

1 **PROCUREMENT CODE MODIFICATIONS**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Scott K. Jenkins**

5 House Sponsor: Gage Froerer

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions relating to the Utah Procurement Code.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ modifies and adds definitions;
- 13 ▶ rearranges some procurement provisions;
- 14 ▶ modifies provisions relating to the head of a procurement unit with independent
- 15 procurement authority;
- 16 ▶ modifies exemptions from the procurement code;
- 17 ▶ rewrites provisions relating to requests for statement of qualifications and approved
- 18 vendor lists;
- 19 ▶ authorizes a procurement unit to establish price based on specified established
- 20 terms;
- 21 ▶ modifies provisions relating to correcting immaterial errors in a solicitation
- 22 response and clarifying information in a solicitation response;
- 23 ▶ modifies duties and responsibilities of the chief procurement officer;
- 24 ▶ modifies provisions relating to a request for information;
- 25 ▶ modifies provisions relating to standard procurement processes;
- 26 ▶ modifies provisions relating to the evaluation process;
- 27 ▶ modifies best and final offer provisions;
- 28 ▶ modifies provisions relating to awarding and canceling a contract and the
- 29 disqualification of offerors;

- 30 ▶ modifies provisions relating to exceptions to standard procurement processes;
- 31 ▶ modifies provisions relating to procurement protests;
- 32 ▶ modifies a provision relating to reporting unlawful conduct; and
- 33 ▶ makes technical and conforming changes.

34 **Money Appropriated in this Bill:**

35 None

36 **Other Special Clauses:**

37 This bill provides a special effective date.

38 This bill provides a coordination clause.

39 **Utah Code Sections Affected:**

40 AMENDS:

- 41 **17B-2a-818.5**, as last amended by Laws of Utah 2014, Chapter 425
- 42 **19-1-206**, as last amended by Laws of Utah 2014, Chapter 425
- 43 **53A-1a-511**, as last amended by Laws of Utah 2015, Chapters 138, 150, and 232
- 44 **63A-5-205**, as last amended by Laws of Utah 2014, Chapter 425
- 45 **63C-9-403**, as last amended by Laws of Utah 2014, Chapter 425
- 46 **63F-1-205**, as last amended by Laws of Utah 2015, Chapters 114 and 283
- 47 **63G-6a-103**, as last amended by Laws of Utah 2015, Chapters 218 and 464
- 48 **63G-6a-105**, as last amended by Laws of Utah 2015, Chapters 218 and 464
- 49 **63G-6a-106**, as last amended by Laws of Utah 2015, Chapters 218 and 362
- 50 **63G-6a-107**, as last amended by Laws of Utah 2015, Chapters 218, 306, and 464
- 51 **63G-6a-109**, as last amended by Laws of Utah 2015, Chapter 464
- 52 **63G-6a-203**, as last amended by Laws of Utah 2013, Chapters 278 and 445
- 53 **63G-6a-401**, as enacted by Laws of Utah 2012, Chapter 347
- 54 **63G-6a-501**, as enacted by Laws of Utah 2012, Chapter 347
- 55 **63G-6a-603**, as last amended by Laws of Utah 2014, Chapter 196
- 56 **63G-6a-604**, as last amended by Laws of Utah 2013, Chapter 445
- 57 **63G-6a-606**, as last amended by Laws of Utah 2015, Chapter 97

- 58 **63G-6a-609**, as last amended by Laws of Utah 2015, Chapter 218
- 59 **63G-6a-611**, as last amended by Laws of Utah 2014, Chapter 196
- 60 **63G-6a-703**, as last amended by Laws of Utah 2014, Chapter 196
- 61 **63G-6a-707**, as last amended by Laws of Utah 2015, Chapters 97 and 218
- 62 **63G-6a-707.5**, as renumbered and amended by Laws of Utah 2014, Chapter 196
- 63 **63G-6a-708**, as last amended by Laws of Utah 2014, Chapter 196
- 64 **63G-6a-709**, as last amended by Laws of Utah 2014, Chapter 196
- 65 **63G-6a-802**, as last amended by Laws of Utah 2014, Chapter 196
- 66 **63G-6a-803**, as enacted by Laws of Utah 2012, Chapter 347
- 67 **63G-6a-806**, as enacted by Laws of Utah 2013, Chapter 445
- 68 **63G-6a-1206**, as last amended by Laws of Utah 2014, Chapter 196
- 69 **63G-6a-1206.5**, as enacted by Laws of Utah 2015, Chapter 218
- 70 **63G-6a-1502**, as last amended by Laws of Utah 2015, Chapter 218
- 71 **63G-6a-1503.5**, as enacted by Laws of Utah 2015, Chapter 218
- 72 **63G-6a-1601**, as enacted by Laws of Utah 2012, Chapter 347
- 73 **63G-6a-1602**, as last amended by Laws of Utah 2014, Chapter 196
- 74 **63G-6a-1603**, as last amended by Laws of Utah 2015, Chapter 218
- 75 **63G-6a-1702**, as last amended by Laws of Utah 2015, Chapters 218, 258, and 464
- 76 **63G-6a-1703**, as last amended by Laws of Utah 2015, Chapter 218
- 77 **63G-6a-1903**, as last amended by Laws of Utah 2015, Chapter 218
- 78 **63G-6a-2002**, as last amended by Laws of Utah 2013, Chapter 445
- 79 **63G-6a-2003**, as last amended by Laws of Utah 2013, Chapter 445
- 80 **63G-6a-2105**, as last amended by Laws of Utah 2014, Chapter 196
- 81 **63G-6a-2407**, as enacted by Laws of Utah 2014, Chapter 196
- 82 **63G-10-403**, as last amended by Laws of Utah 2015, Chapter 258
- 83 **72-6-107.5**, as last amended by Laws of Utah 2014, Chapter 425
- 84 **79-2-404**, as last amended by Laws of Utah 2014, Chapter 425

