

SB0090S01 compared with SB0090

~~{deleted text}~~ shows text that was in SB0090 but was deleted in SB0090S01.

inserted text shows text that was not in SB0090 but was inserted into SB0090S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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: _____

LONG TITLE

General Description:

This bill modifies the Utah Procurement Code.

Highlighted Provisions:

This bill:

- ▶ modifies and enacts definitions applicable to the Utah Procurement Code;
- ▶ modifies provisions relating to procurement units with independent procurement authority;
- ▶ reorganizes and modifies provisions relating to the applicability of and exemptions from the Utah Procurement Code;

~~{~~ → includes community reinvestment agencies within the scope of the Utah Procurement Code;

~~}~~ ▶ makes technical changes to eliminate a redundancy resulting from a reference to a

SB0090S01 compared with SB0090

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;
- ▶ modifies provisions relating to the request for statement of qualifications process;
- ▶ modifies small purchase provisions;
- ▶ modifies provisions relating to the approved vendor list process;
- ▶ modifies provisions relating to the invitation for bids process;
- ▶ modifies and enacts provisions relating to the request for proposals process;
- ▶ modifies provisions relating to trial use contracts;
- ▶ modifies provisions relating to the purchase of goods from the correctional industries division;
- ▶ authorizes a procurement unit to procure professional services by using the design professional procurement process;
- ▶ modifies records retention provisions;
- ▶ modifies provisions relating to agreements and purchases between public entities;
- ▶ repeals provisions relating to:
 - the bidding process; and
 - the request for proposals process; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

SB0090S01 compared with SB0090

63G-6a-106, as last amended by Laws of Utah 2018, Second Special Session, Chapter
4

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

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

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

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

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

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

63G-6a-302, as last amended by Laws of Utah 2017, Chapter 348

63G-6a-303, as last amended by Laws of Utah 2018, Chapter 200

63G-6a-409, as renumbered and amended by Laws of Utah 2016, Chapter 355

63G-6a-410, as last amended by Laws of Utah 2017, Chapter 348

63G-6a-506, as last amended by Laws of Utah 2017, Chapter 348

63G-6a-507, as last amended by Laws of Utah 2017, Chapter 348

63G-6a-602, as last amended by Laws of Utah 2017, Chapter 348

63G-6a-603, as last amended by Laws of Utah 2017, Chapter 348

63G-6a-606, as last amended by Laws of Utah 2017, Chapter 348

63G-6a-702, as last amended by Laws of Utah 2017, Chapters 348, 376 and last
amended by Coordination Clause, Laws of Utah 2017, Chapter 348

63G-6a-703, as last amended by Laws of Utah 2017, Chapters 154, 348, and 376

63G-6a-707, as last amended by Laws of Utah 2017, Chapters 154, 348, and 376

63G-6a-707.5, as repealed and reenacted by Laws of Utah 2017, Chapter 348

63G-6a-712, as enacted by Laws of Utah 2018, Chapter 352

63G-6a-802, as last amended by Laws of Utah 2016, Chapter 355

63G-6a-802.3, as enacted by Laws of Utah 2016, Chapter 355

63G-6a-802.7, as last amended by Laws of Utah 2017, Chapter 348

63G-6a-803, as last amended by Laws of Utah 2016, Chapter 355

63G-6a-804, as last amended by Laws of Utah 2019, Chapter 314

63G-6a-806, as last amended by Laws of Utah 2016, Chapter 355

63G-6a-902, as last amended by Laws of Utah 2013, Chapter 445

63G-6a-903, as last amended by Laws of Utah 2017, Chapter 348

SB0090S01 compared with SB0090

63G-6a-904, as last amended by Laws of Utah 2017, Chapter 348
63G-6a-1002, as last amended by Laws of Utah 2017, Chapter 348
63G-6a-1003, as last amended by Laws of Utah 2017, Chapter 348
63G-6a-1102, as last amended by Laws of Utah 2013, Chapter 445
63G-6a-1103, as last amended by Laws of Utah 2014, Chapter 196
63G-6a-1105, as last amended by Laws of Utah 2014, Chapter 196
63G-6a-1204.5, as last amended by Laws of Utah 2017, Chapter 348
63G-6a-1205, as last amended by Laws of Utah 2014, Chapter 196
63G-6a-1206, as last amended by Laws of Utah 2016, Chapter 355
63G-6a-1208, as enacted by Laws of Utah 2013, Chapter 445
63G-6a-1302, as last amended by Laws of Utah 2013, Chapter 445
63G-6a-1303, as last amended by Laws of Utah 2013, Chapter 445
63G-6a-1502, as last amended by Laws of Utah 2016, Chapter 355
63G-6a-1503.5, as last amended by Laws of Utah 2016, Chapter 355
63G-6a-1506, as last amended by Laws of Utah 2015, Chapter 218
63G-6a-1603, as last amended by Laws of Utah 2017, Chapter 348
63G-6a-1903, as last amended by Laws of Utah 2016, Chapter 355
63G-6a-1911, as last amended by Laws of Utah 2013, Chapter 445
63G-6a-2002, as last amended by Laws of Utah 2016, Chapter 355
63G-6a-2003, as last amended by Laws of Utah 2016, Chapter 355
63G-6a-2102, as last amended by Laws of Utah 2013, Chapter 445
63G-6a-2103, as last amended by Laws of Utah 2014, Chapter 196

ENACTS:

63G-6a-107.2, Utah Code Annotated 1953
63G-6a-107.4, Utah Code Annotated 1953
63G-6a-107.6, Utah Code Annotated 1953
63G-6a-107.7, Utah Code Annotated 1953
63G-6a-107.8, Utah Code Annotated 1953
63G-6a-118, Utah Code Annotated 1953
63G-6a-119, Utah Code Annotated 1953
63G-6a-120, Utah Code Annotated 1953

SB0090S01 compared with SB0090

63G-6a-704.4, Utah Code Annotated 1953

63G-6a-704.6, Utah Code Annotated 1953

REPEALS AND REENACTS:

63G-6a-604, as last amended by Laws of Utah 2016, Chapter 355

63G-6a-608, as last amended by Laws of Utah 2017, Chapter 348

63G-6a-704, as last amended by Laws of Utah 2014, Chapter 196

REPEALS:

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

63G-6a-107, as last amended by Laws of Utah 2016, Chapter 355

63G-6a-110, as renumbered and amended by Laws of Utah 2016, Chapter 355

63G-6a-601, as enacted by Laws of Utah 2012, Chapter 347

63G-6a-605, as repealed and reenacted by Laws of Utah 2016, Chapter 355

63G-6a-607, as last amended by Laws of Utah 2017, Chapter 348

63G-6a-609, as last amended by Laws of Utah 2016, Chapter 355

63G-6a-610, as last amended by Laws of Utah 2013, Chapter 445

63G-6a-611, as last amended by Laws of Utah 2016, Chapter 355

63G-6a-612, as last amended by Laws of Utah 2017, Chapter 348

63G-6a-706, as repealed and reenacted by Laws of Utah 2016, Chapter 355

63G-6a-708, as last amended by Laws of Utah 2016, Chapter 355

63G-6a-709, as last amended by Laws of Utah 2017, Chapter 348

63G-6a-709.5, as last amended by Laws of Utah 2014, Chapter 196

63G-6a-710, as last amended by Laws of Utah 2013, Chapter 445

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

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

63G-6a-103. Definitions.

As used in this chapter:

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

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

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

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

SB0090S01 compared with SB0090

procurement unit by statute:]

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

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

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

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

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

~~[(i) the legislative body of the local government procurement unit; or]~~

~~[(ii) an individual or body designated by the legislative body of the local government procurement unit;]~~

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

~~[(f) for a state institution of higher education described in:]~~

~~[(i) Subsections 53B-1-102(1)(a) and (c), the State Board of Regents; or]~~

~~[(ii) Subsection 53B-1-102(1)(b), the Utah System of Technical Colleges Board of Trustees;]~~

~~[(g) for the State Board of Education or the Utah Schools for the Deaf and the Blind, the State Board of Education;]~~

~~[(h) for a public transit district, the chief executive of the public transit district;]~~

~~[(i) for a local district other than a public transit district or for a special service district:]~~

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

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

~~[(A) with respect to a subject addressed by board rules; or]~~

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

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

SB0090S01 compared with SB0090

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

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

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

~~[(n) for any other procurement unit, the board.]~~

~~[(2)] (1) "Approved vendor" means a person who has been approved for inclusion on an approved vendor list through the approved vendor list process.~~

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

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

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

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

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

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

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

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

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

~~[(12)] (11) {"Community reinvestment agency" means the same as that term is defined in Section 17C-1-102.} {"~~

SB0090S01 compared with SB0090

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

- (a) except:
 - (i) reviewing a solicitation to verify that it is in proper form; and
 - (ii) causing the publication of a notice of a solicitation; and
- (b) including:
 - (i) preparing any solicitation document;
 - (ii) appointing an evaluation committee;
 - (iii) conducting the evaluation process, except [~~as provided in Subsection 63G-6a-707(6)(b)~~] the process relating to scores calculated for costs of proposals;
 - (iv) selecting and recommending the person to be awarded a contract;
 - (v) negotiating the terms and conditions of a contract, subject to the issuing procurement unit's approval; and
 - (vi) contract administration.

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

~~(14)~~ (13) "Construction project":

- (a) means [~~services, including work, and supplies for~~] a project for the construction, renovation, alteration, improvement, or repair of a public facility on real property, including all services, labor, supplies, and materials for the project; and
- (b) does not include services and supplies for the routine, day-to-day operation, repair, or maintenance of an existing public facility.

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

- (a) means a contractor who enters into a contract:
 - (i) for the management of a construction project; and
 - (ii) that allows the contractor to subcontract for additional labor and materials that are not included in the contractor's cost proposal submitted at the time of the procurement of the contractor's services; and
- (b) does not include a contractor whose only subcontract work not included in the contractor's cost proposal submitted as part of the procurement of the contractor's services is to meet subcontracted portions of change orders approved within the scope of the project.

SB0090S01 compared with SB0090

~~[(16)]~~1(15) "Construction subcontractor":

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

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

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

~~[(17)]~~1(16) "Contract" means an agreement for a procurement.

~~[(18)]~~1(17) "Contract administration" means all functions, duties, and responsibilities associated with managing, overseeing, and carrying out a contract between a procurement unit and a contractor, including:

(a) implementing the contract;

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

(c) executing change orders;

(d) processing contract amendments;

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

(f) curing contract errors and deficiencies;

(g) terminating a contract;

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

(i) computing payments under the contract; and

(j) closing out a contract.

~~[(19)]~~1(18) "Contractor" means a person who is awarded a contract with a procurement unit.

~~[(20)]~~1(19) "Cooperative procurement" means procurement conducted by, or on behalf of:

(a) more than one procurement unit; or

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

~~[(21)]~~1(20) "Cooperative purchasing organization" means an organization, association, or alliance of purchasers established to combine purchasing power in order to obtain the best value for the purchasers by engaging in procurements in accordance with Section 63G-6a-2105.

SB0090S01 compared with SB0090

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

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

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

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

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

- (a) an individual licensed as an architect under Title 58, Chapter 3a, Architects Licensing Act;
- (b) an individual licensed as a professional engineer or professional land surveyor under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act; or
- (c) an individual certified as a commercial interior designer under Title 58, Chapter 86, State Certification of Commercial Interior Designers Act.

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

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

- (a) professional services within the scope of the practice of architecture as defined in Section 58-3a-102;
- (b) professional engineering as defined in Section 58-22-102;
- (c) master planning and programming services; or
- (d) services within the scope of the practice of commercial interior design, as defined in Section 58-86-102.

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

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

~~[(31)]~~ ~~[(30)]~~ [(29)] "Division" means the Division of Purchasing and General Services,

SB0090S01 compared with SB0090

created in Section 63A-2-101.

~~[(32)]~~ ~~(31)~~(30) "Educational procurement unit" means:

- (a) a school district;
- (b) a public school, including a local school board or a charter school;
- (c) the Utah Schools for the Deaf and the Blind;
- (d) the Utah Education and Telehealth Network;
- (e) an institution of higher education of the state described in Section 53B-1-102; or
- (f) the State Board of Education.

~~[(33)]~~ ~~(32)~~(31) "Established catalogue price" means the price included in a catalogue, price list, schedule, or other form that:

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

~~[(34)]~~ ~~(33)~~(32) "Executive branch procurement unit" means a department, division, office, bureau, agency, or other organization within the state executive branch.

