

## SB0188S02 compared with SB0188S01

~~text~~ shows text that was in SB0188S01 but was deleted in SB0188S02.

text shows text that was not in SB0188S01 but was inserted into SB0188S02.

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Senator Derrin R. Owens proposes the following substitute bill:

### PROCUREMENT CODE REVISIONS

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Derrin R. Owens**

House Sponsor: ~~text~~ Carl R. Albrecht

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#### 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:

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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

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

Section 1. 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]~~ bids:

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

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

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

(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 2. 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) A procurement unit may award a contract for a procurement item without engaging in a standard procurement process if the 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;

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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 rulemaking authority, that make awarding the contract through a standard procurement process impractical and not in the best interest of the procurement unit~~[-]; or~~

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

(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), 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) 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 3. Section **63G-6a-1206.5** is amended to read:

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

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

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

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

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(2) A contractor may:

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

and

~~[(2)]~~ (b) subject to Subsection (3), lower the contract price at any time during the time a contract is in effect.

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