85 ENACTS:

86 **63G-6a-106.5**, Utah Code Annotated 1953

87 **63G-6a-113**, Utah Code Annotated 1953

88 **63G-6a-114**, Utah Code Annotated 1953

89 **63G-6a-115**, Utah Code Annotated 1953

90 **63G-6a-410**, Utah Code Annotated 1953

91 **63G-6a-507**, Utah Code Annotated 1953

92 **63G-6a-802.3**, Utah Code Annotated 1953

93 **63G-6a-802.7**, Utah Code Annotated 1953

94 **63G-6a-1206.3**, Utah Code Annotated 1953

95 **63G-6a-1601.5**, Utah Code Annotated 1953

96 REPEALS AND REENACTS:

97 **63G-6a-303**, as last amended by Laws of Utah 2015, Chapters 218, 258, and 283

98 **63G-6a-605**, as last amended by Laws of Utah 2013, Chapter 445

99 **63G-6a-706**, as enacted by Laws of Utah 2012, Chapter 347

100 RENUMBERS AND AMENDS:

101 **63G-6a-110**, (Renumbered from 63G-6a-402, as last amended by Laws of Utah 2015,
102 Chapter 218)

103 **63G-6a-111**, (Renumbered from 63G-6a-407, as last amended by Laws of Utah 2013,
104 Chapter 445)

105 **63G-6a-112**, (Renumbered from 63G-6a-406, as last amended by Laws of Utah 2014,
106 Chapter 196)

107 **63G-6a-409**, (Renumbered from 63G-6a-502, as enacted by Laws of Utah 2012,
108 Chapter 347)

109 **63G-6a-506**, (Renumbered from 63G-6a-408, as last amended by Laws of Utah 2015,
110 Chapter 218)

111 REPEALS:

112 **63G-6a-104**, as last amended by Laws of Utah 2015, Chapter 218

113 **63G-6a-403**, as last amended by Laws of Utah 2015, Chapter 97

114 [63G-6a-404](#), as last amended by Laws of Utah 2014, Chapter 196

115 [63G-6a-503](#), as last amended by Laws of Utah 2013, Chapter 445

116 [63G-6a-504](#), as enacted by Laws of Utah 2012, Chapter 347

117 [63G-6a-505](#), as enacted by Laws of Utah 2013, Chapter 445

118 **Utah Code Sections Affected by Coordination Clause:**

119 [63G-6a-103](#), as last amended by Laws of Utah 2015, Chapters 218 and 464

120 [63G-6a-116](#), Utah Code Annotated 1953



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

123 Section 1. Section **17B-2a-818.5** is amended to read:

124 **17B-2a-818.5. Contracting powers of public transit districts -- Health insurance**
125 **coverage.**

126 (1) For purposes of this section:

127 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
128 [34A-2-104](#) who:

129 (i) works at least 30 hours per calendar week; and

130 (ii) meets employer eligibility waiting requirements for health care insurance which
131 may not exceed the first day of the calendar month following 60 days from the date of hire.

132 (b) "Health benefit plan" has the same meaning as provided in Section [31A-1-301](#).

133 (c) "Qualified health insurance coverage" is as defined in Section [26-40-115](#).

134 (d) "Subcontractor" has the same meaning provided for in Section [63A-5-208](#).

135 (2) (a) Except as provided in Subsection (3), this section applies to a design or
136 construction contract entered into by the public transit district on or after July 1, 2009, and to a
137 prime contractor or to a subcontractor in accordance with Subsection (2)(b).

138 (b) (i) A prime contractor is subject to this section if the prime contract is in the
139 amount of \$1,500,000 or greater.

140 (ii) A subcontractor is subject to this section if a subcontract is in the amount of
141 \$750,000 or greater.

- 142 (3) This section does not apply if:
- 143 (a) the application of this section jeopardizes the receipt of federal funds;
- 144 (b) the contract is a sole source contract; or
- 145 (c) the contract is an emergency procurement.
- 146 (4) (a) This section does not apply to a change order as defined in Section [63G-6a-103](#),
- 147 or a modification to a contract, when the contract does not meet the initial threshold required
- 148 by Subsection (2).
- 149 (b) A person who intentionally uses change orders or contract modifications to
- 150 circumvent the requirements of Subsection (2) is guilty of an infraction.
- 151 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the public transit
- 152 district that the contractor has and will maintain an offer of qualified health insurance coverage
- 153 for the contractor's employees and the employee's dependents during the duration of the
- 154 contract.
- 155 (b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor
- 156 shall demonstrate to the public transit district that the subcontractor has and will maintain an
- 157 offer of qualified health insurance coverage for the subcontractor's employees and the
- 158 employee's dependents during the duration of the contract.
- 159 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
- 160 the duration of the contract is subject to penalties in accordance with an ordinance adopted by
- 161 the public transit district under Subsection (6).
- 162 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
- 163 requirements of Subsection (5)(b).
- 164 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
- 165 the duration of the contract is subject to penalties in accordance with an ordinance adopted by
- 166 the public transit district under Subsection (6).
- 167 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
- 168 requirements of Subsection (5)(a).
- 169 (6) The public transit district shall adopt ordinances:

- 170 (a) in coordination with:
- 171 (i) the Department of Environmental Quality in accordance with Section 19-1-206;
- 172 (ii) the Department of Natural Resources in accordance with Section 79-2-404;
- 173 (iii) the State Building Board in accordance with Section 63A-5-205;
- 174 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403; and
- 175 (v) the Department of Transportation in accordance with Section 72-6-107.5; and
- 176 (b) which establish:
- 177 (i) the requirements and procedures a contractor shall follow to demonstrate to the
- 178 public transit district compliance with this section which shall include:
- 179 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or
- 180 (b) more than twice in any 12-month period; and
- 181 (B) that the actuarially equivalent determination required for the qualified health
- 182 insurance coverage in Subsection (1) is met by the contractor if the contractor provides the
- 183 department or division with a written statement of actuarial equivalency from either:
- 184 (I) the Utah Insurance Department;
- 185 (II) an actuary selected by the contractor or the contractor's insurer; or
- 186 (III) an underwriter who is responsible for developing the employer group's premium
- 187 rates;
- 188 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
- 189 violates the provisions of this section, which may include:
- 190 (A) a three-month suspension of the contractor or subcontractor from entering into
- 191 future contracts with the public transit district upon the first violation;
- 192 (B) a six-month suspension of the contractor or subcontractor from entering into future
- 193 contracts with the public transit district upon the second violation;
- 194 (C) an action for debarment of the contractor or subcontractor in accordance with
- 195 Section 63G-6a-904 upon the third or subsequent violation; and
- 196 (D) monetary penalties which may not exceed 50% of the amount necessary to
- 197 purchase qualified health insurance coverage for employees and dependents of employees of

198 the contractor or subcontractor who were not offered qualified health insurance coverage
199 during the duration of the contract; and

200 (iii) a website on which the district shall post the benchmark for the qualified health
201 insurance coverage identified in Subsection (1)(c).

202 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(b)(ii), a contractor
203 or subcontractor who intentionally violates the provisions of this section shall be liable to the
204 employee for health care costs that would have been covered by qualified health insurance
205 coverage.

206 (ii) An employer has an affirmative defense to a cause of action under Subsection
207 (7)(a)(i) if:

208 (A) the employer relied in good faith on a written statement of actuarial equivalency
209 provided by an:

210 (I) actuary; or

211 (II) underwriter who is responsible for developing the employer group's premium rates;

212 or

213 (B) a department or division determines that compliance with this section is not
214 required under the provisions of Subsection (3) or (4).

215 (b) An employee has a private right of action only against the employee's employer to
216 enforce the provisions of this Subsection (7).

217 (8) Any penalties imposed and collected under this section shall be deposited into the
218 Medicaid Restricted Account created in Section [26-18-402](#).

219 (9) The failure of a contractor or subcontractor to provide qualified health insurance
220 coverage as required by this section:

221 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
222 or contractor under Section [~~63G-6a-1603~~] [63G-6a-1602](#) or any other provision in Title 63G,
223 Chapter 6a, Utah Procurement Code; and

224 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
225 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design

226 or construction.

227 Section 2. Section **19-1-206** is amended to read:

228 **19-1-206. Contracting powers of department -- Health insurance coverage.**

229 (1) For purposes of this section:

230 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
231 [34A-2-104](#) who:

232 (i) works at least 30 hours per calendar week; and

233 (ii) meets employer eligibility waiting requirements for health care insurance which
234 may not exceed the first day of the calendar month following 60 days from the date of hire.

235 (b) "Health benefit plan" has the same meaning as provided in Section [31A-1-301](#).

236 (c) "Qualified health insurance coverage" is as defined in Section [26-40-115](#).

237 (d) "Subcontractor" has the same meaning provided for in Section [63A-5-208](#).

238 (2) (a) Except as provided in Subsection (3), this section applies to a design or
239 construction contract entered into by or delegated to the department or a division or board of
240 the department on or after July 1, 2009, and to a prime contractor or subcontractor in
241 accordance with Subsection (2)(b).

242 (b) (i) A prime contractor is subject to this section if the prime contract is in the
243 amount of \$1,500,000 or greater.

244 (ii) A subcontractor is subject to this section if a subcontract is in the amount of
245 \$750,000 or greater.

246 (3) This section does not apply to contracts entered into by the department or a division
247 or board of the department if:

248 (a) the application of this section jeopardizes the receipt of federal funds;

249 (b) the contract or agreement is between:

250 (i) the department or a division or board of the department; and

251 (ii) (A) another agency of the state;

252 (B) the federal government;

253 (C) another state;

254 (D) an interstate agency;
255 (E) a political subdivision of this state; or
256 (F) a political subdivision of another state;
257 (c) the executive director determines that applying the requirements of this section to a
258 particular contract interferes with the effective response to an immediate health and safety
259 threat from the environment; or

260 (d) the contract is:
261 (i) a sole source contract; or
262 (ii) an emergency procurement.

263 (4) (a) This section does not apply to a change order as defined in Section [63G-6a-103](#),
264 or a modification to a contract, when the contract does not meet the initial threshold required
265 by Subsection (2).

266 (b) A person who intentionally uses change orders or contract modifications to
267 circumvent the requirements of Subsection (2) is guilty of an infraction.

268 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive
269 director that the contractor has and will maintain an offer of qualified health insurance
270 coverage for the contractor's employees and the employees' dependents during the duration of
271 the contract.

272 (b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall
273 demonstrate to the executive director that the subcontractor has and will maintain an offer of
274 qualified health insurance coverage for the subcontractor's employees and the employees'
275 dependents during the duration of the contract.

276 (c) (i) (A) A contractor who fails to comply with Subsection (5)(a) during the duration
277 of the contract is subject to penalties in accordance with administrative rules adopted by the
278 department under Subsection (6).

279 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
280 requirements of Subsection (5)(b).

281 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during

282 the duration of the contract is subject to penalties in accordance with administrative rules
283 adopted by the department under Subsection (6).

284 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
285 requirements of Subsection (5)(a).