~~(34)~~(33) "Facilities division" means the Division of Facilities Construction and Management, created in Section 63A-5-201.

~~[(35)]~~(34) "Fixed price contract" means a contract that provides a price, for each procurement item obtained under the contract, that is not subject to adjustment except to the extent that:

- (a) the contract provides, under circumstances specified in the contract, for an adjustment in price that is not based on cost to the contractor; or
- (b) an adjustment is required by law.

~~[(36)]~~(35) "Fixed price contract with price adjustment" means a fixed price contract that provides for an upward or downward revision of price, precisely described in the contract, that:

- (a) is based on the consumer price index or another commercially acceptable index, source, or formula; and
- (b) is not based on a percentage of the cost to the contractor.

SB0090S01 compared with SB0090

~~[(37)]~~[(36)] "Grant" means an expenditure of public funds or other assistance, or an agreement to expend public funds or other assistance, for a public purpose authorized by law, without acquiring a procurement item in exchange.

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

~~[(a) for a legislative procurement unit, any person designated by rule made by the applicable rulemaking authority;]~~

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

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

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

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

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

~~[(ii) any other person designated by the Judicial Council, by rule;]~~

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

~~[(i) the legislative body of the local government procurement unit; or]~~

~~[(ii) any other person designated by the local government procurement unit;]~~

~~[(e) for a local district other than a public transit district, the board of trustees of the local district or a designee of the board of trustees;]~~

~~[(f) for a special service district, the governing body of the special service district or a designee of the governing body;]~~

~~[(g) for a local building authority, the board of directors of the local building authority or a designee of the board of directors;]~~

~~[(h) for a conservation district, the board of supervisors of the conservation district or a designee of the board of supervisors;]~~

~~[(i) for a public corporation, the board of directors of the public corporation or a designee of the board of directors;]~~

~~[(j) for a school district or any school or entity within a school district, the board of the school district, or the board's designee;]~~

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

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

SB0090S01 compared with SB0090

~~[(m) for a public transit district, the board of trustees or a designee of the board of trustees;]~~

~~[(n) for the State Board of Education, the State Board of Education or a designee of the State Board of Education; or]~~

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

~~[(39)]~~ ~~(~~38~~;~~37~~)~~ "Immaterial error":

(a) means an irregularity or abnormality that is:

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

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

(b) includes:

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

(ii) a typographical error;

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

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

~~[(40)]~~ ~~(~~39~~;~~38~~)~~ "Indefinite quantity contract" means a fixed price contract that:

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

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

(ii) provides a maximum purchase limit.

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

~~(~~40~~;~~39~~)~~ "Independent procurement unit" means:

(a) (i) a legislative procurement unit;

(ii) a judicial branch procurement unit;

(iii) an educational procurement unit;

SB0090S01 compared with SB0090

(iv) a local government procurement unit;

(v) a conservation district;

(vi) a local building authority;

(vii) a local district;

~~{ (viii) a community reinvestment agency;~~

~~{ (fix)viii) a public corporation;~~

~~{ (fx)ix) a special service district; or~~

~~{ (fix)x) the Utah Communications Authority, established in Section 63H-7a-201;~~

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

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

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

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

~~{(42)} (~~{41}~~40) "Invitation for bids":~~

(a) means a document used to solicit:

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

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

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

described in Subsection ~~{(42)} (~~{41}~~40)(a).~~

~~{(43)} (~~{42}~~41) "Issuing procurement unit" means a procurement unit that:~~

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

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

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

~~{(44)} (~~{43}~~42) "Judicial procurement unit" means:~~

(a) the Utah Supreme Court;

(b) the Utah Court of Appeals;

SB0090S01 compared with SB0090

- (c) the Judicial Council;
- (d) a state judicial district; or
- (e) an office, committee, subcommittee, or other organization within the state judicial

branch.

~~(45)~~ ~~(44)~~ 43 "Labor hour contract" is a contract under which:

- (a) the supplies and materials are not provided by, or through, the contractor; and
- (b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and

profit for a specified number of labor hours or days.

~~(46)~~ ~~(45)~~ 44 "Legislative procurement unit" means:

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

support.

~~(47)~~ ~~(46)~~ 45 "Local building authority" means the same as that term is defined in Section 17D-2-102.

~~(48)~~ ~~(47)~~ 46 "Local district" means the same as that term is defined in Section 17B-1-102.

~~(49)~~ ~~(48)~~ 47 "Local government procurement unit" means:

- (a) a county or municipality, and each office or agency of the county or municipality, unless the county or municipality adopts its own procurement code by ordinance;
- (b) a county or municipality that has adopted this entire chapter by ordinance, and each office or agency of that county or municipality; or
- (c) a county or municipality that has adopted a portion of this chapter by ordinance, to the extent that a term in the ordinance is used in the adopted portion of this chapter, and each office or agency of that county or municipality.

SB0090S01 compared with SB0090

[(50)] ~~(49;48)~~ "Multiple award contracts" means the award of a contract for an indefinite quantity of a procurement item to more than one person.

[(51)] ~~(50;49)~~ "Multiyear contract" means a contract that extends beyond a one-year period, including a contract that permits renewal of the contract, without competition, beyond the first year of the contract.

[(52)] ~~(51;50)~~ "Municipality" means a city, town, or metro township.

[(53)] ~~(52;51)~~ "Nonadopting local government procurement unit" means:

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

(b) each office or agency of a county or municipality described in Subsection [(53)] ~~(52;51)~~(a).

[(54)] ~~(53;52)~~ "Offeror" means a person who submits a proposal in response to a request for proposals.

[(55)] ~~(54;53)~~ "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference under the requirements of this chapter.

[(56)] ~~(55;54)~~ "Procure" means to acquire a procurement item through a procurement.

[(57)] ~~(56;55)~~ "Procurement" ~~[:-(a) means a procurement unit's]~~ means the acquisition of a procurement item through an expenditure of public funds, or an agreement to expend public funds, including an acquisition through a public-private partnership[;].

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

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

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

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

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

[(58)] ~~(57;56)~~ "Procurement item" means ~~[a supply]~~ an item of personal property, a technology, a service, or a construction project.

[(59)] "Procurement officer" means:

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

SB0090S01 compared with SB0090

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

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

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

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

~~(f58)57~~ "Procurement official" means:

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

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

~~(c) for a judicial procurement unit, the Judicial Council or an individual or body designated by the Judicial Council by rule;~~

~~(d) for a local government procurement unit:~~

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

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

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

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

~~† (fg)f for a special service district, the governing body of the special service district or the governing body's designee;~~

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

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

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

~~(fk)i for a school district or any school or entity within a school district, the board of the school district or the board's designee;~~

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

SB0090S01 compared with SB0090

(f)(m)(l) for an institution of higher education described in Section 53B-2-101, the president of the institution of higher education or the president's designee;

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

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

(f)(p)(o) for the Utah Communications Authority, established in Section 63H-7a-201, the executive director of the Utah Communications Authority or the executive director's designee;

or

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

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

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

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

(v) for any other executive branch department, division, office, or entity that has statutory procurement authority outside this chapter, and only to the extent of the procurement activities of the department, division, office, or entity as an independent procurement unit under the procurement authority provided outside this chapter for the department, division, office, or entity, the chief executive officer of the department, division, office, or entity or the

SB0090S01 compared with SB0090

chief executive officer's designee.

~~[(60)]~~ ~~(~~59~~;58)~~ "Procurement unit":

(a) means:

(i) a legislative procurement unit;

(ii) an executive branch procurement unit;

(iii) a judicial procurement unit;

(iv) an educational procurement unit;

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

(vi) a local government procurement unit;

(vii) a local district;

(viii) a special service district;

(ix) a local building authority;

(x) a conservation district;

~~{~~ ~~(xi) a community reinvestment agency; or~~

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

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

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

Interlocal Cooperation Act.

~~[(61)]~~ ~~(~~60~~;59)~~ "Professional service" means labor, effort, or work that requires ~~[an elevated degree of]~~ specialized knowledge, expertise, and discretion, including labor, effort, or work in the field of:

(a) accounting;

(b) administrative law judge service;

(c) architecture;

(d) construction design and management;

(e) engineering;

(f) financial services;

(g) information technology;

(h) the law;

(i) medicine;

(j) psychiatry; or

SB0090S01 compared with SB0090

(k) underwriting.

[(62)] ~~(61)~~60 "Protest officer" means:

(a) for the division or ~~[a procurement unit with]~~ an independent procurement ~~[authority]~~ unit:

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

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

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

(b) for a procurement unit ~~[without]~~ other than an independent procurement ~~[authority]~~ unit, the chief procurement officer or the chief procurement officer's designee who is an employee of the division.

[(63)] ~~(62)~~61 "Public corporation" means the same as that term is defined in Section 63E-1-102.

[(64)] ~~(63)~~62 "Public entity" means the state or any other government entity [of the state or political subdivision of the state, including:] within the state that expends public funds.

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

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

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

[(65)] ~~(64)~~63 "Public facility" means a building, structure, infrastructure, improvement, or other facility of a public entity.

[(66)] ~~(65)~~64 "Public funds" means money, regardless of its source, including from the federal government, that is owned or held by a procurement unit.

[(67)] ~~(66)~~65 "Public transit district" means a public transit district organized under Title 17B, Chapter 2a, Part 8, Public Transit District Act.

[(68)] ~~(67)~~66 "Public-private partnership" means an arrangement or agreement, occurring on or after January 1, 2017, between a procurement unit and one or more contractors to provide for a public need through the development or operation of a project in which the contractor or contractors share with the procurement unit the responsibility or risk of developing, owning, maintaining, financing, or operating the project.

[(69)] ~~(68)~~67 "Qualified vendor" means a vendor who:

SB0090S01 compared with SB0090

(a) is responsible; and

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

~~[(70)]~~ ~~(~~69~~;68)~~ "Real property" means land and any building, fixture, improvement, appurtenance, structure, or other development that is permanently affixed to land.

~~[(71)]~~ ~~(~~70~~;69)~~ "Request for information" means a nonbinding process through which a procurement unit requests information relating to a procurement item.

~~[(72)]~~ ~~(~~71~~;70)~~ "Request for proposals" means a document used to solicit proposals to provide a procurement item to a procurement unit, including all other documents that are attached to that document or incorporated in that document by reference.

~~[(73)]~~ ~~(~~72~~;71)~~ "Request for proposals process" means the procurement process described in Part 7, Request for Proposals.

~~[(74)]~~ ~~(~~73~~;72)~~ "Request for statement of qualifications" means a document used to solicit information about the qualifications of a person interested in responding to a potential procurement, including all other documents attached to that document or incorporated in that document by reference.

~~[(75)]~~ ~~(~~74~~;73)~~ "Requirements contract" means a contract:

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

(b) that:

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

(ii) provides a maximum purchase limit.

~~[(76)]~~ ~~(~~75~~;74)~~ "Responsible" means being capable, in all respects, of:

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

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

~~[(77)]~~ ~~(~~76~~;75)~~ "Responsive" means conforming in all material respects to the requirements of a solicitation.

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

~~(~~77~~;76)~~ "Rule" includes a policy or regulation adopted by the rulemaking authority, if

SB0090S01 compared with SB0090

adopting a policy or regulation is the method the rulemaking authority uses to adopt provisions that govern the applicable procurement unit.

(~~78~~77) "Rulemaking authority" means:

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

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

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

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

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

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

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

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

(d) for a local government procurement unit:

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

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

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

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

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

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

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

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

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

SB0090S01 compared with SB0090

(ii) that are in addition to board rules;

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

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

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

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

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

~~[(79)]~~ [(78)] "Service":

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

(b) includes a professional service; and

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

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

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

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

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

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

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

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

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

~~[(85)]~~ [(84)] "Special service district" means the same as that term is defined in Section

SB0090S01 compared with SB0090

17D-1-102.

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

- (a) a requirement for inspecting or testing a procurement item; or
- (b) preparing a procurement item for delivery.

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

- (a) the bidding process;
- (b) the request for proposals process;
- (c) the approved vendor list process;
- (d) the small purchase process; or
- (e) the design professional procurement process.

~~[(88)]~~ [(87)] "State cooperative contract" means a contract awarded by the division for and in behalf of all public entities.

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

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

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

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

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

~~[(91);90]~~ [(90)] "Technology" means the same as "information technology," as defined in Section 63F-1-102.

