a standard procurement process or pursuant
2776 to a sole source procurement, if the total contract price is expected to exceed an amount
2777 established by rule made by the [~~applicable~~] rulemaking authority; or

2778 (b) the pricing of any change order that is expected to exceed an amount established by
2779 rule made by the [~~applicable~~] rulemaking authority.

2780 (4) A contract or change order that requires a certification described in Subsection (2)
2781 shall include a provision that the price to the procurement unit, including profit or fee, shall be
2782 adjusted to exclude any significant sums by which the procurement unit finds that the price was
2783 increased because the contractor provided cost or pricing data that was inaccurate, incomplete,
2784 or not current as of the date specified by the procurement officer.

- 2785 (5) A procurement unit is not required to comply with Subsection (2) if:
- 2786 (a) the contract price is based on adequate price competition;
- 2787 (b) the contract price is based on established catalogue prices or market prices;
- 2788 (c) the contract price is set by law or rule; or
- 2789 (d) the procurement states, in writing:
- 2790 (i) that, in accordance with rules made by the ~~[applicable]~~ rulemaking authority, the
- 2791 requirements of Subsection (2) may be waived; and
- 2792 (ii) the reasons for the waiver.

2793 Section 53. Section **63G-6a-1208** is amended to read:

2794 **63G-6a-1208. Installment payments -- Contract prepayments.**

2795 (1) A contract entered into by a procurement unit may provide for installment

2796 payments, including interest charges, over a period of time, if the procurement ~~[officer]~~ official

2797 makes a written finding that:

- 2798 (a) the use of installment payments are in the interest of the procurement unit;
- 2799 (b) installment payments are not used as a method of avoiding budgetary constraints;
- 2800 (c) the procurement unit has obtained all budgetary approvals and other approvals
- 2801 required for making the installment payments;
- 2802 (d) all aspects of the installment payments required in the contract are in accordance
- 2803 with the requirements of law; and
- 2804 (e) for a contract awarded through an invitation for bids or a request for proposals, the
- 2805 invitation for bids or request for proposals indicates that installment payments are required or
- 2806 permitted.

2807 (2) (a) A procurement unit may not pay for a procurement item before the procurement

2808 unit receives the procurement item ~~[is received by the procurement unit]~~, unless the

2809 procurement ~~[officer makes a written finding]~~ official determines that it is necessary or

2810 beneficial for the procurement unit to pay for the procurement item before the procurement unit

2811 receives the procurement item ~~[is received by the procurement unit]~~.

2812 (b) A procurement official's determination under Subsection (2)(a) shall be in writing,

2813 unless:

2814 (i) the rulemaking authority has adopted a rule describing one or more circumstances

2815 under which a written determination is not necessary; and

2816 (ii) the procurement official's determination is under one of those circumstances.

2817 (3) Circumstances where prepayment may be necessary for, or beneficial to, the
2818 procurement unit include:

2819 (a) when it is customary in the industry to prepay for the procurement item;

2820 (b) if the procurement unit will receive an identifiable benefit by prepaying, including
2821 reduced costs, additional procurement items, early delivery, better service, or better contract
2822 terms; or

2823 (c) other circumstances permitted by rule made by the ~~[applicable]~~ rulemaking
2824 authority.

2825 (4) The ~~[applicable]~~ rulemaking authority may make rules governing prepayments.

2826 (5) A prepaid expenditure shall be supported by documentation indicating:

2827 (a) the amount of the prepayment;

2828 (b) the prepayment schedule;

2829 (c) the procurement items to which each prepayment relates;

2830 (d) the remedies for a contractor's noncompliance with requirements relating to the
2831 provision of the procurement items; and

2832 (e) all other terms and conditions relating to the payments and the procurement items.

2833 (6) The procurement ~~[officer]~~ official or the procurement ~~[officer's]~~ official's designee
2834 may require a performance bond, of up to 100% of the prepayment amount, from the person to
2835 whom the prepayments are made.