286 (6) The department shall adopt administrative rules:

287 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

288 (b) in coordination with:

289 (i) a public transit district in accordance with Section 17B-2a-818.5;

290 (ii) the Department of Natural Resources in accordance with Section 79-2-404;

291 (iii) the State Building Board in accordance with Section 63A-5-205;

292 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

293 (v) the Department of Transportation in accordance with Section 72-6-107.5; and

294 (vi) the Legislature's Administrative Rules Review Committee; and

295 (c) which establish:

296 (i) the requirements and procedures a contractor shall follow to demonstrate to the
297 public transit district compliance with this section that shall include:

298 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or

299 (b) more than twice in any 12-month period; and

300 (B) that the actuarially equivalent determination required for the qualified health
301 insurance coverage in Subsection (1) is met by the contractor if the contractor provides the
302 department or division with a written statement of actuarial equivalency from either:

303 (I) the Utah Insurance Department;

304 (II) an actuary selected by the contractor or the contractor's insurer; or

305 (III) an underwriter who is responsible for developing the employer group's premium
306 rates;

307 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
308 violates the provisions of this section, which may include:

309 (A) a three-month suspension of the contractor or subcontractor from entering into

310 future contracts with the state upon the first violation;

311 (B) a six-month suspension of the contractor or subcontractor from entering into future
312 contracts with the state upon the second violation;

313 (C) an action for debarment of the contractor or subcontractor in accordance with
314 Section [63G-6a-904](#) upon the third or subsequent violation; and

315 (D) notwithstanding Section [19-1-303](#), monetary penalties which may not exceed 50%
316 of the amount necessary to purchase qualified health insurance coverage for an employee and
317 the dependents of an employee of the contractor or subcontractor who was not offered qualified
318 health insurance coverage during the duration of the contract; and

319 (iii) a website on which the department shall post the benchmark for the qualified
320 health insurance coverage identified in Subsection (1)(c).

321 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or
322 subcontractor who intentionally violates the provisions of this section shall be liable to the
323 employee for health care costs that would have been covered by qualified health insurance
324 coverage.

325 (ii) An employer has an affirmative defense to a cause of action under Subsection
326 (7)(a)(i) if:

327 (A) the employer relied in good faith on a written statement of actuarial equivalency
328 provided by:

329 (I) an actuary; or

330 (II) an underwriter who is responsible for developing the employer group's premium
331 rates; or

332 (B) the department determines that compliance with this section is not required under
333 the provisions of Subsection (3) or (4).

334 (b) An employee has a private right of action only against the employee's employer to
335 enforce the provisions of this Subsection (7).

336 (8) Any penalties imposed and collected under this section shall be deposited into the
337 Medicaid Restricted Account created in Section [26-18-402](#).

338 (9) The failure of a contractor or subcontractor to provide qualified health insurance
339 coverage as required by this section:

340 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
341 or contractor under Section [~~63G-6a-1603~~] [63G-6a-1602](#) or any other provision in Title 63G,
342 Chapter 6a, Utah Procurement Code; and

343 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
344 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
345 or construction.

346 Section 3. Section **53A-1a-511** is amended to read:

347 **53A-1a-511. Waivers from state board rules -- Application of statutes and rules**
348 **to charter schools.**

349 (1) A charter school shall operate in accordance with its charter and is subject to Title
350 53A, State System of Public Education, and other state laws applicable to public schools,
351 except as otherwise provided in this part.

352 (2) (a) A charter school or any other public school or school district may apply to the
353 State Board of Education for a waiver of any state board rule that inhibits or hinders the school
354 or the school district from accomplishing its mission or educational goals set out in its strategic
355 plan or charter.

356 (b) The state board may grant the waiver, unless:

357 (i) the waiver would cause the school district or the school to be in violation of state or
358 federal law; or

359 (ii) the waiver would threaten the health, safety, or welfare of students in the district or
360 at the school.

361 (c) If the State Board of Education denies the waiver, the reason for the denial shall be
362 provided in writing to the waiver applicant.

363 (3) (a) Except as provided in Subsection (3)(b), State Board of Education rules
364 governing the following do not apply to a charter school:

365 (i) school libraries;

366 (ii) required school administrative and supervisory services; and

367 (iii) required expenditures for instructional supplies.

368 (b) A charter school shall comply with rules implementing statutes that prescribe how
369 state appropriations may be spent.

370 (4) The following provisions of Title 53A, State System of Public Education, and rules
371 adopted under those provisions, do not apply to a charter school:

372 (a) Sections [53A-1a-108](#) and [53A-1a-108.5](#), requiring the establishment of a school
373 community council and school improvement plan;

374 (b) Section [53A-3-420](#), requiring the use of activity disclosure statements;

375 (c) Section [53A-12-207](#), requiring notification of intent to dispose of textbooks;

376 (d) Section [53A-13-107](#), requiring annual presentations on adoption;

377 (e) Chapter 19, Part 1, Fiscal Procedures, pertaining to fiscal procedures of school
378 districts and local school boards; and

379 (f) Section [53A-14-107](#), requiring an independent evaluation of instructional materials.

380 (5) For the purposes of Title 63G, Chapter 6a, Utah Procurement Code, a charter
381 school is considered an educational procurement unit as defined in [~~Subsection [63G-6a-104](#)(7)]
382 Section [63G-6a-103](#).~~

383 (6) Each charter school shall be subject to:

384 (a) Title 52, Chapter 4, Open and Public Meetings Act; and

385 (b) Title 63G, Chapter 2, Government Records Access and Management Act.

386 (7) A charter school is exempt from Section [51-2a-201.5](#), requiring accounting reports
387 of certain nonprofit corporations. A charter school is subject to the requirements of Section
388 [53A-1a-507](#).

389 (8) (a) The State Charter School Board shall, in concert with the charter schools, study
390 existing state law and administrative rules for the purpose of determining from which laws and
391 rules charter schools should be exempt.

392 (b) (i) The State Charter School Board shall present recommendations for exemption to
393 the State Board of Education for consideration.

394 (ii) The State Board of Education shall consider the recommendations of the State
395 Charter School Board and respond within 60 days.

396 Section 4. Section 63A-5-205 is amended to read:

397 **63A-5-205. Contracting powers of director -- Retainage -- Health insurance**
398 **coverage.**

399 (1) As used in this section:

400 (a) "Capital developments" has the same meaning as provided in Section 63A-5-104.

401 (b) "Capital improvements" has the same meaning as provided in Section 63A-5-104.