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

~~[(93)]~~ [(92)] "Time and materials contract" means a contract under which the contractor

SB0090S01 compared with SB0090

is paid:

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

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

- (a) means the costs of changing:
 - (i) from an existing provider of a procurement item to another provider of that procurement item; or

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

- (b) includes:

- (i) training costs;

- (ii) conversion costs;

- (iii) compatibility costs;

- (iv) costs associated with system downtime;

- (v) disruption of service costs;

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

- (vii) installation costs; and

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

- (c) does not include:

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

- (ii) contract negotiation or drafting costs.

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

~~[(96)]~~ ~~(95)~~ 94 "Vendor":

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

- (b) includes:

- (i) a bidder;

- (ii) an offeror;

SB0090S01 compared with SB0090

- (iii) an approved vendor;
- (iv) a design professional; and
- (v) a person who submits an unsolicited proposal under Section 63G-6a-712.

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

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

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

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

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

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

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

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

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

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

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

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

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

~~[(ii) procure an]~~

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

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

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

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

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

SB0090S01 compared with SB0090

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

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

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

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

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

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

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

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

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

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

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

~~[(d) (2) Notwithstanding Subsection [(4)(a), a procurement unit with] (1), an independent procurement [authority] unit may agree in writing with the division to extend the authority of the division or the chief procurement officer to the procurement unit, as provided in the agreement.~~

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

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

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

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

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

~~[(v) (e) for the [head] procurement official of an executive branch procurement unit [with] that is an independent procurement [authority] unit, coordinate with the Department of~~

SB0090S01 compared with SB0090

Technology Services, created in Section 63F-1-103, with respect to the procurement unit's procurement of information technology services;

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

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

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

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

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

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

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

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

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

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

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

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

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

SB0090S01 compared with SB0090

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

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

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

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

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

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

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

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

(a) deposit services; and

(b) services related to issuing bonds.

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

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

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

(2) Notwithstanding any other provision of this chapter:

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

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

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

(a) the procurement unit complies with:

(i) all applicable requirements of this chapter; and

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

SB0090S01 compared with SB0090

and

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

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

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

A county or municipality or the Utah Housing Corporation:

(1) may adopt:

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

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

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

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

63G-6a-107.6. Exemptions from chapter.

(1) Except for this Subsection (1), the provisions of this chapter do not apply to:

(a) a public entity's acquisition of a procurement item from another public entity; or

(b) a public entity that is not a procurement unit.

(2) Unless otherwise provided by statute and except for this Subsection (2), the provisions of this chapter do not apply to the acquisition or disposal of real property or an interest in real property.

(3) Except for this Subsection (3) and Part 24, Unlawful Conduct and Penalties, the provisions of this chapter do not apply to:

(a) funds administered under the Percent-for-Art Program of the Utah Percent-for-Art Act;

(b) a grant;

(c) medical supplies or medical equipment, including service agreements for medical equipment, obtained by the University of Utah Hospital through a purchasing consortium if:

(i) the consortium uses a competitive procurement process; and

(ii) the chief administrative officer of the hospital makes a written finding that the prices for purchasing medical supplies and medical equipment through the consortium are

SB0090S01 compared with SB0090

competitive with market prices;

(d) the purchase of firefighting supplies or equipment by the Division of Forestry, Fire, and State Lands, created in Section 65A-1-4, through the federal General Services

Administration or the National Fire Cache system;

(e) supplies purchased for resale to the public; or

(f) activities related to the management of investments by a public entity granted investment authority by law.

(4) This chapter does not supersede the requirements for retention or withholding of construction proceeds and release of construction proceeds as provided in Section 13-8-5.

(5) Except for this Subsection (5), the provisions of this chapter do not apply to a procurement unit's hiring a mediator, arbitrator, or arbitration panel member to participate in the procurement unit's dispute resolution efforts.

Section 6. Section **63G-6a-107.7** is enacted to read:

63G-6a-107.7. Procurement rules.

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

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

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

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

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

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

(4) The rules of the rulemaking authority for the executive branch procurement unit shall require, for each contract and request for proposals, the inclusion of a clause that requires

SB0090S01 compared with SB0090

the issuing procurement unit, for the duration of the contract, to make available contact information of the winning contractor to the Department of Workforce Services in accordance with Section 35A-2-203. This requirement does not preclude a contractor from advertising job openings in other forums throughout the state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SB0090S01 compared with SB0090

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

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

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

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

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

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

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

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

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

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

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

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

(A) directly impacted by the procurement; or

(B) over which the procurement unit has jurisdiction;

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

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

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

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

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

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

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

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

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

SB0090S01 compared with SB0090

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

~~[(4) An issuing]~~

~~(2) A procurement unit may reduce the seven-day period described in Subsection [(2) or (3)] (1), if the procurement [officer or the procurement officer's designee] unit's procurement official signs a written statement that:~~

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

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

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

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

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

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

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

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

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

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

SB0090S01 compared with SB0090

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

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

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

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

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

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

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

~~[(vi) correct a defect or inadequacy resulting in a determination that a vendor's solicitation response does not meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds established in the solicitation.]~~

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

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

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

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

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

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

(b) A procurement unit may not allow a vendor to correct an immaterial error in a

SB0090S01 compared with SB0090

responsive solicitation response after the deadline established under Subsection (2)(a).

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

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

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

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

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

procurement unit needs to determine whether the vendor is responsible.

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

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

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

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

(b) A procurement unit may not allow a vendor to submit clarifying or additional information after the deadline established under Subsection ~~[(3)]~~ (2)(a).

~~[(4) A vendor's response to a request under this section:]~~

~~[(a) may only explain, illustrate, or interpret the contents of the vendor's original solicitation response;]~~

~~[(b) may not be used to address criteria or specifications not contained in the vendor's original solicitation response; and]~~

~~[(c) may not be used to:]~~

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

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

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

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

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

~~[(vi) correct a defect or inadequacy resulting in a determination that a vendor does not~~

SB0090S01 compared with SB0090

meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds established in the solicitation.]

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

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

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

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

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

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

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

(2) If a procurement unit cancels a solicitation:

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

and

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

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

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

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

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

(a) the solicitation response:

(i) is not responsive;

(ii) violates a requirement of the solicitation; or

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

(b) the vendor who submitted the solicitation response:

SB0090S01 compared with SB0090

(i) is not responsible;

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

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

(iv) has engaged in unethical conduct;

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

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

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

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

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

(2) A procurement unit that rejects a solicitation response under Subsection (1) shall provide the vendor who submitted the rejected solicitation response a written statement of the reasons for the rejection.

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

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

(1) In addition to making rules in accordance with Section [~~63G-6a-110~~] ~~{63G-6a-107}~~63G-6a-107.7 and the other provisions of this chapter, the board shall consider and decide matters of policy within the provisions of this chapter, including those referred to it by the chief procurement officer.

(2) (a) The board may:

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

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

(iii) approve the use of innovative procurement processes.

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

SB0090S01 compared with SB0090

- (i) the award or administration of any particular contract; or
- (ii) any dispute, claim, or litigation pertaining to any particular contract.

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

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

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

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

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

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

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

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

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

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

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

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

(1) The executive director of the Department of Administrative Services, with the consent of the governor, shall appoint the chief procurement officer after considering

SB0090S01 compared with SB0090

recommendations from the board.

(2) The chief procurement officer shall:

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

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

(B) negotiating contract terms and conditions; and

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

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

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

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

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

(b) as otherwise expressly provided in this chapter.

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

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

(1) The chief procurement officer:

(a) is the director of the division;

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

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

(d) serves as the protest officer for a protest relating to a procurement of an executive branch procurement ~~[unit without independent procurement authority],~~ except an executive branch procurement unit designated under Subsection 63G-6a-103(40)(b), (c), (d), or (e) as an independent procurement unit, or a state cooperative contract procurement, unless the chief procurement officer designates another to serve as protest officer, as authorized in this chapter.

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

(a) develop procurement policies and procedures supporting ethical procurement practices, fair and open competition among vendors, and transparency within the state's procurement process;

(b) administer the state's cooperative purchasing program, including state cooperative contracts and associated administrative fees;

SB0090S01 compared with SB0090

(c) enter into an agreement with a public entity for services provided by the division, if the agreement is in the best interest of the state;

(d) ensure the division's compliance with any applicable law, rule, or policy, including a law, rule, or policy applicable to the division's role as an issuing procurement unit or conducting procurement unit, or as the state's central procurement organization;

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

(f) oversee the recruitment, training, career development, certification requirements, and performance evaluation of the division's procurement personnel;

(g) make procurement training available to procurement units and persons who do business with procurement units;

(h) provide exemplary customer service and continually improve the division's procurement operations;

(i) exercise all other authority, fulfill all other duties and responsibilities, and perform all other functions authorized under this chapter; and

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

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

(a) shall:

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

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

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

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

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

(vi) after consultation with the attorney general's office, correct, amend, or cancel a

SB0090S01 compared with SB0090

contract at any time during the term of the contract if:

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

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

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

(b) may:

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

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

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

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

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

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

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

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

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

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

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

SB0090S01 compared with SB0090

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SB0090S01 compared with SB0090

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

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

(iv) enter into a contract.

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

(i) use a standard procurement process; or

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

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

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

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

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

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

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

~~[(e) training;]~~

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

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

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

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

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

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

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

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

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

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

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

SB0090S01 compared with SB0090

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

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

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

(2) A procurement unit may not:

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

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

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

(4) A request for statement of qualifications in a multiple-stage standard procurement process shall include:

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

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

(i) experience and work history;

(ii) management and staff requirements or standards;

(iii) licenses, certifications, and other qualifications;

(iv) performance ratings or references;

(v) financial stability; and

(vi) other information pertaining to vendor qualifications that the ~~[chief procurement officer or the head of a procurement unit with independent procurement authority]~~ procurement official considers relevant or important; and

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

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

(a) a general description of, as applicable:

SB0090S01 compared with SB0090

- (i) the procurement item that the procurement unit seeks to acquire;
- (ii) the type of project or scope or category of work that will be the subject of a procurement by the procurement unit;
- (iii) the procurement process the procurement unit will use to acquire the procurement item; and
- (iv) the type of vendor the procurement unit seeks to provide the procurement item;
- (b) the minimum mandatory requirements, evaluation criteria, and applicable score thresholds that vendors are required to meet to be included on the approved vendor list;
- (c) a statement indicating that the approved vendor list will include only responsible vendors that:
 - (i) submit a responsive statement of qualifications; and
 - (ii) meet the minimum mandatory requirements, evaluation criteria, and applicable score thresholds described in the request for statement of qualifications;
- (d) a statement indicating that only vendors on the approved vendor list will be able to participate in the procurements identified in the request for statement of qualifications;
- (e) a statement indicating whether the procurement unit will use a performance rating system for evaluating the performance of vendors on the approved vendor list, including whether a vendor on the approved vendor list may be disqualified and removed from the list;
- (f) (i) a statement indicating whether the procurement unit uses a closed-ended approved vendor list, as defined in Section 63G-6a-507, or an open-ended approved vendor list, as defined in Section 63G-6a-507; and
 - (ii) (A) if the procurement unit uses a closed-ended approved vendor list, the deadline by which a vendor is required to submit a statement of qualifications and a specified period of time after which the approved vendor list will expire; or
 - (B) if the procurement unit uses an open-ended approved vendor list, the deadline by which a vendor is required to submit a statement of qualifications to be considered for the initial approved vendor list, a schedule indicating when a vendor not on the initial approved vendor list may submit a statement of qualifications to be considered to be added to the approved vendor list, and the specified period of time after which a vendor is required to submit a new statement of qualifications for evaluation before the vendor's status as an approved vendor on the approved vendor list may be renewed; and

SB0090S01 compared with SB0090

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

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

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

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

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

(A) is not responsible;

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

(C) has engaged in unethical conduct; or

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

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

(iii) the statement of qualifications:

(A) is not responsive; or

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

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

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

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

(9) (a) (i) After the issuance of a request for statement of qualifications, the conducting procurement unit shall appoint an evaluation committee consisting, subject to Subsection

SB0090S01 compared with SB0090

(9)(b), of at least three individuals with at least a general familiarity with or basic understanding of:

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

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

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

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

(B) can fairly evaluate each statement of qualifications;

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

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

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

(i) consist of only objective criteria; and

(ii) do not include any subjective criterion that requires analysis, assessment, or deliberation.