2836 Section 54. Section **63G-6a-1302** is amended to read:

2837 **63G-6a-1302. Alternative methods of construction contracting management.**

2838 (1) ~~[The applicable]~~ A rulemaking authority shall, by rule provide as many alternative
2839 methods of construction contracting management as determined to be feasible.

2840 (2) The rules described in Subsection (1) shall:

2841 (a) grant to the procurement ~~[officer or the head of the issuing procurement unit]~~

2842 official responsible for carrying out the construction project the discretion to select the
2843 appropriate method of construction contracting management for a particular project; and

2844 (b) require the procurement ~~[officer]~~ official to execute and include in the contract file
2845 a written statement describing the facts that led to the selection of a particular method of
2846 construction contracting management for each project.

2847 (3) Before choosing a construction contracting management method, the procurement
2848 [~~officer or the head of the issuing procurement unit~~] official responsible for carrying out the
2849 construction project shall consider the following factors:

2850 (a) when the project must be ready to be occupied;

2851 (b) the type of project;

2852 (c) the extent to which the requirements of the procurement unit, and the way they are
2853 to be met are known;

2854 (d) the location of the project;

2855 (e) the size, scope, complexity, and economics of the project;

2856 (f) the source of funding and any resulting constraints necessitated by the funding
2857 source;

2858 (g) the availability, qualification, and experience of public personnel to be assigned to
2859 the project and the amount of time that the public personnel can devote to the project; and

2860 (h) the availability, qualifications, and experience of outside consultants and
2861 contractors to complete the project under the various methods being considered.

2862 (4) [~~An applicable~~] A rulemaking authority may make rules that authorize the use of a
2863 construction manager/general contractor as one method of construction contracting
2864 management.

2865 (5) The rules described in Subsection (2) shall require that:

2866 (a) the construction manager/general contractor be selected using:

2867 (i) a standard procurement process; or

2868 (ii) an exception to the requirement to use a standard procurement process, described in
2869 Part 8, Exceptions to Procurement Requirements; and

2870 (b) when entering into a subcontract that was not specifically included in the
2871 construction manager/general contractor's cost proposal, the construction manager/general
2872 contractor shall procure the subcontractor by using a standard procurement process, or an
2873 exception to the requirement to use a standard procurement process, described in Part 8,
2874 Exceptions to Procurement Requirements, in the same manner as if the subcontract work was
2875 procured directly by the procurement unit.

2876 (6) Procurement rules adopted by the [~~State Building Board~~] building board under
2877 Subsections (1) through (3) for state building construction projects may authorize the use of a

2878 design-build provider as one method of construction contracting management.

2879 (7) A design-build contract may include a provision for obtaining the site for the
2880 construction project.

2881 (8) A design-build contract or a construction manager/general contractor contract may
2882 include provision by the contractor of operations, maintenance, or financing.

2883 Section 55. Section **63G-6a-1303** is amended to read:

2884 **63G-6a-1303. Drug and alcohol testing required for state construction contracts.**

2885 (1) As used in this section:

2886 (a) "Contractor" means a person who is or may be awarded a state construction
2887 contract.

2888 (b) "Covered individual" means an individual who:

2889 (i) on behalf of a contractor or subcontractor provides services directly related to
2890 design or construction under a state construction contract; and

2891 (ii) is in a safety sensitive position, including a design position that has responsibilities
2892 that directly affect the safety of an improvement to real property that is the subject of a state
2893 construction contract.

2894 (c) "Drug and alcohol testing policy" means a policy under which a contractor or
2895 subcontractor tests a covered individual to establish, maintain, or enforce the prohibition of:

2896 (i) the manufacture, distribution, dispensing, possession, or use of drugs or alcohol,
2897 except the medically prescribed possession and use of a drug; or

2898 (ii) the impairment of judgment or physical abilities due to the use of drugs or alcohol.