402 (c) "Employee" means an "employee," "worker," or "operative" as defined in Section
403 34A-2-104 who:

404 (i) works at least 30 hours per calendar week; and

405 (ii) meets employer eligibility waiting requirements for health care insurance which
406 may not exceed the first day of the calendar month following 60 days from the date of hire.

407 (d) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

408 (e) "Qualified health insurance coverage" is as defined in Section 26-40-115.

409 (f) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

410 (2) In accordance with Title 63G, Chapter 6a, Utah Procurement Code, the director
411 may:

412 (a) subject to Subsection (3), enter into contracts for any work or professional services
413 which the division or the State Building Board may do or have done; and

414 (b) as a condition of any contract for architectural or engineering services, prohibit the
415 architect or engineer from retaining a sales or agent engineer for the necessary design work.

416 (3) (a) Except as provided in Subsection (3)(b), this Subsection (3) applies to all design
417 or construction contracts entered into by the division or the State Building Board on or after
418 July 1, 2009, and:

419 (i) applies to a prime contractor if the prime contract is in the amount of \$1,500,000 or
420 greater; and

421 (ii) applies to a subcontractor if the subcontract is in the amount of \$750,000 or greater.

- 422 (b) This Subsection (3) does not apply:
- 423 (i) if the application of this Subsection (3) jeopardizes the receipt of federal funds;
- 424 (ii) if the contract is a sole source contract;
- 425 (iii) if the contract is an emergency procurement; or
- 426 (iv) to a change order as defined in Section [63G-6a-103](#), or a modification to a
- 427 contract, when the contract does not meet the threshold required by Subsection (3)(a).
- 428 (c) A person who intentionally uses change orders or contract modifications to
- 429 circumvent the requirements of Subsection (3)(a) is guilty of an infraction.
- 430 (d) (i) A contractor subject to Subsection (3)(a) shall demonstrate to the director that
- 431 the contractor has and will maintain an offer of qualified health insurance coverage for the
- 432 contractor's employees and the employees' dependents.
- 433 (ii) If a subcontractor of the contractor is subject to Subsection (3)(a), the contractor
- 434 shall demonstrate to the director that the subcontractor has and will maintain an offer of
- 435 qualified health insurance coverage for the subcontractor's employees and the employees'
- 436 dependents.
- 437 (e) (i) (A) A contractor who fails to meet the requirements of Subsection (3)(d)(i)
- 438 during the duration of the contract is subject to penalties in accordance with administrative
- 439 rules adopted by the division under Subsection (3)(f).
- 440 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
- 441 requirements of Subsection (3)(d)(ii).
- 442 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (3)(d)(ii)
- 443 during the duration of the contract is subject to penalties in accordance with administrative
- 444 rules adopted by the division under Subsection (3)(f).
- 445 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
- 446 requirements of Subsection (3)(d)(i).
- 447 (f) The division shall adopt administrative rules:
- 448 (i) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- 449 (ii) in coordination with:

- 450 (A) the Department of Environmental Quality in accordance with Section 19-1-206;
- 451 (B) the Department of Natural Resources in accordance with Section 79-2-404;
- 452 (C) a public transit district in accordance with Section 17B-2a-818.5;
- 453 (D) the State Capitol Preservation Board in accordance with Section 63C-9-403;
- 454 (E) the Department of Transportation in accordance with Section 72-6-107.5; and
- 455 (F) the Legislature's Administrative Rules Review Committee; and

456 (iii) which establish:

457 (A) the requirements and procedures a contractor must follow to demonstrate to the
458 director compliance with this Subsection (3) which shall include:

459 (I) that a contractor will not have to demonstrate compliance with Subsection (3)(d)(i)
460 or (ii) more than twice in any 12-month period; and

461 (II) that the actuarially equivalent determination required for the qualified health
462 insurance coverage in Subsection (1) is met by the contractor if the contractor provides the
463 department or division with a written statement of actuarial equivalency from either:

464 (Aa) the Utah Insurance Department;

465 (Bb) an actuary selected by the contractor or the contractor's insurer; or

466 (Cc) an underwriter who is responsible for developing the employer group's premium
467 rates;

468 (B) the penalties that may be imposed if a contractor or subcontractor intentionally
469 violates the provisions of this Subsection (3), which may include:

470 (I) a three-month suspension of the contractor or subcontractor from entering into
471 future contracts with the state upon the first violation;

472 (II) a six-month suspension of the contractor or subcontractor from entering into future
473 contracts with the state upon the second violation;

474 (III) an action for debarment of the contractor or subcontractor in accordance with
475 Section 63G-6a-904 upon the third or subsequent violation; and

476 (IV) monetary penalties which may not exceed 50% of the amount necessary to
477 purchase qualified health insurance coverage for an employee and the dependents of an

478 employee of the contractor or subcontractor who was not offered qualified health insurance
479 coverage during the duration of the contract; and

480 (C) a website on which the department shall post the benchmark for the qualified
481 health insurance coverage identified in Subsection (1)(e).

482 (g) (i) In addition to the penalties imposed under Subsection (3)(f)(iii), a contractor or
483 subcontractor who intentionally violates the provisions of this section shall be liable to the
484 employee for health care costs that would have been covered by qualified health insurance
485 coverage.

486 (ii) An employer has an affirmative defense to a cause of action under Subsection
487 (3)(g)(i) if:

488 (A) the employer relied in good faith on a written statement of actuarial equivalency
489 provided by:

490 (I) an actuary; or

491 (II) an underwriter who is responsible for developing the employer group's premium
492 rates; or

493 (B) the department determines that compliance with this section is not required under
494 the provisions of Subsection (3)(b).

495 (iii) An employee has a private right of action only against the employee's employer to
496 enforce the provisions of this Subsection (3)(g).

497 (h) Any penalties imposed and collected under this section shall be deposited into the
498 Medicaid Restricted Account created by Section [26-18-402](#).