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

(i) from an expert or consultant who:

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

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

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

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

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

(ii) may not evaluate or score a statement of qualifications using criteria not included in

SB0090S01 compared with SB0090

the request for statement of qualifications; and

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

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

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

(ii) may not:

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

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

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

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

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

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

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

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

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

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

SB0090S01 compared with SB0090

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

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

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

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

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

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

(a) ~~[shall]~~ cancel the request for statement of qualifications; ~~[and]~~ or

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

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

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

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

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

(14) After receiving and reviewing the statements of qualifications and evaluation scores submitted by the evaluation committee, the ~~[head]~~ procurement official of the procurement unit using the request for statement of qualifications process under this section as

SB0090S01 compared with SB0090

one of the stages of a multiple-stage procurement process shall identify those vendors meeting the minimum mandatory requirements, evaluation criteria, and applicable score thresholds as qualified vendors who are allowed to participate in the remaining stages of the multiple-stage procurement process.

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

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

63G-6a-506. Small purchases.

(1) As used in this section:

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

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

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

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

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

(i) establishing expenditure thresholds, including:

(A) an annual cumulative threshold;

(B) an individual procurement threshold; and

(C) a single procurement aggregate threshold;

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

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

(c) If a procurement unit obtains administrative law judge service through a small

SB0090S01 compared with SB0090

purchase standard procurement process, rules made under Subsection (2)(a) shall provide that the process for the procurement of administrative law judge service include an evaluation committee described in Subsection 63G-6a-116(3).

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

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

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

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

- (i) an item needed to avoid stopping a public construction project;
- (ii) an immediate repair to a facility or equipment; or
- (iii) another emergency condition; or

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

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

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

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

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

SB0090S01 compared with SB0090

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

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

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

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

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

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

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

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

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

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

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

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

(A) avoid having to use a standard procurement process, other than the small purchase

SB0090S01 compared with SB0090

process, that the person would otherwise be required to use for the single procurement; or

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

(b) A violation of Subsection (8)(a) is subject to penalties as provided in Subsection 63G-6a-2404.3(2).

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

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

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

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

(1) As used in this section:

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

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

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

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

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

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

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

(2) A procurement unit may not establish an approved vendor list unless the procurement unit has first completed the statement of qualifications process described in

SB0090S01 compared with SB0090

Section 63G-6a-410.

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

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

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

(A) the procurement item; and

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

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

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

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

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

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

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

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

(6) A procurement unit may:

(a) (i) using a bidding process, request for proposals process, small purchase process,

SB0090S01 compared with SB0090

or design professional procurement process, award a contract to a vendor on an approved vendor list for any procurement item or type of procurement item specified by the procurement unit in the request for statement of qualifications, including procurement items that the procurement unit intends to acquire in a series of future procurements described in the request for statement of qualifications; and

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

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

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

(b) An issuing procurement unit that receives an approved vendor list under Subsection (7)(a) shall make the approved vendor list available to the public.

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

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

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

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

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

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

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

SB0090S01 compared with SB0090

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

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

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

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

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

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

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

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

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

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

~~[(c) state the place where a bid shall be submitted; and]~~

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

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

~~[(ii) the objective criteria that will be used to evaluate the bids; and]~~

~~[(iii) the required contractual terms and conditions.]~~

(1) A procurement unit that intends to award a contract for a procurement item using the bidding process shall issue an invitation for bids.

(2) A procurement unit shall include in an invitation for bids:

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

(b) instructions for submitting a bid, including the deadline for submitting a bid;

(c) the objective criteria that the procurement unit will use to evaluate bids;

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

(e) terms and conditions that the procurement unit intends to include in a contract resulting from the bidding process.

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

SB0090S01 compared with SB0090

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

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

(1) A procurement unit:

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

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

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

(a) the interest of the procurement unit; or

(b) fair competition.

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

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

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

~~[(a) experience;]~~

~~[(b) performance ratings;]~~

~~[(c) inspection;]~~

~~[(d) testing;]~~

~~[(e) quality;]~~

~~[(f) workmanship;]~~

~~[(g) time and manner of delivery;]~~

~~[(h) references;]~~

~~[(i) financial stability;]~~

~~[(j) cost;]~~

~~[(k) suitability for a particular purpose;]~~

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

~~[(m) other objective criteria specified in the invitation for bids.]~~

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

~~[(3) The conducting procurement unit shall:]~~

~~[(a) subject to the provisions of Section 63G-6a-1204.5 for multiple award contracts;~~

SB0090S01 compared with SB0090

~~award the contract as soon as practicable to:]~~

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

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

~~[(b) cancel the invitation for bids without awarding a contract.]~~

~~[(4) In accordance with Subsection (5), the procurement officer or the head of the conducting procurement unit may reject a bid for:]~~

~~[(a) a violation of this chapter by the bidder who submitted the bid;]~~

~~[(b) a violation of a requirement of the invitation for bids;]~~

~~[(c) unlawful or unethical conduct by the bidder who submitted the bid; or]~~

~~[(d) a change in a bidder's circumstance that, had the change been known at the time the bid was submitted, would have caused the bid to be rejected.]~~

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

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

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

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

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

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

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

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

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

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

63G-6a-608. Tie bids.

SB0090S01 compared with SB0090

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SB0090S01 compared with SB0090

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

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

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

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

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

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

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

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

~~[(f) state the relative weight that will be given to each score for the criteria described in Subsection (2)(d)(ii), including cost;]~~

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

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

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

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

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

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

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

SB0090S01 compared with SB0090

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

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

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

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

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

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

(1) A procurement unit:

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

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

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

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

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

(a) the interest of the procurement unit; or

(b) fair competition.

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

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

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

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

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

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

SB0090S01 compared with SB0090

responsive.

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

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

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

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

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

~~[(1)-(a)]~~ (3) To determine which proposal provides the best value to the procurement unit, the evaluation committee shall evaluate each responsible offeror's responsive proposal that has not been disqualified from consideration under the provisions of this chapter, using the evaluation criteria described in the request for proposals.

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

~~[(i) experience;]~~

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

~~[(iii) inspection;]~~

~~[(iv) testing;]~~

~~[(v) quality;]~~

~~[(vi) workmanship;]~~

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

~~[(viii) references;]~~

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

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

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

~~[(xii) cost;]~~

~~[(xiii) if applicable, the offeror's willingness and capability to enter into a public-private partnership; or]~~

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

SB0090S01 compared with SB0090

~~[(c) The criteria in a request for proposals for a construction project shall include the existence and quality of:]~~

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

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

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

~~[(3) The conducting]~~

(5) A procurement unit shall:

(a) appoint [an] evaluation committee [~~consisting of at least three individuals with~~ members who have at least a general familiarity with or basic understanding of:

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

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

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

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

(ii) can fairly evaluate each proposal;

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

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

~~[(4) A conducting]~~

(6) A procurement unit may authorize an evaluation committee to receive assistance[~~:~~ (a)] from an expert or consultant [~~who: (i) is not a member of the evaluation committee; and (ii) does not participate in the evaluation scoring; and (b)-~~] to better understand a technical issue involved in the procurement.

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

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

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

SB0090S01 compared with SB0090

~~proposal; and]~~

~~[(ii) may not:]~~

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

~~[(B) correct a deficiency, inaccuracy, or mistake in a proposal that is not an immaterial error;]~~

~~[(C) correct an incomplete submission of documents that the solicitation required to be submitted with the proposal;]~~

~~[(D) correct a failure to submit a timely proposal;]~~

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

~~[(F) remedy a cause for an offeror being considered to be not responsible or a proposal not responsive; or]~~

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

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

~~[(b) The issuing procurement unit shall:]~~

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

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

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

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

SB0090S01 compared with SB0090

(7) (a) Except as provided in Subsection (7)(b), an evaluation committee member is prohibited from knowing or having access to information relating to the cost of a proposal until after the evaluation committee submits its recommendation to the procurement unit based on the scores of all criteria other than cost.

(b) A procurement official may waive the prohibition of Subsection (7)(a) by signing a written statement indicating why waiving the prohibition is in the best interests of the procurement unit.

~~[(c) The] (8) An~~ evaluation committee may ~~[not: (i)]~~ change its final recommended scores ~~[described in Subsection (6)(a)]~~ after the evaluation committee has submitted those scores to the ~~[issuing] procurement unit[; or]~~.

~~[(ii) change cost scores calculated by the issuing procurement unit.]~~

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

~~[(i) preconstruction phase services;]~~

~~[(ii) monthly supervision fees for the construction phase; and]~~

~~[(iii) overhead and profit for the construction phase.]~~

~~[(b) When selecting a construction manager/general contractor for a construction project, the evaluation committee:]~~

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

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

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

~~[(iv) except as provided in Subsection (9), may not know or have access to any other information relating to the cost of construction submitted by the offerors, until after the evaluation committee submits its final recommended scores on all other criteria to the issuing procurement unit.]~~

~~[(8)] (9) (a) The deliberations and other proceedings of an evaluation committee may be held in private.~~

SB0090S01 compared with SB0090

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

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

~~[(a) signs a written statement:]~~

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

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

~~[(b) makes the written statement available to the public, upon request.]~~

(10) (a) At the conclusion of the evaluation process, an evaluation committee shall prepare and submit to the procurement unit a written statement that:

(i) recommends a proposal for an award of a contract, if the evaluation committee decides to recommend a proposal;

(ii) contains the score awarded to the recommended proposal based on the criteria stated in the request for proposals; and

(iii) explains how the recommended proposal provides the best value to the procurement unit.

(b) A procurement unit is not required to comply with Subsection (10)(a) for a contract with a construction manager/general contractor if the contract is awarded based solely on:

(i) the qualifications of the construction manager/general contractor; and

(ii) the management fee to be paid to the construction manager/general contractor.

Section 34. Section **63G-6a-707.5** is amended to read:

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

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

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

SB0090S01 compared with SB0090

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

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

(a) only with the approval of the [~~chief procurement officer or the head of the issuing procurement unit~~] procurement official; and

(b) if:

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

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

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

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

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

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

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

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

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

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

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

SB0090S01 compared with SB0090

funding; or

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) clearly specify:

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

(ii) how best and final offers will be evaluated and scored in accordance with Section ~~[63G-6a-707]~~ ~~{63G-6a-707}~~ 63G-6a-707.5;

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

SB0090S01 compared with SB0090

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

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

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

(b) ensure that each offeror receives fair and equal treatment; and

(c) safeguard the integrity of the scope of the original request for proposals, except as specifically provided otherwise in this section.

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

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

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

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

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

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

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

Section 35. Section **63G-6a-712** is amended to read:

63G-6a-712. Unsolicited proposals.

(1) As used in this section, "unsolicited proposal" [~~:(a)~~] means a written proposal:

[~~(i)~~] (a) for a public-private partnership for:

[~~(A)~~] (i) an infrastructure project; or

[~~(B)~~] (ii) a project to collect, analyze, and distribute health data to improve health and health care and to facilitate interaction regarding health and health care issues; and

SB0090S01 compared with SB0090

~~[(ii)] (b)~~ that is not submitted in response to a solicitation~~;~~ ~~and~~.

~~[(b) does not include an initial proposal, as defined in Section 63G-6a-711.]~~

(2) (a) Subject to Subsection (2)(b), a person may submit an unsolicited proposal to a procurement unit at any time.

(b) An unsolicited proposal may not be used to seek a procurement unit's consideration of a proposal after the expiration of the time for submitting proposals in response to a request for proposals.

(3) An unsolicited proposal shall include:

(a) a reference to this section and a statement that the unsolicited proposal is submitted under this section;

(b) a conceptual description of the project that constitutes the procurement item that is the subject of the proposed public-private partnership;

(c) a description of the economic benefit of the project to the state and the procurement unit;

(d) information concerning the services or facilities currently being provided by the state or procurement unit that are similar to the project;

(e) an estimate of the project costs for:

(i) design;

(ii) implementation;

(iii) operation and maintenance; and

(iv) any other related project cost; and

(f) the name, address, telephone number, and email address of an individual who may be contacted for further information concerning the unsolicited proposal.

(4) A procurement unit is not required to consider an unsolicited proposal.

(5) A procurement unit may charge a person submitting an unsolicited proposal a fee to cover the actual cost of processing, considering, and evaluating the unsolicited proposal.

(6) A procurement unit that receives an unsolicited proposal may not award a contract for the procurement item described in the unsolicited proposal unless:

(a) the procurement unit first engages in a standard procurement process for proposals to provide the procurement item described in the unsolicited proposal; or

(b) awarding the contract without the procurement unit engaging in a standard

SB0090S01 compared with SB0090

procurement process is allowed under Section 63G-6a-802.