2899 (d) "Random testing" means that a covered individual is subject to periodic testing for
2900 drugs and alcohol:

2901 (i) in accordance with a drug and alcohol testing policy; and

2902 (ii) on the basis of a random selection process.

2903 (e) "State executive entity" means:

2904 (i) a state executive branch:

2905 (A) department;

2906 (B) division;

2907 (C) agency;

2908 (D) board;

2909 (E) commission;

2910 (F) council;

2911 (G) committee; or

2912 (H) institution; or

2913 (ii) a state institution of higher education, as defined in Section [53B-3-102](#).

2914 (f) "State construction contract" means a contract for design or construction entered
2915 into by a state executive entity.

2916 (2) Except as provided in Subsection (7), a state executive entity may not enter into a
2917 state construction contract unless the public construction contract requires that the contractor
2918 demonstrate to the state executive entity that the contractor:

2919 (a) has and will maintain a drug and alcohol testing policy during the period of the state
2920 construction contract that applies to the covered individuals hired by the contractor;

2921 (b) posts in one or more conspicuous places notice to covered individuals hired by the
2922 contractor that the contractor has the drug and alcohol testing policy described in Subsection
2923 (2)(a);

2924 (c) subjects the covered individuals to random testing under the drug and alcohol
2925 testing policy described in Subsection (2)(a) if at any time during the period of the state
2926 construction contract there are 10 or more individuals who are covered individuals hired by the
2927 contractor; and

2928 (d) requires that as a condition of contracting with the contractor, a subcontractor:

2929 (i) has and will maintain a drug and alcohol testing policy during the period of the state
2930 construction contract that applies to the covered individuals hired by the subcontractor;

2931 (ii) posts in one or more conspicuous places notice to covered individuals hired by the
2932 subcontractor that the subcontractor has the drug and alcohol testing policy described in
2933 Subsection (2)(d)(i); and

2934 (iii) subjects the covered individuals hired by the subcontractor to random testing under
2935 the drug and alcohol testing policy described in Subsection (2)(d)(i) if at any time during the
2936 period of the state construction contract there are 10 or more individuals who are covered
2937 individuals hired by the subcontractor.

2938 (3) (a) Except as otherwise provided in this Subsection (3), if a contractor or
2939 subcontractor fails to comply with Subsection (2), the contractor or subcontractor may be

2940 suspended or debarred in accordance with this chapter.

2941 (b) A state executive entity shall include in a state construction contract:

2942 (i) a reference to the rules described in Subsection (4)(b); or

2943 (ii) if the ~~[applicable]~~ rulemaking authority has not made the rules described in

2944 Subsection (4)(b), a process that provides a contractor or subcontractor reasonable notice and
2945 opportunity to cure a violation of this section before suspension or debarment of the contractor
2946 or subcontractor in light of the circumstances of the state construction contract or the violation.

2947 (c) (i) A contractor is not subject to penalties for the failure of a subcontractor to
2948 comply with Subsection (2).

2949 (ii) A subcontractor is not subject to penalties for the failure of a contractor to comply
2950 with Subsection (2).

2951 (4) ~~[An applicable]~~ A rulemaking authority:

2952 (a) may make rules that establish the requirements and procedures a contractor is
2953 required to follow to comply with Subsection (2); and

2954 (b) shall make rules that establish:

2955 (i) the penalties that may be imposed in accordance with Subsection (3); and

2956 (ii) a process that provides a contractor or subcontractor reasonable notice and
2957 opportunity to cure a violation of this section before suspension or debarment of the contractor
2958 or subcontractor in light of the circumstances of the state construction contract or the violation.

2959 (5) The failure of a contractor or subcontractor to meet the requirements of Subsection
2960 (2):

2961 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
2962 or contractor under Part 17, Procurement Appeals Board, or Part 18, Appeals to Court and
2963 Court Proceedings; and

2964 (b) may not be used by a state executive entity, a prospective bidder, an offeror, a
2965 contractor, or a subcontractor as a basis for an action that would suspend, disrupt, or terminate
2966 the design or construction under a state construction contract.

