

1 **PROCUREMENT CODE REVISIONS**

2 2021 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Derrin R. Owens**

5 House Sponsor: _____

6 **LONG TITLE**7 **General Description:**

8 This bill modifies provisions of the Utah Procurement Code.

9 **Highlighted Provisions:**

10 This bill:

- 11 ▶ modifies a provision relating to a procurement unit's evaluation of bids;
- 12 ▶ provides that a procurement intended for the establishment of a state liquor store
- 13 may be made without engaging in a standard procurement process; and
- 14 ▶ defines "contract price" in the context of a provision allowing a contractor to
- 15 increase or lower the contract price.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**21 **AMENDS:**22 **63G-6a-606**, as last amended by Laws of Utah 2020, Chapter 25723 **63G-6a-802**, as last amended by Laws of Utah 2020, Chapters 257 and 28624 **63G-6a-1206.5**, as last amended by Laws of Utah 2016, Chapter 355

25

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

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

29 **63G-6a-606. Evaluation of bids -- Award -- Cancellation.**

30 (1) A procurement unit that conducts a procurement using a bidding process shall

31 evaluate [~~each bid~~] bids:

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

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

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

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

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

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

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

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

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

43 **63G-6a-802. Award of contract without engaging in a standard procurement
44 process -- Notice -- Duty to negotiate contract terms in best interest of procurement unit.**

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

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

48 (b) (i) transitional costs are a significant consideration in selecting a procurement item;

49 and

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

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

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

58 (2) Transitional costs associated with a trial use or testing of a procurement item under

59 a trial use contract awarded under Section 63G-6a-802.3 may not be included in a
60 consideration of transitional costs under Subsection (1)(b).

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

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

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

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

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

73 **63G-6a-1206.5. Change in contract price.**

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

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

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

80 (2) A contractor may:

81 [+] (a) increase the contract price only in accordance with the terms of the contract;

82 and

83 [+] (b) lower the contract price at any time during the time a contract is in effect.