(7) If a procurement unit engages in a standard procurement process pursuant to Subsection (6)(a):

(a) the procurement unit shall treat an unsolicited proposal as though it were submitted as a proposal in response to the solicitation; and

(b) a person who has submitted an unsolicited proposal may, within the time provided in the solicitation for the submission of proposals, modify the unsolicited proposal to the extent necessary to address matters raised in the solicitation that were not addressed in the initial unsolicited proposal.

(8) [~~An applicable~~] A rulemaking authority may make rules to govern the submission, processing, consideration, and evaluation of an unsolicited proposal, including fees relating to the unsolicited proposal.

(9) An unsolicited proposal is subject to Chapter 2, Government Records Access and Management Act, including, if applicable, provisions relating to a written claim of business confidentiality, as provided in Section 63G-2-309, for trade secrets, commercial information, or nonindividual financial information described in Subsection 63G-2-305(1) or (2).

Section 36. Section **63G-6a-802** is amended to read:

63G-6a-802. Award of contract without engaging in a standard procurement process -- Notice -- Duty to negotiate contract terms in best interest of procurement unit.

(1) [~~The chief procurement officer or the head of a procurement unit with independent procurement authority~~] A procurement unit may award a contract for a procurement item without engaging in a standard procurement process if the [~~chief procurement officer or the head of the procurement unit with independent procurement authority~~] procurement official determines in writing that:

(a) there is only one source for the procurement item;

(b) (i) transitional costs are a significant consideration in selecting a procurement item; and

(ii) the results of a cost-benefit analysis demonstrate that transitional costs are unreasonable or cost-prohibitive, and that the award of a contract without engaging in a standard procurement process is in the best interest of the procurement unit; or

(c) the award of a contract is under circumstances, described in rules adopted by the

SB0090S01 compared with SB0090

[~~applicable~~] rulemaking authority, that make awarding the contract through a standard procurement process impractical and not in the best interest of the procurement unit.

(2) Transitional costs associated with a trial use or testing of a procurement item under a trial use contract awarded under Section 63G-6a-802.3 may not be included in a consideration of transitional costs under Subsection (1)(b).

(3) (a) Subject to Subsection (3)(b), [~~the applicable~~] a rulemaking authority shall make rules regarding the publication of notice for a procurement under this section that, at a minimum, require publication of notice of the procurement, in accordance with Section 63G-6a-112, if the cost of the procurement exceeds \$50,000.

(b) Publication of notice under Section 63G-6a-112 is not required for:

(i) the procurement of public utility services pursuant to a sole source contract; or
(ii) other procurements under this section for which an applicable rule provides that notice is not required.

(4) [~~The chief procurement officer or the head of a procurement unit with independent procurement authority~~] A procurement official who awards a contract under this section shall negotiate with the contractor to ensure that the terms of the contract, including price and delivery, are in the best interest of the procurement unit.

Section 37. Section **63G-6a-802.3** is amended to read:

63G-6a-802.3. Trial use contracts.

(1) A procurement unit may award a trial use contract without engaging in a standard procurement process if:

(a) the purpose of the contract is to:

(i) determine whether the procurement item will benefit the procurement unit;

(ii) assess the feasibility of a procurement item that:

(A) is new or innovative; or

(B) has a proposed use or application that is novel or unproven; or

(iii) evaluate whether to conduct a standard procurement process for the procurement item being tested; and

(b) the contract is:

[~~(a)~~] (i) awarded for a procurement item that is not already available to the procurement unit under an existing contract;

SB0090S01 compared with SB0090

~~(b)~~ (ii) restricted to the procurement of a procurement item in the minimum quantity and for the minimum period of time necessary to test the procurement item;

~~(c)~~ (iii) the only trial use contract for that procurement unit for the same procurement item; and

~~(d)~~ (iv) not used to circumvent the purposes and policies of this chapter as set forth in Section 63G-6a-102.

(2) The period of trial use or testing of a procurement item under a trial use contract may not exceed ~~[18]~~ 24 months, unless the procurement ~~[officer]~~ official provides a written exception documenting the reason for a longer period.

(3) A trial use contract shall:

(a) state that the contract is strictly for the trial use or testing of a procurement item;

(b) state that the contract terminates upon completion of the trial use or testing period;

(c) state that the procurement unit is not obligated to purchase or enter into a contract for the procurement item, regardless of the trial use or testing result;

(d) state that any purchase of the procurement item that is the subject of the trial use contract will be made in accordance with this chapter; and

(e) include, as applicable:

(i) test schedules;

(ii) deadlines and a termination date;

(iii) measures that will be used to evaluate the performance of the procurement item;

(iv) any fees and associated expenses or an explanation of the circumstances

warranting a waiver of those fees and expenses;

(v) the obligations of the procurement unit and vendor;

(vi) provisions regarding the ownership of the procurement item during and after the trial use or testing period;

(vii) an explanation of the grounds upon which the contract may be terminated;

(viii) a provision relating to any required bond or security deposit; and

(ix) other requirements unique to the procurement item for trial use or testing.

(4) Publication of notice under Section 63G-6a-112 is not required for a trial use contract.

(5) ~~[The applicable]~~ A rulemaking authority may make rules pertaining to a trial use

SB0090S01 compared with SB0090

contract.

Section 38. Section **63G-6a-802.7** is amended to read:

63G-6a-802.7. Extension of a contract without engaging in a standard procurement process.

~~[The chief procurement officer or the head of a procurement unit with independent procurement authority]~~ A procurement official may extend an existing contract without engaging in a standard procurement process:

- (1) for a period of time not to exceed 120 days, if:
 - (a) an extension of the contract is necessary to:
 - (i) avoid a lapse in a critical government service; or
 - (ii) to mitigate a circumstance that is likely to have a negative impact on public health, safety, welfare, or property; and
 - (b) (i) (A) the procurement unit is engaged in a standard procurement process for a procurement item that is the subject of the contract being extended; and
 - (B) the standard procurement process is delayed due to an unintentional error;
 - (ii) a change in an industry standard requires one or more significant changes to specifications for the procurement item; or
 - (iii) an extension is necessary:
 - (A) to prevent the loss of federal funds;
 - (B) to mitigate the effects of a delay of a state or federal appropriation;
 - (C) to enable the procurement unit to continue to receive a procurement item during a delay in the implementation of a contract awarded pursuant to a procurement that has already been conducted; or
 - (D) to enable the procurement unit to continue to receive a procurement item during a period of time during which negotiations with a vendor under a new contract for the procurement item are being conducted;
- (2) for the period of a protest, appeal, or court action, if the protest, appeal, or court action is the reason for delaying the award of a new contract; or
- (3) for a period of time exceeding 120 days, if, after consulting with the attorney general or the procurement unit's attorney, the ~~[chief procurement officer or head of a procurement unit with independent procurement authority]~~ procurement official determines in

SB0090S01 compared with SB0090

writing that the contract extension does not violate state or federal antitrust laws and is consistent with the purpose of ensuring the fair and equitable treatment of all persons who deal with the procurement system.

Section 39. Section **63G-6a-803** is amended to read:

63G-6a-803. Emergency procurement.

(1) Notwithstanding any other provision of this chapter, [~~the chief procurement officer or the head of a procurement unit with independent procurement authority~~] a procurement official may authorize a procurement unit to engage in an emergency procurement without using a standard procurement process if the procurement is necessary to:

(a) avoid a lapse in a critical government service;

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

(c) protect the legal interests of a public entity.

(2) A procurement unit conducting an emergency procurement under Subsection (1) shall:

(a) ensure that the procurement is made with as much competition as reasonably practicable while:

(i) avoiding a lapse in a critical government service;

(ii) avoiding harm, or a risk of harm, to the public health, safety, welfare, or property;

or

(iii) protecting the legal interests of a public entity; and

(b) after the emergency has abated, prepare a written document explaining the emergency condition that necessitated the emergency procurement under Subsection (1).

Section 40. Section **63G-6a-804** is amended to read:

63G-6a-804. Purchase of prison industry goods.

(1) As used in this section [~~,"applicable~~]:

(a) "Applicable procurement unit" means a procurement unit that is not:

~~[(a)]~~ (i) a political subdivision of the state; or

~~[(b)]~~ (ii) the Utah Schools for the Deaf and the Blind.

(b) "Correctional industries division" means the Division of Correctional Industries, created in Section 64-13a-4.

SB0090S01 compared with SB0090

(c) "Correctional industries director" means the director of the correctional industries division, appointed under Section 64-13a-4.

(2) (a) An applicable procurement unit shall purchase goods and services produced by the [~~Utah Correctional Industries Division~~] correctional industries division as provided in this section.

(b) A procurement unit that is not an applicable procurement unit may, and is encouraged to, purchase goods and services under this section.

(c) A procurement unit is not required to use a standard procurement process to purchase goods or services under this section.

(3) On or before July 1 of each year, the correctional industries director [~~of the Utah Correctional Industries~~] shall:

(a) publish and distribute to all procurement units and other interested public entities a catalog of goods and services [~~provided~~] produced by the [~~Correctional Industries Division~~] correctional industries division, including a description and price of each item offered for sale; and

(b) update and revise the catalog described in Subsection (3)(a) during the year as the correctional industries director considers necessary.

(4) (a) An applicable procurement unit may not purchase any goods or services provided by the [~~Correctional Industries Division~~] correctional industries division from any other source unless [~~it has been determined in writing by the director of Correctional Industries and by the~~] the correctional industries director and the procurement [officer] official or, in the case of institutions of higher education, the institutional procurement officer, determine in writing that purchase from the [~~Correctional Industries Division~~] correctional industries division is not feasible due to one of the following circumstances:

(i) the good or service offered by the correctional industries division does not meet the reasonable requirements of the procurement unit;

(ii) the good or service cannot be supplied within a reasonable time by the correctional industries division; or

(iii) the cost of the good or service, including basic price, transportation costs, and other expenses of acquisition, is not competitive with the cost of procuring the item from another source.

SB0090S01 compared with SB0090

(b) In cases of disagreement under Subsection (4)(a):

(i) the decision may be appealed to a board consisting of:

(A) the director of the Department of Corrections;

(B) the director of Administrative Services; and

(C) a neutral third party agreed upon by the other two members of the board;

(ii) in the case of an institution of higher education of the state, the president of the institution, or the president's designee, shall make the final decision; or

(iii) in the case of any of the following entities, a person designated by the [applicable] rulemaking authority shall make the final decision:

(A) a legislative procurement unit;

(B) a judicial procurement unit; or

(C) a public transit district.

Section 41. Section **63G-6a-806** is amended to read:

63G-6a-806. Exception for public transit district contracting with a county or municipality.

A public transit district, organized under Title 17B, Chapter 2a, Part 8, Public Transit District Act, may, without going through a standard procurement process or another exception to a standard procurement process described in this part:

(1) contract with a county or municipality to receive money from the county or municipality; and

(2) use the money described in Subsection (1) to fund a transportation project or a transit-related program in accordance with rules made by the [applicable] rulemaking authority.

Section 42. Section **63G-6a-902** is amended to read:

63G-6a-902. Cancellation and rejection of bids and proposals.

(1) An issuing procurement unit may cancel an invitation for bids, a request for proposals, or other solicitation or reject any or all bids or proposal responses, in whole or in part, as may be specified in the solicitation, when it is in the best interests of the procurement unit in accordance with the rules of the [applicable] rulemaking authority.

(2) The reasons for a cancellation or rejection described in Subsection (1) shall be made part of the contract file.

Section 43. Section **63G-6a-903** is amended to read:

SB0090S01 compared with SB0090

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

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

(2) A person's unreasonable failure to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to the person.

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

Section 44. Section **63G-6a-904** is amended to read:

63G-6a-904. Debarment or suspension from consideration for award of contracts -- Process -- Causes for debarment -- Judicial review.

(1) (a) Subject to Subsection (1)(b), [~~the chief procurement officer or the head of a procurement unit with independent procurement authority~~] a procurement official may:

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

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

(b) Before debarring or suspending a person under Subsection (1)(a), [~~the chief procurement officer or head of a procurement unit with independent procurement authority~~] a procurement official shall:

(i) consult with:

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

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

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

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

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

(iii) hold an informal hearing in accordance with Subsection (1)(c).