2967 (6) (a) After a state executive entity enters into a state construction contract in
2968 compliance with this section, the state is not required to audit, monitor, or take any other action
2969 to ensure compliance with this section.

2970 (b) The state is not liable in any action related to this section, including not being liable

2971 in relation to:

2972 (i) a contractor or subcontractor having or not having a drug and alcohol testing policy;

2973 (ii) failure to test for a drug or alcohol under a contractor's or subcontractor's drug and
2974 alcohol testing policy;

2975 (iii) the requirements of a contractor's or subcontractor's drug and alcohol testing
2976 policy;

2977 (iv) a contractor's or subcontractor's implementation of a drug and alcohol testing
2978 policy, including procedures for:

2979 (A) collection of a sample;

2980 (B) testing of a sample;

2981 (C) evaluation of a test; or

2982 (D) disciplinary or rehabilitative action on the basis of a test result;

2983 (v) an individual being under the influence of drugs or alcohol; or

2984 (vi) an individual under the influence of drugs or alcohol harming another person or
2985 causing property damage.

2986 (7) This section does not apply if the state executive entity determines that the
2987 application of this section would severely disrupt the operation of a procurement unit to the
2988 detriment of the procurement unit or the general public, including:

2989 (a) jeopardizing the receipt of federal funds;

2990 (b) causing the state construction contract to be a sole source contract; or

2991 (c) causing the state construction contract to be an emergency procurement.

2992 (8) If a contractor or subcontractor meets the requirements of this section, this section
2993 may not be construed to restrict the contractor's or subcontractor's ability to impose or
2994 implement an otherwise lawful provision as part of a drug and alcohol testing policy.

2995 Section 56. Section **63G-6a-1502** is amended to read:

2996 **63G-6a-1502. Requirements regarding procurement of design professional**
2997 **services.**

2998 (1) A procurement unit seeking to procure design professional services shall:

2999 (a) publicly announce all requirements for those services through a request for
3000 statement of qualifications, as provided in this part; and

3001 (b) negotiate contracts for design professional services:

3002 (i) on the basis of demonstrated competence and qualification for the type of services
3003 required; and

3004 (ii) at fair and reasonable prices.

3005 (2) A procurement unit shall procure design professional services as provided in this
3006 part, except as otherwise provided in Sections 63G-6a-506, 63G-6a-802, and 63G-6a-803.

3007 (3) A procurement unit may procure professional services, other than design
3008 professional services, as provided in this part.

3009 ~~[(3)]~~ (4) This part does not affect the authority of, and does not apply to procedures
3010 undertaken by, a procurement unit to obtain the services of architects or engineers in the
3011 capacity of employees of the procurement unit.

3012 Section 57. Section 63G-6a-1503.5 is amended to read:

3013 **63G-6a-1503.5. Evaluation of statements of qualifications.**

3014 (1) An evaluation committee appointed under Section 63G-6a-1503 shall evaluate and
3015 score each responsive statement of qualifications that has not been eliminated from
3016 consideration under this chapter, using the criteria described in the request for statement of
3017 qualifications.

3018 (2) Criteria not described in the request for statement of qualifications may not be used
3019 to evaluate a statement of qualifications.

3020 (3) An evaluation committee may enter into discussions or conduct interviews with, or
3021 attend presentations by, the design professionals whose statements of qualifications are under
3022 consideration.

3023 (4) An evaluation committee shall rank the top three highest scoring design
3024 professionals, in order of their scores, for the purpose of entering into fee negotiations as
3025 provided in Section 63G-6a-1505.

3026 (5) If fewer than three responsible design professionals submit statements of
3027 qualifications that are determined to be responsive, the ~~[chief procurement officer or head of a~~
3028 ~~procurement unit with independent procurement authority]~~ procurement official shall issue a
3029 written determination explaining why it is in the best interest of the procurement unit to
3030 continue the fee negotiation and the contracting process with less than three design
3031 professionals.

