

PROCUREMENT CODE REVISIONS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Derrin R. Owens

House Sponsor: Kay J. Christofferson

LONG TITLE

General Description:

This bill modifies provisions of the Utah Procurement Code.

Highlighted Provisions:

This bill:

- ▶ modifies a provision relating to a procurement unit's evaluation of bids;
- ▶ provides that a procurement intended for the establishment of a state liquor store may be made without engaging in a standard procurement process;
- ▶ defines "contract price" in the context of a provision allowing a contractor to increase or lower the contract price; and
- ▶ prohibits a contractor under a multiple award contract from lowering the contract price under certain circumstances.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-6a-606, as last amended by Laws of Utah 2020, Chapter 257

63G-6a-802, as last amended by Laws of Utah 2020, Chapters 257 and 286

63G-6a-1206.5, as last amended by Laws of Utah 2016, Chapter 355

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

30 Section 1. Section **63G-6a-606** is amended to read:

31 **63G-6a-606. Evaluation of bids -- Award -- Cancellation.**

32 (1) A procurement unit that conducts a procurement using a bidding process shall
33 evaluate ~~[each bid]~~ bids:

34 (a) using the objective criteria described in the invitation for bids~~[-];~~ and

35 (b) to achieve the greatest long-term value to the state and the procurement unit.

36 (2) Criteria not described in the invitation for bids may not be used to evaluate a bid.

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

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

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

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

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

44 Section 2. Section **63G-6a-802** is amended to read:

45 **63G-6a-802. Award of contract without engaging in a standard procurement**
46 **process -- Notice -- Duty to negotiate contract terms in best interest of procurement unit.**

47 (1) A procurement unit may award a contract for a procurement item without engaging
48 in a standard procurement process if the procurement official determines in writing that:

49 (a) there is only one source for the procurement item;

50 (b) (i) transitional costs are a significant consideration in selecting a procurement item;
51 and

52 (ii) the results of a cost-benefit analysis demonstrate that transitional costs are
53 unreasonable or cost-prohibitive, and that the award of a contract without engaging in a
54 standard procurement process is in the best interest of the procurement unit; ~~[or]~~

55 (c) the award of a contract is under circumstances, described in rules adopted by the
56 rulemaking authority, that make awarding the contract through a standard procurement process
57 impractical and not in the best interest of the procurement unit~~[-];~~ or

58 (d) the procurement item is intended to be used for, or in connection with the
 59 establishment of, a state store, as defined in Section 32B-1-102.

60 (2) Transitional costs associated with a trial use or testing of a procurement item under
 61 a trial use contract awarded under Section 63G-6a-802.3 may not be included in a
 62 consideration of transitional costs under Subsection (1)(b).

63 (3) (a) Subject to Subsection (3)(b), a rulemaking authority shall make rules regarding
 64 the publication of notice for a procurement under this section that, at a minimum, require
 65 publication of notice of the procurement, in accordance with Section 63G-6a-112, if the cost of
 66 the procurement exceeds \$50,000.

67 (b) Publication of notice under Section 63G-6a-112 is not required for:

- 68 (i) the procurement of public utility services pursuant to a sole source contract; or
- 69 (ii) other procurements under this section for which an applicable rule provides that
 70 notice is not required.

71 (4) A procurement official who awards a contract under this section shall negotiate
 72 with the contractor to ensure that the terms of the contract, including price and delivery, are in
 73 the best interest of the procurement unit.

74 Section 3. Section 63G-6a-1206.5 is amended to read:

75 **63G-6a-1206.5. Change in contract price.**

76 (1) As used in this section, "contract price":

77 (a) means the price under an existing contract between a procurement unit and a
 78 contractor; and

79 (b) does not include a proposed price or cost contained in a solicitation response or any
 80 other bid, proposal, or offer submitted by a person other than the contractor under the existing
 81 contract.

82 (2) A contractor may:

83 ~~[(1)]~~ (a) increase the contract price only in accordance with the terms of the contract;

84 and

85 ~~[(2)]~~ (b) subject to Subsection (3), lower the contract price at any time during the time

86 a contract is in effect.

87 (3) A contractor under a multiple award contract resulting from a bidding process may
88 not lower the contract price unless the contractor's solicitation response that led to the contract
89 award was the lowest price solicitation response.