SB0090S01 compared with SB0090

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

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

(B) subpoena documents for production at the hearing;

(C) obtain additional factual information; and

(D) obtain testimony from experts, the person who is the subject of the proposed debarment or suspension, representatives of the procurement unit, or others to assist the [~~chief procurement officer or head of a procurement unit with independent procurement authority~~] procurement official to make a decision on the proposed debarment or suspension.

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

~~[(iii) The chief procurement officer or head of a procurement unit with independent procurement authority]~~

(iii) A procurement official shall:

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

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

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

~~[(v) The chief procurement officer or head of a procurement unit with independent procurement authority]~~

(v) A procurement official shall:

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

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

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

(A) state the reasons for the debarment or suspension, if debarment or suspension is

SB0090S01 compared with SB0090

ordered; and

(B) inform the person who is debarred or suspended of the right to judicial review as provided in this chapter.

(vii) A decision of debarment or suspension is final and conclusive unless the decision is overturned by a court under Subsection (4).

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

(3) The causes for debarment include the following:

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

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

(c) conviction under state or federal antitrust statutes;

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

(e) a violation of this chapter; or

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

(4) (a) A person who is debarred or suspended under this section may seek judicial review of the debarment or suspension by filing a petition for judicial review in district court.

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

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

(ii) shall name the procurement unit as respondent;

SB0090S01 compared with SB0090

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

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

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

(d) A district court shall, without a jury, determine all questions of fact and law, including any constitutional issue, presented in the pleadings.

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

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

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

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

Section 45. Section **63G-6a-1002** is amended to read:

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

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

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

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

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

(2) (a) If the responsible bidder submitting the lowest responsive bid offers

SB0090S01 compared with SB0090

procurement items that are produced, manufactured, mined, grown, or performed in a state that gives or requires a preference, and if another responsible bidder has submitted a responsive bid offering procurement items that are produced, manufactured, mined, grown, or performed in Utah, and with the benefit of the reciprocal preference, the bid of the other bidder is equal to or less than the original lowest bid, the issuing procurement unit shall:

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

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

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

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

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

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

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

Section 46. Section **63G-6a-1003** is amended to read:

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

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

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

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

(2) (a) When awarding contracts for construction, an issuing procurement unit shall

SB0090S01 compared with SB0090

grant a resident contractor a reciprocal preference over a nonresident contractor from any state that gives or requires a preference to contractors from that state.

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

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

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

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

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

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

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

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

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

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

SB0090S01 compared with SB0090

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

Section 47. Section **63G-6a-1102** is amended to read:

63G-6a-1102. Bid security requirements -- Directed suretyship prohibited -- Penalty.

(1) Bid security in an amount equal to at least 5% of the amount of the bid shall be required for all competitive bidding for construction contracts. Bid security shall be a bond provided by a surety company authorized to do business in this state, the equivalent in cash, or any other form satisfactory to the state.

(2) When a bidder fails to comply with the requirement for bid security described in the invitation for bids, the bid shall be rejected unless, pursuant to rules of the ~~[applicable]~~ rulemaking authority, the issuing procurement unit determines that the failure to comply with the security requirements is nonsubstantial.

(3) After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids~~[, except as provided in Section 63G-6a-605]~~. If a bidder is permitted to withdraw a bid before award, no action shall be taken against the bidder or the bid security.

(4) (a) When issuing an invitation for a bid under this chapter, the procurement ~~[officer or the head of an issuing procurement unit]~~ official responsible for carrying out a construction project may not require a person or entity who is bidding for a contract to obtain a bond of the type described in Subsection (1) from a specific insurance or surety company, producer, agent, or broker.

(b) A person who violates Subsection (4)(a) is guilty of an infraction.

Section 48. Section **63G-6a-1103** is amended to read:

63G-6a-1103. Bonds or security necessary when contract is awarded -- Waiver -- Action -- Attorney fees.

(1) When a construction contract is awarded under this chapter, the contractor to whom the contract is awarded shall deliver the following bonds or security to the procurement unit, which shall become binding on the parties upon the execution of the contract:

(a) a performance bond satisfactory to the procurement unit that is in an amount equal to 100% of the price specified in the contract and is executed by a surety company authorized to do business in the state or any other form satisfactory to the procurement unit; and

SB0090S01 compared with SB0090

(b) a payment bond satisfactory to the procurement unit that is in an amount equal to 100% of the price specified in the contract and is executed by a surety company authorized to do business in the state or any other form satisfactory to the procurement unit, which is for the protection of each person supplying labor, service, equipment, or material for the performance of the work provided for in the contract.

(2) (a) When a construction contract is awarded under this chapter, the procurement [~~officer or the head of the issuing procurement unit~~] official responsible for carrying out the construction project may not require a contractor to whom a contract is awarded to obtain a bond of the types referred to in Subsection (1) from a specific insurance or surety company, producer, agent, or broker.

(b) A person who violates Subsection (2)(a) is guilty of an infraction.

(3) Rules of [~~the applicable~~] a rulemaking authority may provide for waiver of the requirement of a bid, performance, or payment bond for circumstances in which the procurement [~~officer~~] official considers any or all of the bonds to be unnecessary to protect the procurement unit.

(4) A person [~~shall have~~] has a right of action on a payment bond under this section for any unpaid amount due to the person if:

(a) the person has furnished labor, service, equipment, or material for the work provided for in the contract for which the payment bond is furnished under this section; and

(b) the person has not been paid in full within 90 days after the last day on which the person performed the labor or service or supplied the equipment or material for which the claim is made.

(5) An action upon a payment bond may only be brought in a court of competent jurisdiction in a county where the construction contract was to be performed. The action is barred if not commenced within one year after the last day on which the claimant performed the labor or service or supplied the equipment or material on which the claim is based. The obligee named in the bond need not be joined as a party to the action.

(6) In any suit upon a payment bond, the court shall award reasonable attorney fees to the prevailing party, which fees shall be taxed as costs in the action.

Section 49. Section **63G-6a-1105** is amended to read:

63G-6a-1105. Form of bonds -- Effect of certified copy.

SB0090S01 compared with SB0090

(1) The form of the bonds required by this part shall be established by rule made by the [applicable] rulemaking authority.

(2) Any person may obtain from the procurement unit a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any.

(3) A certified copy of a bond is prima facie evidence of the contents, execution, and delivery of the original.

Section 50. Section **63G-6a-1204.5** is amended to read:

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

(1) (a) Through a standard procurement process, the division or [a] an independent procurement unit [~~with independent procurement authority~~] may enter into multiple award contracts with multiple persons.

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

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

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

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

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

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

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

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

(b) reserve the right to obtain the procurement items described in Subsection (4)(a)

SB0090S01 compared with SB0090

separately from the contracts if:

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

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

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

Section 51. Section **63G-6a-1205** is amended to read:

63G-6a-1205. Regulation of contract types -- Permitted and prohibited contract types.

(1) Except as otherwise provided in this section, and subject to rules made under this section by the [~~applicable~~] rulemaking authority, a procurement unit may use any type of contract that will promote the best interests of the procurement unit.

(2) [~~An applicable~~] A rulemaking authority:

(a) may make rules governing, placing restrictions on, or prohibiting the use of any type of contract; and

(b) may not make rules that permit the use of a contract:

(i) that is prohibited under this section; or

(ii) in a manner that is prohibited under this section.

(3) A procurement [~~officer, the head of an issuing procurement unit, or a designee of either,~~] official may not use a type of contract, other than a firm fixed price contract, unless the procurement [~~officer~~] official makes a written determination that:

(a) the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated;

(b) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles; and

(c) the use of a specified type of contract, other than a firm fixed price contract, is in the best interest of the procurement unit, taking into consideration the following criteria:

(i) the type and complexity of the procurement item;

(ii) the difficulty of estimating performance costs at the time the contract is entered

SB0090S01 compared with SB0090

into, due to factors that may include:

- (A) the difficulty of determining definitive specifications;
 - (B) the difficulty of determining the risks, to the contractor, that are inherent in the nature of the work to be performed; or
 - (C) the difficulty to clearly determine other factors necessary to enter into an accurate firm fixed price contract;
 - (iii) the administrative costs to the procurement unit and the contractor;
 - (iv) the degree to which the procurement unit is required to provide technical coordination during performance of the contract;
 - (v) the impact that the choice of contract type may have upon the level of competition for award of the contract;
 - (vi) the stability of material prices, commodity prices, and wage rates in the applicable market;
 - (vii) the impact of the contract type on the level of urgency related to obtaining the procurement item;
 - (viii) the impact of any applicable governmental regulation relating to the contract; and
 - (ix) other criteria that the procurement officer determines may relate to determining the contract type that is in the best interest of the procurement unit.
- (4) Contract types that, subject to the provisions of this section and rules made under this section, may be used by a procurement unit include the following:
- (a) a fixed price contract;
 - (b) a fixed price contract with price adjustment;
 - (c) a time and materials contract;
 - (d) a labor hour contract;
 - (e) a definite quantity contract;
 - (f) an indefinite quantity contract;
 - (g) a requirements contract;
 - (h) a contract based on a rate table in accordance with industry standards; or
 - (i) a contract that includes one of the following construction delivery methods:
 - (i) design-build;
 - (ii) design-bid-build; or

SB0090S01 compared with SB0090

(iii) construction manager/general contractor.

(5) Except as it applies to a change order, a procurement unit may not enter into a cost-plus-percentage-of-cost contract, unless:

(a) use of a cost-plus-percentage-of-cost contract is approved by the procurement officer;

(b) it is standard practice in the industry to obtain the procurement item through a cost-plus-percentage-of-cost contract; and

(c) the percentage and the method of calculating costs in the contract are in accordance with industry standards.

(6) A procurement unit may not enter into a cost-reimbursement contract, unless the procurement [~~officer~~] official makes a written determination that:

(a) (i) a cost-reimbursement contract is likely to cost less than any other type of permitted contract; or

(ii) it is impracticable to obtain the procurement item under any other type of permitted contract; and

(b) the proposed contractor's accounting system:

(i) will timely develop the cost data in the form necessary for the procurement unit to timely and accurately make payments under the contract; and

(ii) will allocate costs in accordance with generally accepted accounting principles.

Section 52. Section **63G-6a-1206** is amended to read:

63G-6a-1206. Rules and regulations to determine allowable incurred costs --

Required information.

(1) (a) [~~The applicable~~] A rulemaking authority may, by rule, establish the cost principles to be included in a cost-reimbursement contract to determine incurred costs for the purpose of calculating a reimbursement.

(b) The cost principles established by rule under Subsection (1)(a) may be modified, by contract, if the procurement [~~officer or the head of the issuing procurement unit~~] official approves the modification.

(2) Except as provided in Subsection (5), a person who seeks to be, or is, a party in a cost-based contract with a procurement unit shall:

(a) submit cost or pricing data relating to determining the cost or pricing amount; and

SB0090S01 compared with SB0090

(b) certify that, to the best of the contractor's knowledge and belief, the cost or pricing data submitted is accurate and complete as of the date specified by the procurement unit.

(3) The procurement [~~officer~~] official shall ensure that the date specified under Subsection (2)(b) is before:

(a) the pricing of any contract awarded by a standard procurement process or pursuant to a sole source procurement, if the total contract price is expected to exceed an amount established by rule made by the [~~applicable~~] rulemaking authority; or

(b) the pricing of any change order that is expected to exceed an amount established by rule made by the [~~applicable~~] rulemaking authority.

(4) A contract or change order that requires a certification described in Subsection (2) shall include a provision that the price to the procurement unit, including profit or fee, shall be adjusted to exclude any significant sums by which the procurement unit finds that the price was increased because the contractor provided cost or pricing data that was inaccurate, incomplete, or not current as of the date specified by the procurement officer.

(5) A procurement unit is not required to comply with Subsection (2) if:

(a) the contract price is based on adequate price competition;

(b) the contract price is based on established catalogue prices or market prices;

(c) the contract price is set by law or rule; or

(d) the procurement states, in writing:

(i) that, in accordance with rules made by the [~~applicable~~] rulemaking authority, the requirements of Subsection (2) may be waived; and

(ii) the reasons for the waiver.

Section 53. Section **63G-6a-1208** is amended to read:

63G-6a-1208. Installment payments -- Contract prepayments.