3032 (6) (a) The deliberations of an evaluation committee may be held in private.

3033 (b) If the evaluation committee is a public body, as defined in Section 52-4-103, the
3034 evaluation committee shall comply with Section 52-4-205 in closing a meeting for its
3035 deliberations.

3036 Section 58. Section 63G-6a-1506 is amended to read:

3037 **63G-6a-1506. Restrictions on procurement of design professional services.**

3038 (1) Except as provided in Subsection (2), if the division or [a] an independent
3039 procurement unit [~~with independent procurement authority~~], in accordance with Section
3040 63G-6a-1502, issues a request for statement of qualifications to procure design professional
3041 services and provides public notice of the request for statement of qualifications:

3042 (a) a public entity inside or outside the state may not submit a proposal in response to
3043 the procurement unit's request for statement of qualifications; and

3044 (b) the procurement unit may not award a contract to a public entity inside or outside
3045 the state to perform the design professional services solicited in the request for statement of
3046 qualifications.

3047 (2) Subsection (1) does not apply when the procurement unit is procuring design
3048 professional services for contracts related to research activities and technology transfer.

3049 Section 59. Section 63G-6a-1603 is amended to read:

3050 **63G-6a-1603. Protest officer responsibilities and authority -- Proceedings on**
3051 **protest -- Effect of decision.**

3052 (1) After a protest is filed, the protest officer shall determine whether the protest is
3053 timely filed and complies fully with the requirements of Section 63G-6a-1602.

3054 (2) If the protest officer determines that the protest is not timely filed or that the protest
3055 does not fully comply with Section 63G-6a-1602, the protest officer shall dismiss the protest
3056 without holding a hearing.

3057 (3) If the protest officer determines that the protest is timely filed and complies fully
3058 with Section 63G-6a-1602, the protest officer shall:

3059 (a) dismiss the protest without holding a hearing if the protest officer determines that
3060 the protest alleges facts that, if true, do not provide an adequate basis for the protest;

3061 (b) uphold the protest without holding a hearing if the protest officer determines that
3062 the undisputed facts of the protest indicate that the protest should be upheld; or

3063 (c) hold a hearing on the protest if there is a genuine issue of material fact or law that

3064 needs to be resolved in order to determine whether the protest should be upheld.

3065 (4) (a) If a hearing is held on a protest, the protest officer may:

3066 (i) subpoena witnesses and compel their attendance at the protest hearing;

3067 (ii) subpoena documents for production at the protest hearing;

3068 (iii) obtain additional factual information; and

3069 (iv) obtain testimony from experts, the person filing the protest, representatives of the
3070 procurement unit, or others to assist the protest officer to make a decision on the protest.

3071 (b) The Rules of Evidence do not apply to a protest hearing.

3072 (c) [~~The applicable~~] A rulemaking authority shall make rules relating to intervention in
3073 a protest, including designating:

3074 (i) who may intervene; and

3075 (ii) the time and manner of intervention.

3076 (d) A protest officer shall:

3077 (i) record each hearing held on a protest under this section;

3078 (ii) regardless of whether a hearing on a protest is held under this section, preserve all
3079 records and other evidence relied upon in reaching the protest officer's written decision until
3080 the decision, and any appeal of the decision, becomes final; and

3081 (iii) if the protestor appeals the protest officer's decision, submit the protest appeal
3082 record to the procurement policy board chair within seven days after receiving:

3083 (A) notice that an appeal of the protest officer's decision has been filed under Section
3084 [63G-6a-1702](#); or

3085 (B) a request for the protest appeal record from the chair of the procurement policy
3086 board.

3087 (e) A protest officer's holding a hearing, considering a protest, or issuing a written
3088 decision under this section does not affect a person's right to later question or challenge the
3089 protest officer's jurisdiction to hold the hearing, consider the protest, or issue the decision.

3090 (5) (a) The deliberations of a protest officer may be held in private.