499 (i) The failure of a contractor or subcontractor to provide qualified health insurance
500 coverage as required by this section:

501 (i) may not be the basis for a protest or other action from a prospective bidder, offeror,
502 or contractor under Section [~~63G-6a-1603~~] [63G-6a-1602](#) or any other provision in Title 63G,
503 Chapter 6a, Utah Procurement Code; and

504 (ii) may not be used by the procurement entity or a prospective bidder, offeror, or
505 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design

506 or construction.

507 (4) The judgment of the director as to the responsibility and qualifications of a bidder
508 is conclusive, except in case of fraud or bad faith.

509 (5) The division shall make all payments to the contractor for completed work in
510 accordance with the contract and pay the interest specified in the contract on any payments that
511 are late.

512 (6) If any payment on a contract with a private contractor to do work for the division or
513 the State Building Board is retained or withheld, it shall be retained or withheld and released as
514 provided in Section 13-8-5.

515 Section 5. Section 63C-9-403 is amended to read:

516 **63C-9-403. Contracting power of executive director -- Health insurance coverage.**

517 (1) For purposes of this section:

518 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
519 34A-2-104 who:

520 (i) works at least 30 hours per calendar week; and

521 (ii) meets employer eligibility waiting requirements for health care insurance which
522 may not exceed the first of the calendar month following 60 days from the date of hire.

523 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

524 (c) "Qualified health insurance coverage" is as defined in Section 26-40-115.

525 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

526 (2) (a) Except as provided in Subsection (3), this section applies to a design or
527 construction contract entered into by the board or on behalf of the board on or after July 1,
528 2009, and to a prime contractor or a subcontractor in accordance with Subsection (2)(b).

529 (b) (i) A prime contractor is subject to this section if the prime contract is in the
530 amount of \$1,500,000 or greater.

531 (ii) A subcontractor is subject to this section if a subcontract is in the amount of
532 \$750,000 or greater.

533 (3) This section does not apply if:

- 534 (a) the application of this section jeopardizes the receipt of federal funds;
- 535 (b) the contract is a sole source contract; or
- 536 (c) the contract is an emergency procurement.
- 537 (4) (a) This section does not apply to a change order as defined in Section [63G-6a-103](#),
- 538 or a modification to a contract, when the contract does not meet the initial threshold required
- 539 by Subsection (2).
- 540 (b) A person who intentionally uses change orders or contract modifications to
- 541 circumvent the requirements of Subsection (2) is guilty of an infraction.
- 542 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive
- 543 director that the contractor has and will maintain an offer of qualified health insurance
- 544 coverage for the contractor's employees and the employees' dependents during the duration of
- 545 the contract.
- 546 (b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor
- 547 shall demonstrate to the executive director that the subcontractor has and will maintain an offer
- 548 of qualified health insurance coverage for the subcontractor's employees and the employees'
- 549 dependents during the duration of the contract.
- 550 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
- 551 the duration of the contract is subject to penalties in accordance with administrative rules
- 552 adopted by the division under Subsection (6).
- 553 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
- 554 requirements of Subsection (5)(b).
- 555 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
- 556 the duration of the contract is subject to penalties in accordance with administrative rules
- 557 adopted by the department under Subsection (6).
- 558 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
- 559 requirements of Subsection (5)(a).
- 560 (6) The department shall adopt administrative rules:
- 561 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

- 562 (b) in coordination with:
- 563 (i) the Department of Environmental Quality in accordance with Section 19-1-206;
- 564 (ii) the Department of Natural Resources in accordance with Section 79-2-404;
- 565 (iii) the State Building Board in accordance with Section 63A-5-205;
- 566 (iv) a public transit district in accordance with Section 17B-2a-818.5;
- 567 (v) the Department of Transportation in accordance with Section 72-6-107.5; and
- 568 (vi) the Legislature's Administrative Rules Review Committee; and
- 569 (c) which establish:
- 570 (i) the requirements and procedures a contractor must follow to demonstrate to the
- 571 executive director compliance with this section which shall include:
- 572 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or
- 573 (b) more than twice in any 12-month period; and
- 574 (B) that the actuarially equivalent determination required for the qualified health
- 575 insurance coverage in Subsection (1) is met by the contractor if the contractor provides the
- 576 department or division with a written statement of actuarial equivalency from either:
- 577 (I) the Utah Insurance Department;
- 578 (II) an actuary selected by the contractor or the contractor's insurer; or
- 579 (III) an underwriter who is responsible for developing the employer group's premium
- 580 rates;
- 581 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
- 582 violates the provisions of this section, which may include:
- 583 (A) a three-month suspension of the contractor or subcontractor from entering into
- 584 future contracts with the state upon the first violation;
- 585 (B) a six-month suspension of the contractor or subcontractor from entering into future
- 586 contracts with the state upon the second violation;
- 587 (C) an action for debarment of the contractor or subcontractor in accordance with
- 588 Section 63G-6a-904 upon the third or subsequent violation; and
- 589 (D) monetary penalties which may not exceed 50% of the amount necessary to

590 purchase qualified health insurance coverage for employees and dependents of employees of
591 the contractor or subcontractor who were not offered qualified health insurance coverage
592 during the duration of the contract; and

593 (iii) a website on which the department shall post the benchmark for the qualified
594 health insurance coverage identified in Subsection (1)(c).

595 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or
596 subcontractor who intentionally violates the provisions of this section shall be liable to the
597 employee for health care costs that would have been covered by qualified health insurance
598 coverage.

599 (ii) An employer has an affirmative defense to a cause of action under Subsection
600 (7)(a)(i) if:

601 (A) the employer relied in good faith on a written statement of actuarial equivalency
602 provided by:

603 (I) an actuary; or

604 (II) an underwriter who is responsible for developing the employer group's premium
605 rates; or

606 (B) the department determines that compliance with this section is not required under
607 the provisions of Subsection (3) or (4).