(1) A contract entered into by a procurement unit may provide for installment payments, including interest charges, over a period of time, if the procurement [~~officer~~] official makes a written finding that:

(a) the use of installment payments are in the interest of the procurement unit;

(b) installment payments are not used as a method of avoiding budgetary constraints;

(c) the procurement unit has obtained all budgetary approvals and other approvals required for making the installment payments;

SB0090S01 compared with SB0090

(d) all aspects of the installment payments required in the contract are in accordance with the requirements of law; and

(e) for a contract awarded through an invitation for bids or a request for proposals, the invitation for bids or request for proposals indicates that installment payments are required or permitted.

(2) (a) A procurement unit may not pay for a procurement item before the procurement unit receives the procurement item [~~is received by the procurement unit~~], unless the procurement [~~officer makes a written finding~~] official determines that it is necessary or beneficial for the procurement unit to pay for the procurement item before the procurement unit receives the procurement item [~~is received by the procurement unit~~].

(b) A procurement official's determination under Subsection (2)(a) shall be in writing, unless:

(i) the rulemaking authority has adopted a rule describing one or more circumstances under which a written determination is not necessary; and

(ii) the procurement official's determination is under one of those circumstances.

(3) Circumstances where prepayment may be necessary for, or beneficial to, the procurement unit include:

(a) when it is customary in the industry to prepay for the procurement item;

(b) if the procurement unit will receive an identifiable benefit by prepaying, including reduced costs, additional procurement items, early delivery, better service, or better contract terms; or

(c) other circumstances permitted by rule made by the [~~applicable~~] rulemaking authority.

(4) The [~~applicable~~] rulemaking authority may make rules governing prepayments.

(5) A prepaid expenditure shall be supported by documentation indicating:

(a) the amount of the prepayment;

(b) the prepayment schedule;

(c) the procurement items to which each prepayment relates;

(d) the remedies for a contractor's noncompliance with requirements relating to the provision of the procurement items; and

(e) all other terms and conditions relating to the payments and the procurement items.

SB0090S01 compared with SB0090

(6) The procurement [~~officer~~] official or the procurement [~~officer's~~] official's designee may require a performance bond, of up to 100% of the prepayment amount, from the person to whom the prepayments are made.

Section 54. Section **63G-6a-1302** is amended to read:

63G-6a-1302. Alternative methods of construction contracting management.

(1) [~~The applicable~~] A rulemaking authority shall, by rule provide as many alternative methods of construction contracting management as determined to be feasible.

(2) The rules described in Subsection (1) shall:

(a) grant to the procurement [~~officer or the head of the issuing procurement unit~~] official responsible for carrying out the construction project the discretion to select the appropriate method of construction contracting management for a particular project; and

(b) require the procurement [~~officer~~] official to execute and include in the contract file a written statement describing the facts that led to the selection of a particular method of construction contracting management for each project.

(3) Before choosing a construction contracting management method, the procurement [~~officer or the head of the issuing procurement unit~~] official responsible for carrying out the construction project shall consider the following factors:

(a) when the project must be ready to be occupied;

(b) the type of project;

(c) the extent to which the requirements of the procurement unit, and the way they are to be met are known;

(d) the location of the project;

(e) the size, scope, complexity, and economics of the project;

(f) the source of funding and any resulting constraints necessitated by the funding source;

(g) the availability, qualification, and experience of public personnel to be assigned to the project and the amount of time that the public personnel can devote to the project; and

(h) the availability, qualifications, and experience of outside consultants and contractors to complete the project under the various methods being considered.

(4) [~~An applicable~~] A rulemaking authority may make rules that authorize the use of a construction manager/general contractor as one method of construction contracting

SB0090S01 compared with SB0090

management.

(5) The rules described in Subsection (2) shall require that:

(a) the construction manager/general contractor be selected using:

(i) a standard procurement process; or

(ii) an exception to the requirement to use a standard procurement process, described in Part 8, Exceptions to Procurement Requirements; and

(b) when entering into a subcontract that was not specifically included in the construction manager/general contractor's cost proposal, the construction manager/general contractor shall procure the subcontractor by using a standard procurement process, or an exception to the requirement to use a standard procurement process, described in Part 8, Exceptions to Procurement Requirements, in the same manner as if the subcontract work was procured directly by the procurement unit.

(6) Procurement rules adopted by the [~~State Building Board~~] building board under Subsections (1) through (3) for state building construction projects may authorize the use of a design-build provider as one method of construction contracting management.

(7) A design-build contract may include a provision for obtaining the site for the construction project.

(8) A design-build contract or a construction manager/general contractor contract may include provision by the contractor of operations, maintenance, or financing.

Section 55. Section **63G-6a-1303** is amended to read:

63G-6a-1303. Drug and alcohol testing required for state construction contracts.

(1) As used in this section:

(a) "Contractor" means a person who is or may be awarded a state construction contract.

(b) "Covered individual" means an individual who:

(i) on behalf of a contractor or subcontractor provides services directly related to design or construction under a state construction contract; and

(ii) is in a safety sensitive position, including a design position that has responsibilities that directly affect the safety of an improvement to real property that is the subject of a state construction contract.

(c) "Drug and alcohol testing policy" means a policy under which a contractor or

SB0090S01 compared with SB0090

subcontractor tests a covered individual to establish, maintain, or enforce the prohibition of:

(i) the manufacture, distribution, dispensing, possession, or use of drugs or alcohol, except the medically prescribed possession and use of a drug; or

(ii) the impairment of judgment or physical abilities due to the use of drugs or alcohol.

(d) "Random testing" means that a covered individual is subject to periodic testing for drugs and alcohol:

(i) in accordance with a drug and alcohol testing policy; and

(ii) on the basis of a random selection process.

(e) "State executive entity" means:

(i) a state executive branch:

(A) department;

(B) division;

(C) agency;

(D) board;

(E) commission;

(F) council;

(G) committee; or

(H) institution; or

(ii) a state institution of higher education, as defined in Section 53B-3-102.

(f) "State construction contract" means a contract for design or construction entered into by a state executive entity.

(2) Except as provided in Subsection (7), a state executive entity may not enter into a state construction contract unless the public construction contract requires that the contractor demonstrate to the state executive entity that the contractor:

(a) has and will maintain a drug and alcohol testing policy during the period of the state construction contract that applies to the covered individuals hired by the contractor;

(b) posts in one or more conspicuous places notice to covered individuals hired by the contractor that the contractor has the drug and alcohol testing policy described in Subsection (2)(a);

(c) subjects the covered individuals to random testing under the drug and alcohol testing policy described in Subsection (2)(a) if at any time during the period of the state

SB0090S01 compared with SB0090

construction contract there are 10 or more individuals who are covered individuals hired by the contractor; and

(d) requires that as a condition of contracting with the contractor, a subcontractor:

(i) has and will maintain a drug and alcohol testing policy during the period of the state construction contract that applies to the covered individuals hired by the subcontractor;

(ii) posts in one or more conspicuous places notice to covered individuals hired by the subcontractor that the subcontractor has the drug and alcohol testing policy described in Subsection (2)(d)(i); and

(iii) subjects the covered individuals hired by the subcontractor to random testing under the drug and alcohol testing policy described in Subsection (2)(d)(i) if at any time during the period of the state construction contract there are 10 or more individuals who are covered individuals hired by the subcontractor.

(3) (a) Except as otherwise provided in this Subsection (3), if a contractor or subcontractor fails to comply with Subsection (2), the contractor or subcontractor may be suspended or debarred in accordance with this chapter.

(b) A state executive entity shall include in a state construction contract:

(i) a reference to the rules described in Subsection (4)(b); or

(ii) if the [applicable] rulemaking authority has not made the rules described in Subsection (4)(b), a process that provides a contractor or subcontractor reasonable notice and opportunity to cure a violation of this section before suspension or debarment of the contractor or subcontractor in light of the circumstances of the state construction contract or the violation.

(c) (i) A contractor is not subject to penalties for the failure of a subcontractor to comply with Subsection (2).

(ii) A subcontractor is not subject to penalties for the failure of a contractor to comply with Subsection (2).

(4) [~~An applicable~~] A rulemaking authority:

(a) may make rules that establish the requirements and procedures a contractor is required to follow to comply with Subsection (2); and

(b) shall make rules that establish:

(i) the penalties that may be imposed in accordance with Subsection (3); and

(ii) a process that provides a contractor or subcontractor reasonable notice and

SB0090S01 compared with SB0090

opportunity to cure a violation of this section before suspension or debarment of the contractor or subcontractor in light of the circumstances of the state construction contract or the violation.

(5) The failure of a contractor or subcontractor to meet the requirements of Subsection (2):

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Part 17, Procurement Appeals Board, or Part 18, Appeals to Court and Court Proceedings; and

(b) may not be used by a state executive entity, a prospective bidder, an offeror, a contractor, or a subcontractor as a basis for an action that would suspend, disrupt, or terminate the design or construction under a state construction contract.

(6) (a) After a state executive entity enters into a state construction contract in compliance with this section, the state is not required to audit, monitor, or take any other action to ensure compliance with this section.

(b) The state is not liable in any action related to this section, including not being liable in relation to:

(i) a contractor or subcontractor having or not having a drug and alcohol testing policy;

(ii) failure to test for a drug or alcohol under a contractor's or subcontractor's drug and alcohol testing policy;

(iii) the requirements of a contractor's or subcontractor's drug and alcohol testing policy;

(iv) a contractor's or subcontractor's implementation of a drug and alcohol testing policy, including procedures for:

(A) collection of a sample;

(B) testing of a sample;

(C) evaluation of a test; or

(D) disciplinary or rehabilitative action on the basis of a test result;

(v) an individual being under the influence of drugs or alcohol; or

(vi) an individual under the influence of drugs or alcohol harming another person or causing property damage.

(7) This section does not apply if the state executive entity determines that the application of this section would severely disrupt the operation of a procurement unit to the

SB0090S01 compared with SB0090

detriment of the procurement unit or the general public, including:

- (a) jeopardizing the receipt of federal funds;
- (b) causing the state construction contract to be a sole source contract; or
- (c) causing the state construction contract to be an emergency procurement.

(8) If a contractor or subcontractor meets the requirements of this section, this section may not be construed to restrict the contractor's or subcontractor's ability to impose or implement an otherwise lawful provision as part of a drug and alcohol testing policy.

Section 56. Section **63G-6a-1502** is amended to read:

63G-6a-1502. Requirements regarding procurement of design professional services.

(1) A procurement unit seeking to procure design professional services shall:

(a) publicly announce all requirements for those services through a request for statement of qualifications, as provided in this part; and

(b) negotiate contracts for design professional services:

(i) on the basis of demonstrated competence and qualification for the type of services required; and

(ii) at fair and reasonable prices.

(2) A procurement unit shall procure design professional services as provided in this part, except as otherwise provided in Sections 63G-6a-506, 63G-6a-802, and 63G-6a-803.

(3) A procurement unit may procure professional services, other than design professional services, as provided in this part.

~~[(3)]~~ (4) This part does not affect the authority of, and does not apply to procedures undertaken by, a procurement unit to obtain the services of architects or engineers in the capacity of employees of the procurement unit.

Section 57. Section **63G-6a-1503.5** is amended to read:

63G-6a-1503.5. Evaluation of statements of qualifications.

(1) An evaluation committee appointed under Section 63G-6a-1503 shall evaluate and score each responsive statement of qualifications that has not been eliminated from consideration under this chapter, using the criteria described in the request for statement of qualifications.

(2) Criteria not described in the request for statement of qualifications may not be used

SB0090S01 compared with SB0090

to evaluate a statement of qualifications.

(3) An evaluation committee may enter into discussions or conduct interviews with, or attend presentations by, the design professionals whose statements of qualifications are under consideration.

(4) An evaluation committee shall rank the top three highest scoring design professionals, in order of their scores, for the purpose of entering into fee negotiations as provided in Section 63G-6a-1505.

(5) If fewer than three responsible design professionals submit statements of qualifications that are determined to be responsive, the [~~chief procurement officer or head of a procurement unit with independent procurement authority~~] procurement official shall issue a written determination explaining why it is in the best interest of the procurement unit to continue the fee negotiation and the contracting process with less than three design professionals.

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

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

Section 58. Section **63G-6a-1506** is amended to read:

63G-6a-1506. Restrictions on procurement of design professional services.

(1) Except as provided in Subsection (2), if the division or [~~a~~] an independent procurement unit [~~with independent procurement authority~~], in accordance with Section 63G-6a-1502, issues a request for statement of qualifications to procure design professional services and provides public notice of the request for statement of qualifications:

(a) a public entity inside or outside the state may not submit a proposal in response to the procurement unit's request for statement of qualifications; and

(b) the procurement unit may not award a contract to a public entity inside or outside the state to perform the design professional services solicited in the request for statement of qualifications.