3091 (b) If the protest officer is a public body, as defined in Section [52-4-103](#), the protest
3092 officer shall comply with Section [52-4-205](#) in closing a meeting for its deliberations.

3093 (6) (a) A protest officer shall promptly issue a written decision regarding any protest,
3094 unless the protest is settled by mutual agreement.

- 3095 (b) The decision shall:
- 3096 (i) state the reasons for the action taken;
- 3097 (ii) inform the protestor of the right to judicial or administrative review as provided in
- 3098 this chapter; and
- 3099 (iii) indicate the amount of the security deposit or bond required under Section
- 3100 [63G-6a-1703](#).
- 3101 (c) A person who issues a decision under Subsection (6)(a) shall mail, email, or
- 3102 otherwise immediately furnish a copy of the decision to the protestor.
- 3103 (7) A decision described in this section is effective until stayed or reversed on appeal,
- 3104 except to the extent provided in Section [63G-6a-1903](#).
- 3105 (8) (a) A decision described in Subsection (6)(a) that is issued in relation to a
- 3106 procurement unit other than a legislative procurement unit, a judicial procurement unit, a
- 3107 nonadopting local government procurement unit, or a public transit district is final and
- 3108 conclusive unless the protestor files an appeal under Section [63G-6a-1702](#).
- 3109 (b) A decision described in Subsection (6)(a) that is issued in relation to a legislative
- 3110 procurement unit, a judicial procurement unit, a nonadopting local government procurement
- 3111 unit, or a public transit district is final and conclusive unless the protestor files an appeal under
- 3112 Section [63G-6a-1802](#).
- 3113 (9) If the protest officer does not issue the written decision regarding a protest within
- 3114 30 calendar days after the day on which the protest was filed with the protest officer, or within
- 3115 a longer period as may be agreed upon by the parties, the protestor may proceed as if an adverse
- 3116 decision had been received.
- 3117 (10) A determination under this section by the protest officer regarding an issue of fact
- 3118 may not be overturned on appeal unless the decision is arbitrary and capricious or clearly
- 3119 erroneous.
- 3120 (11) An individual is not precluded from acting, and may not be disqualified or
- 3121 required to be recused from acting, as a protest officer because the individual also acted in
- 3122 another capacity during the procurement process, as required or allowed in this chapter.
- 3123 Section 60. Section [63G-6a-1903](#) is amended to read:
- 3124 **63G-6a-1903. Effect of timely protest or appeal.**
- 3125 A procurement unit, other than a legislative procurement unit, a judicial procurement

3126 unit, a nonadopting local government procurement unit, or a public transit district, may not
3127 proceed further with a solicitation or with the award of a contract:

3128 (1) during the pendency of a timely:

3129 (a) protest under Section 63G-6a-1602;

3130 (b) appeal of a protest under Section 63G-6a-1702; or

3131 (c) appeal of a procurement appeals panel decision under Section 63G-6a-1802; and

3132 (2) until:

3133 (a) all administrative and judicial remedies are exhausted;

3134 (b) for a protest under Section 63G-6a-1602 or an appeal under Section 63G-6a-1702:

3135 (i) the chief procurement officer, after consultation with the attorney general's office

3136 and the head of the using agency, makes a written determination that award of the contract

3137 without delay is in the best interest of the procurement unit or the state;

3138 (ii) the ~~[head of a procurement unit with independent procurement authority]~~

3139 procurement official of an independent procurement unit, after consultation with the

3140 procurement unit's attorney, makes a written determination that award of the contract without

3141 delay is in the best interest of the procurement unit or the state; or

3142 (iii) for a procurement unit that is not represented by the attorney general's office, the

3143 procurement ~~[unit]~~ official, after consulting with the attorney for the procurement unit, makes a

3144 written determination that award of the contract without delay is in the best interest of the

3145 procurement unit or the state; or

3146 (c) for an appeal under Section 63G-6a-1802, or an appeal to a higher court than

3147 district court:

3148 (i) the chief procurement officer, after consultation with the attorney general's office

3149 and the head of the using agency, makes a written determination that award of the contract

3150 without delay is in the best interest of the procurement unit or the state;

3151 (ii) the ~~[head of a procurement unit with independent procurement authority]~~

3152 procurement official of an independent procurement unit, after consultation with the

3153 procurement unit's attorney, makes a written determination that award of the contract without

3154 delay is in the best interest of the procurement unit or the state; or

3155 (iii) for a procurement unit that is not represented by the attorney general's office, the

3156 procurement ~~[unit]~~ official, after consulting with the attorney for the procurement unit, makes a

3157 written determination that award of the contract without delay is necessary to protect the best
3158 interest of the procurement unit or the state.

3159 Section 61. Section **63G-6a-1911** is amended to read:

3160 **63G-6a-1911. Determinations final except when arbitrary and capricious.**

3161 The determinations required under the following provisions are final and conclusive
3162 unless they are arbitrary and capricious or clearly erroneous:

3163 (1) Section [~~63G-6a-605~~] 63G-6a-114;

3164 (2) Section 63G-6a-115;

3165 [~~(2)~~] (3) Section 63G-6a-702;

3166 [~~(3)~~] ~~Section 63G-6a-708~~;

3167 [~~(4)~~] ~~Subsection 63G-6a-709(1)~~;

3168 (4) Section 63G-6a-707;

3169 (5) Section 63G-6a-803;

3170 (6) Section 63G-6a-804;

3171 (7) Section 63G-6a-903;

3172 (8) Subsection 63G-6a-1204(1) or (2);

3173 (9) Subsection 63G-6a-1204(5);

3174 (10) Section 63G-6a-1205; or

3175 (11) Subsection 63G-6a-1206(5).

3176 Section 62. Section **63G-6a-2002** is amended to read:

3177 **63G-6a-2002. Records -- Retention.**

3178 (1) All procurement records shall be retained and disposed of in accordance with Title
3179 63G, Chapter 2, Government Records Access and Management Act.

3180 (2) Written determinations required by this chapter shall be retained in the appropriate
3181 official contract file of:

3182 (a) the division;

3183 (b) except as provided in Subsection (2)(c), the independent procurement unit [~~with~~
3184 ~~independent procurement authority~~]; or

3185 (c) for a legislative procurement unit or a judicial procurement unit, the person
3186 designated by rule made by the [~~applicable~~] rulemaking authority.

3187 (3) A procurement unit shall keep, and make available to the public, upon request,

3188 written records of procurements for which an expenditure of [~~\$50~~] \$100 or more is made, for
3189 the longer of:

- 3190 (a) six years;
- 3191 (b) the time otherwise required by law; or
- 3192 (c) the time period provided by rule made by the [~~applicable~~] rulemaking authority.
- 3193 (4) The written record described in Subsection (3) shall include:
 - 3194 (a) the name of the provider from whom the procurement was made;
 - 3195 (b) a description of the procurement item;
 - 3196 (c) the date of the procurement; and
 - 3197 (d) the expenditure made for the procurement.

3198 Section 63. Section **63G-6a-2003** is amended to read:

3199 **63G-6a-2003. Record of contracts made.**

3200 [~~The chief procurement officer, the procurement officer, or the head of a procurement~~
3201 ~~unit with independent procurement authority~~] A procurement official shall maintain a record of
3202 all contracts made under Section **63G-6a-506**, **63G-6a-802**, or **63G-6a-803**, in accordance with
3203 Title 63G, Chapter 2, Government Records Access and Management Act. The record shall
3204 contain each contractor's name, the amount and type of each contract, and a listing of the
3205 procurement items to which the contract relates.