608 (b) An employee has a private right of action only against the employee's employer to
609 enforce the provisions of this Subsection (7).

610 (8) Any penalties imposed and collected under this section shall be deposited into the
611 Medicaid Restricted Account created in Section [26-18-402](#).

612 (9) The failure of a contractor or subcontractor to provide qualified health insurance
613 coverage as required by this section:

614 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
615 or contractor under Section [~~63G-6a-1603~~] [63G-6a-1602](#) or any other provision in Title 63G,
616 Chapter 6a, Utah Procurement Code; and

617 (b) may not be used by the procurement entity or a prospective bidder, offeror, or

618 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
619 or construction.

620 Section 6. Section **63F-1-205** is amended to read:

621 **63F-1-205. Approval of acquisitions of information technology.**

622 (1) (a) Except as provided in Title 63N, Chapter 13, Part 2, Government Procurement
623 Private Proposal Program, in accordance with Subsection (2), the chief information officer
624 shall approve the acquisition by an executive branch agency of:

- 625 (i) information technology equipment;
- 626 (ii) telecommunications equipment;
- 627 (iii) software;
- 628 (iv) services related to the items listed in Subsections (1)(a)(i) through (iii); and
- 629 (v) data acquisition.

630 (b) The chief information officer may negotiate the purchase, lease, or rental of private
631 or public information technology or telecommunication services or facilities in accordance with
632 this section.

633 (c) Where practical, efficient, and economically beneficial, the chief information
634 officer shall use existing private and public information technology or telecommunication
635 resources.

636 (d) Notwithstanding another provision of this section, an acquisition authorized by this
637 section shall comply with rules made by the applicable rulemaking authority under Title 63G,
638 Chapter 6a, Utah Procurement Code.

639 (2) Before negotiating a purchase, lease, or rental under Subsection (1) for an amount
640 that exceeds the value established by the chief information officer by rule in accordance with
641 Section **63F-1-206**, the chief information officer shall:

- 642 (a) conduct an analysis of the needs of executive branch agencies and subscribers of
643 services and the ability of the proposed information technology or telecommunications services
644 or supplies to meet those needs; and
- 645 (b) for purchases, leases, or rentals not covered by an existing statewide contract,

646 [~~provide~~] certify in writing to the chief procurement officer in the Division of Purchasing and
647 General Services that:

- 648 (i) the analysis required in Subsection (2)(a) was completed; and
- 649 (ii) based on the analysis, the proposed purchase, lease, rental, or master contract of
650 services, products, or supplies is practical, efficient, and economically beneficial to the state
651 and the executive branch agency or subscriber of services.

652 (3) In approving an acquisition described in Subsections (1) and (2), the chief
653 information officer shall:

654 (a) establish by administrative rule, in accordance with Section 63F-1-206, standards
655 under which an agency must obtain approval from the chief information officer before
656 acquiring the items listed in Subsections (1) and (2);

657 (b) for those acquisitions requiring approval, determine whether the acquisition is in
658 compliance with:

- 659 (i) the executive branch strategic plan;
- 660 (ii) the applicable agency information technology plan;
- 661 (iii) the budget for the executive branch agency or department as adopted by the
662 Legislature;

663 (iv) Title 63G, Chapter 6a, Utah Procurement Code; and

664 (v) the information technology accessibility standards described in Section 63F-1-210;

665 and

666 (c) in accordance with Section 63F-1-207, require coordination of acquisitions between
667 two or more executive branch agencies if it is in the best interests of the state.

668 (4) (a) Each executive branch agency shall provide the chief information officer with
669 complete access to all information technology records, documents, and reports:

- 670 (i) at the request of the chief information officer; and
- 671 (ii) related to the executive branch agency's acquisition of any item listed in Subsection
672 (1).

673 (b) Beginning July 1, 2006 and in accordance with administrative rules established by

674 the department under Section [63F-1-206](#), no new technology projects may be initiated by an
 675 executive branch agency or the department unless the technology project is described in a
 676 formal project plan and the business case analysis has been approved by the chief information
 677 officer and agency head. The project plan and business case analysis required by this
 678 Subsection (4) shall be in the form required by the chief information officer, and shall include:

- 679 (i) a statement of work to be done and existing work to be modified or displaced;
- 680 (ii) total cost of system development and conversion effort, including system analysis
 681 and programming costs, establishment of master files, testing, documentation, special
 682 equipment cost and all other costs, including overhead;
- 683 (iii) savings or added operating costs that will result after conversion;
- 684 (iv) other advantages or reasons that justify the work;
- 685 (v) source of funding of the work, including ongoing costs;
- 686 (vi) consistency with budget submissions and planning components of budgets; and
- 687 (vii) whether the work is within the scope of projects or initiatives envisioned when the
 688 current fiscal year budget was approved.

689 (5) ~~[(a)]~~ The chief information officer and the Division of Purchasing and General
 690 Services shall work cooperatively to establish procedures under which the chief information
 691 officer shall monitor and approve acquisitions as provided in this section.