(2) Subsection (1) does not apply when the procurement unit is procuring design professional services for contracts related to research activities and technology transfer.

Section 59. Section **63G-6a-1603** is amended to read:

SB0090S01 compared with SB0090

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

(1) After a protest is filed, the protest officer shall determine whether the protest is timely filed and complies fully with the requirements of Section 63G-6a-1602.

(2) If the protest officer determines that the protest is not timely filed or that the protest does not fully comply with Section 63G-6a-1602, the protest officer shall dismiss the protest without holding a hearing.

(3) If the protest officer determines that the protest is timely filed and complies fully with Section 63G-6a-1602, the protest officer shall:

(a) dismiss the protest without holding a hearing if the protest officer determines that the protest alleges facts that, if true, do not provide an adequate basis for the protest;

(b) uphold the protest without holding a hearing if the protest officer determines that the undisputed facts of the protest indicate that the protest should be upheld; or

(c) hold a hearing on the protest if there is a genuine issue of material fact or law that needs to be resolved in order to determine whether the protest should be upheld.

(4) (a) If a hearing is held on a protest, the protest officer may:

(i) subpoena witnesses and compel their attendance at the protest hearing;

(ii) subpoena documents for production at the protest hearing;

(iii) obtain additional factual information; and

(iv) obtain testimony from experts, the person filing the protest, representatives of the procurement unit, or others to assist the protest officer to make a decision on the protest.

(b) The Rules of Evidence do not apply to a protest hearing.

(c) [~~The applicable~~] A rulemaking authority shall make rules relating to intervention in a protest, including designating:

(i) who may intervene; and

(ii) the time and manner of intervention.

(d) A protest officer shall:

(i) record each hearing held on a protest under this section;

(ii) regardless of whether a hearing on a protest is held under this section, preserve all records and other evidence relied upon in reaching the protest officer's written decision until the decision, and any appeal of the decision, becomes final; and

SB0090S01 compared with SB0090

(iii) if the protestor appeals the protest officer's decision, submit the protest appeal record to the procurement policy board chair within seven days after receiving:

(A) notice that an appeal of the protest officer's decision has been filed under Section 63G-6a-1702; or

(B) a request for the protest appeal record from the chair of the procurement policy board.

(e) A protest officer's holding a hearing, considering a protest, or issuing a written decision under this section does not affect a person's right to later question or challenge the protest officer's jurisdiction to hold the hearing, consider the protest, or issue the decision.

(5) (a) The deliberations of a protest officer may be held in private.

(b) If the protest officer is a public body, as defined in Section 52-4-103, the protest officer shall comply with Section 52-4-205 in closing a meeting for its deliberations.

(6) (a) A protest officer shall promptly issue a written decision regarding any protest, unless the protest is settled by mutual agreement.

(b) The decision shall:

(i) state the reasons for the action taken;

(ii) inform the protestor of the right to judicial or administrative review as provided in this chapter; and

(iii) indicate the amount of the security deposit or bond required under Section 63G-6a-1703.

(c) A person who issues a decision under Subsection (6)(a) shall mail, email, or otherwise immediately furnish a copy of the decision to the protestor.

(7) A decision described in this section is effective until stayed or reversed on appeal, except to the extent provided in Section 63G-6a-1903.

(8) (a) A decision described in Subsection (6)(a) that is issued in relation to a procurement unit other than a legislative procurement unit, a judicial procurement unit, a nonadopting local government procurement unit, or a public transit district is final and conclusive unless the protestor files an appeal under Section 63G-6a-1702.

(b) A decision described in Subsection (6)(a) that is issued in relation to a legislative procurement unit, a judicial procurement unit, a nonadopting local government procurement unit, or a public transit district is final and conclusive unless the protestor files an appeal under

SB0090S01 compared with SB0090

Section 63G-6a-1802.

(9) If the protest officer does not issue the written decision regarding a protest within 30 calendar days after the day on which the protest was filed with the protest officer, or within a longer period as may be agreed upon by the parties, the protester may proceed as if an adverse decision had been received.

(10) A determination under this section by the protest officer regarding an issue of fact may not be overturned on appeal unless the decision is arbitrary and capricious or clearly erroneous.

(11) An individual is not precluded from acting, and may not be disqualified or required to be recused from acting, as a protest officer because the individual also acted in another capacity during the procurement process, as required or allowed in this chapter.

Section 60. Section **63G-6a-1903** is amended to read:

63G-6a-1903. Effect of timely protest or appeal.

A procurement unit, other than a legislative procurement unit, a judicial procurement unit, a nonadopting local government procurement unit, or a public transit district, may not proceed further with a solicitation or with the award of a contract:

- (1) during the pendency of a timely:
 - (a) protest under Section 63G-6a-1602;
 - (b) appeal of a protest under Section 63G-6a-1702; or
 - (c) appeal of a procurement appeals panel decision under Section 63G-6a-1802; and
- (2) until:
 - (a) all administrative and judicial remedies are exhausted;
 - (b) for a protest under Section 63G-6a-1602 or an appeal under Section 63G-6a-1702:
 - (i) the chief procurement officer, after consultation with the attorney general's office and the head of the using agency, makes a written determination that award of the contract without delay is in the best interest of the procurement unit or the state;
 - (ii) the ~~[head of a procurement unit with independent procurement authority]~~ procurement official of an independent procurement unit, after consultation with the procurement unit's attorney, makes a written determination that award of the contract without delay is in the best interest of the procurement unit or the state; or
 - (iii) for a procurement unit that is not represented by the attorney general's office, the

SB0090S01 compared with SB0090

procurement ~~[unit]~~ official, after consulting with the attorney for the procurement unit, makes a written determination that award of the contract without delay is in the best interest of the procurement unit or the state; or

(c) for an appeal under Section 63G-6a-1802, or an appeal to a higher court than district court:

(i) the chief procurement officer, after consultation with the attorney general's office and the head of the using agency, makes a written determination that award of the contract without delay is in the best interest of the procurement unit or the state;

(ii) the ~~[head of a procurement unit with independent procurement authority]~~ procurement official of an independent procurement unit, after consultation with the procurement unit's attorney, makes a written determination that award of the contract without delay is in the best interest of the procurement unit or the state; or

(iii) for a procurement unit that is not represented by the attorney general's office, the procurement ~~[unit]~~ official, after consulting with the attorney for the procurement unit, makes a written determination that award of the contract without delay is necessary to protect the best interest of the procurement unit or the state.

Section 61. Section **63G-6a-1911** is amended to read:

63G-6a-1911. Determinations final except when arbitrary and capricious.

The determinations required under the following provisions are final and conclusive unless they are arbitrary and capricious or clearly erroneous:

(1) Section ~~[63G-6a-605]~~ 63G-6a-114;

~~(2)~~ Section 63G-6a-115;

~~[(2)]~~ (3) Section 63G-6a-702;

~~[(3)]~~ Section 63G-6a-708;

~~[(4)]~~ Subsection 63G-6a-709(1);

~~(4)~~ Section 63G-6a-707;

(5) Section 63G-6a-803;

(6) Section 63G-6a-804;

(7) Section 63G-6a-903;

(8) Subsection 63G-6a-1204(1) or (2);

(9) Subsection 63G-6a-1204(5);

SB0090S01 compared with SB0090

(10) Section 63G-6a-1205; or

(11) Subsection 63G-6a-1206(5).

Section 62. Section **63G-6a-2002** is amended to read:

63G-6a-2002. Records -- Retention.

(1) All procurement records shall be retained and disposed of in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

(2) Written determinations required by this chapter shall be retained in the appropriate official contract file of:

(a) the division;

(b) except as provided in Subsection (2)(c), the independent procurement unit [~~with independent procurement authority~~]; or

(c) for a legislative procurement unit or a judicial procurement unit, the person designated by rule made by the [~~applicable~~] rulemaking authority.

(3) A procurement unit shall keep, and make available to the public, upon request, written records of procurements for which an expenditure of [~~\$50~~] \$100 or more is made, for the longer of:

(a) six years;

(b) the time otherwise required by law; or

(c) the time period provided by rule made by the [~~applicable~~] rulemaking authority.

(4) The written record described in Subsection (3) shall include:

(a) the name of the provider from whom the procurement was made;

(b) a description of the procurement item;

(c) the date of the procurement; and

(d) the expenditure made for the procurement.

Section 63. Section **63G-6a-2003** is amended to read:

63G-6a-2003. Record of contracts made.

[~~The chief procurement officer, the procurement officer, or the head of a procurement unit with independent procurement authority~~] A procurement official shall maintain a record of all contracts made under Section 63G-6a-506, 63G-6a-802, or 63G-6a-803, in accordance with Title 63G, Chapter 2, Government Records Access and Management Act. The record shall contain each contractor's name, the amount and type of each contract, and a listing of the

SB0090S01 compared with SB0090

procurement items to which the contract relates.

Section 64. Section **63G-6a-2102** is amended to read:

63G-6a-2102. Agreements between public entities.

A ~~[procurement unit]~~ public entity may enter into an agreement with one or more other ~~[procurement units]~~ public entities to:

(1) sponsor, conduct, or administer a cooperative agreement for:

(a) the procurement of a procurement item, in accordance with the requirements of Section 63G-6a-2105; or

(b) the disposal of a procurement item;

(2) cooperatively use a procurement item;

(3) commonly use or share warehousing facilities, capital equipment, and other facilities;

(4) provide personnel, if the receiving ~~[procurement unit]~~ public entity pays the ~~[procurement unit]~~ public entity providing the personnel the direct and indirect cost of providing the personnel, in accordance with the agreement; or

~~[(5) make available informational, technical, and other services, if:]~~

~~[(a) the requirements of the procurement unit tendering the services have precedence over the procurement unit that receives the services, and]~~

~~[(b) the receiving procurement unit pays the expenses of the services provided, in accordance with the agreement.]~~

(5) purchase from, contribute to, or otherwise participate in a pooled governmental funds program for the purpose of acquiring or sharing information, data, reports, or other services in accordance with the terms of the agreement.

Section 65. Section **63G-6a-2103** is amended to read:

63G-6a-2103. Purchases between public entities.

~~[(1)(a) A procurement unit may, without using a standard procurement process, purchase from another procurement unit]~~

(1) (a) (i) A public entity may purchase a procurement item [that the other procurement unit itself produces or provides] from another public entity.

(ii) Subsection (1)(a)(i) may not be construed to require a public entity to sell a procurement item to another public entity.

SB0090S01 compared with SB0090

(b) As provided in Subsection 63G-6a-107.6(1)(a), a purchase under Subsection (1)(a) is not subject to the procurement requirements of this chapter.

~~(b)~~ (c) (i) Subsection (1)(a) does not authorize a ~~[procurement unit]~~ public entity to obtain a procurement item under a contract of another ~~[procurement unit]~~ public entity.

(ii) Subsection (1)~~(b)~~(c)(i) does not affect the authority of a procurement unit relating to a cooperative procurement under Subsection 63G-6a-2105(4)(b).

(2) A ~~[procurement unit]~~ public entity may publish a schedule of costs or fees for procurement items available for purchase by another ~~[procurement unit]~~ public entity.

Section 66. Repealer.

This bill repeals:

Section 63G-6a-105, Application of chapter -- Ordinances or resolutions relating to procurement of design professional services -- Rules.

Section 63G-6a-107, Exemptions from chapter -- Compliance with other provisions.

Section 63G-6a-110, Procurement unit required to comply with Utah Procurement Code and applicable rules -- Rulemaking authority -- Reporting.

Section 63G-6a-601, Title.

Section 63G-6a-605, Correction or clarification of bids.

Section 63G-6a-607, Action if all bids exceed available funds -- Exemption.

Section 63G-6a-609, Multiple stage bidding process.

Section 63G-6a-610, Contracts awarded by reverse auction.

Section 63G-6a-611, Invitation for bids for reverse auction -- Requirements -- Publication of invitation.

Section 63G-6a-612, Conduct of reverse auction.

Section 63G-6a-706, Correction or clarification of proposal.

Section 63G-6a-708, Justification statement -- Cost-benefit analysis.

Section 63G-6a-709, Award of contract -- Cancellation -- Rejection of proposal.

Section 63G-6a-709.5, Publication of award and scores.

Section 63G-6a-710, Multiple stage process.