3206 Section 64. Section **63G-6a-2102** is amended to read:

3207 **63G-6a-2102. Agreements between public entities.**

3208 A [~~procurement unit~~] public entity may enter into an agreement with one or more other
3209 [~~procurement units~~] public entities to:

- 3210 (1) sponsor, conduct, or administer a cooperative agreement for:
 - 3211 (a) the procurement of a procurement item, in accordance with the requirements of
3212 Section **63G-6a-2105**; or
 - 3213 (b) the disposal of a procurement item;
- 3214 (2) cooperatively use a procurement item;
- 3215 (3) commonly use or share warehousing facilities, capital equipment, and other
3216 facilities;
- 3217 (4) provide personnel, if the receiving [~~procurement unit~~] public entity pays the
3218 [~~procurement unit~~] public entity providing the personnel the direct and indirect cost of

3219 providing the personnel, in accordance with the agreement; or

3220 ~~[(5) make available informational, technical, and other services, if:]~~

3221 ~~[(a) the requirements of the procurement unit tendering the services have precedence~~
3222 ~~over the procurement unit that receives the services; and]~~

3223 ~~[(b) the receiving procurement unit pays the expenses of the services provided, in~~
3224 ~~accordance with the agreement.]~~

3225 (5) purchase from, contribute to, or otherwise participate in a pooled governmental
3226 funds program for the purpose of acquiring or sharing information, data, reports, or other
3227 services in accordance with the terms of the agreement.

3228 Section 65. Section **63G-6a-2103** is amended to read:

3229 **63G-6a-2103. Purchases between public entities.**

3230 ~~[(1)(a) A procurement unit may, without using a standard procurement process;~~
3231 ~~purchase from another procurement unit]~~

3232 (1) (a) (i) A public entity may purchase a procurement item [that the other procurement
3233 unit itself produces or provides] from another public entity.

3234 (ii) Subsection (1)(a)(i) may not be construed to require a public entity to sell a
3235 procurement item to another public entity.

3236 (b) As provided in Subsection 63G-6a-107.6(1)(a), a purchase under Subsection (1)(a)
3237 is not subject to the procurement requirements of this chapter.

3238 ~~[(b)]~~ (c) (i) Subsection (1)(a) does not authorize a [procurement unit] public entity to
3239 obtain a procurement item under a contract of another [procurement unit] public entity.

3240 (ii) Subsection (1)[(b)](c)(i) does not affect the authority of a procurement unit relating
3241 to a cooperative procurement under Subsection 63G-6a-2105(4)(b).

3242 (2) A [procurement unit] public entity may publish a schedule of costs or fees for
3243 procurement items available for purchase by another [procurement unit] public entity.

3244 Section 66. **Repealer.**

3245 This bill repeals:

3246 Section **63G-6a-105, Application of chapter -- Ordinances or resolutions relating to**
3247 **procurement of design professional services -- Rules.**

3248 Section **63G-6a-107, Exemptions from chapter -- Compliance with other**
3249 **provisions.**

- 3250 Section **63G-6a-110**, Procurement unit required to comply with Utah Procurement
- 3251 **Code and applicable rules -- Rulemaking authority -- Reporting.**
- 3252 Section **63G-6a-601**, Title.
- 3253 Section **63G-6a-605**, Correction or clarification of bids.
- 3254 Section **63G-6a-607**, Action if all bids exceed available funds -- Exemption.
- 3255 Section **63G-6a-609**, Multiple stage bidding process.
- 3256 Section **63G-6a-610**, Contracts awarded by reverse auction.
- 3257 Section **63G-6a-611**, Invitation for bids for reverse auction -- Requirements --
- 3258 **Publication of invitation.**
- 3259 Section **63G-6a-612**, Conduct of reverse auction.
- 3260 Section **63G-6a-706**, Correction or clarification of proposal.
- 3261 Section **63G-6a-708**, Justification statement -- Cost-benefit analysis.
- 3262 Section **63G-6a-709**, Award of contract -- Cancellation -- Rejection of proposal.
- 3263 Section **63G-6a-709.5**, Publication of award and scores.
- 3264 Section **63G-6a-710**, Multiple stage process.