692 ~~[(b) The procedures established under this section shall include at least the written
 693 certification required by Subsection [63G-6a-303\(1\)\(c\)](#).]~~

694 Section 7. Section **63G-6a-103** is amended to read:

695 **63G-6a-103. Definitions.**

696 As used in this chapter:

697 (1) "Applicable rulemaking authority" means:

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

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

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

- 702 (A) for the building board or the Division of Facilities Construction and Management,
703 created in Section 63A-5-201, the building board;
- 704 (B) for the Office of the Attorney General, the attorney general; and
- 705 (C) for the Department of Transportation created in Section 72-1-201, the executive
706 director of the Department of Transportation; and
- 707 (ii) for each other executive branch procurement unit, the board;
- 708 (d) for a local government procurement unit:
- 709 (i) the legislative body of the local government procurement unit; or
- 710 (ii) an individual or body designated by the legislative body of the local government
711 procurement unit;
- 712 (e) for a school district or a public school, the board, except to the extent of a school
713 district's own nonadministrative rules that do not conflict with the provisions of this chapter;
- 714 (f) for a state institution of higher education, the State Board of Regents;
- 715 (g) for a public transit district, the chief executive of the public transit district;
- 716 (h) for a local district other than a public transit district or for a special service district:
- 717 (i) before January 1, 2015, the board of trustees of the local district or the governing
718 body of the special service district; or
- 719 (ii) on or after January 1, 2015, the board, except to the extent that the board of trustees
720 of the local district or the governing body of the special service district makes its own rules:
- 721 (A) with respect to a subject addressed by board rules; or
- 722 (B) that are in addition to board rules; or
- 723 (i) for any other procurement unit, the board.
- 724 (2) "Approved vendor" means a vendor who has been approved through the approved
725 vendor list process.
- 726 (3) "Approved vendor list" means a list of approved vendors established under Section
727 63G-6a-507.
- 728 (4) "Approved vendor list process" means the procurement process described in
729 Section 63G-6a-507.

730 ~~[(1)]~~ (5) "Bidder" means a person who ~~[responds]~~ submits a bid or price quote in
731 response to an invitation for bids.

732 (6) "Bidding process" means the procurement process described in Part 6, Bidding.

733 (7) "Board" means the Utah State Procurement Policy Board, created in Section
734 63G-6a-202.

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

736 ~~[(2)]~~ (9) "Change directive" means a written order signed by the procurement officer
737 that directs the contractor to suspend work or make changes, as authorized by contract, without
738 the consent of the contractor.

739 ~~[(3)]~~ (10) "Change order" means a written alteration in specifications, delivery point,
740 rate of delivery, period of performance, price, quantity, or other provisions of a contract, upon
741 mutual agreement of the parties to the contract.

742 ~~[(4)]~~ (11) "Chief procurement officer" means the chief procurement officer appointed
743 under Subsection 63G-6a-302(1).

744 ~~[(5)]~~ (12) "Conducting procurement unit" means a procurement unit that conducts all
745 aspects of a procurement:

746 (a) except:

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

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

749 (b) including:

750 (i) preparing any solicitation document;

751 (ii) appointing an evaluation committee;

752 (iii) conducting the evaluation process, except as provided in Subsection

753 63G-6a-707~~[(5)]~~(6)(b) relating to scores calculated for costs of proposals;

754 (iv) selecting and recommending the person to be awarded a contract;

755 (v) negotiating the terms and conditions of a contract, subject to the issuing
756 procurement unit's approval; and

757 (vi) ~~[administering a]~~ contract administration.

758 (13) "Conservation district" means the same as that term is defined in Section
759 17D-3-102.

760 ~~[(6) (a) "Construction" means the process of building, renovating, altering, improving,~~
761 ~~or repairing a public building or public work.]~~

762 ~~[(b) "Construction" does not include the routine operation, routine repair, or routine~~
763 ~~maintenance of an existing structure, building, or real property.]~~

764 (14) "Construction":

765 (a) means services, including work, and supplies for a project for the construction,
766 renovation, alteration, improvement, or repair of a public facility on real property; and

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

769 ~~[(7) (a)]~~ (15) "Construction manager/general contractor":

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

771 (i) for the management of a construction project ~~[when the contract]; and~~

772 (ii) that allows the contractor to subcontract for additional labor and materials that are
773 not included in the contractor's cost proposal submitted at the time of the procurement of the
774 contractor's services[-]; and

775 ~~(b) ["Construction manager/general contractor"] does not include a contractor whose~~
776 ~~only subcontract work not included in the contractor's cost proposal submitted as part of the~~
777 ~~procurement of the contractor's services is to meet subcontracted portions of change orders~~
778 ~~approved within the scope of the project.~~

779 ~~[(8)]~~ (16) "Contract" means an agreement for [the] a procurement ~~[or disposal of a~~
780 procurement item].

781 (17) "Contract administration" means all functions, duties, and responsibilities
782 associated with managing, overseeing, and carrying out a contract between a procurement unit
783 and a contractor, including:

784 (a) implementing the contract;

785 (b) ensuring compliance with the contract terms and conditions by the conducting

786 procurement unit and the contractor;

787 (c) executing change orders;

788 (d) processing contract amendments;

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

790 (f) curing contract errors and deficiencies;

791 (g) terminating a contract;

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

793 (i) computing payments under the contract; and

794 (j) closing out a contract.

795 ~~[(9)]~~ (18) "Contractor" means a person who is awarded a contract with a procurement
796 unit.

797 ~~[(10)]~~ (19) "Cooperative procurement" means procurement conducted by, or on behalf
798 of:

799 (a) more than one procurement unit; or

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

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

804 ~~[(11)]~~ (21) "Cost-plus-a-percentage-of-cost contract" means a contract ~~[where]~~ under
805 which the contractor is paid a percentage ~~[over and above]~~ of the total actual expenses or costs
806 in addition to the contractor's actual expenses or costs.

807 ~~[(12)]~~ (22) "Cost-reimbursement contract" means a contract under which a contractor
808 is reimbursed for costs which are allowed and allocated in accordance with the contract terms
809 and the provisions of this chapter, and a fee, if any.

810 ~~[(13)]~~ (23) "Days" means calendar days, unless expressly provided otherwise.

811 ~~[(14)]~~ (24) "Definite quantity contract" means a fixed price contract that provides for
812 ~~[the supply of]~~ a specified amount of ~~[goods]~~ supplies over a specified period, with deliveries
813 scheduled according to a specified schedule.

814 ~~[(15)]~~ (25) "Design-build" means the procurement of design professional services and
815 construction by the use of a single contract ~~[with the design-build provider].~~

816 ~~[(16)]~~ (26) "Design professional" means:

817 (a) an individual licensed as an architect under Title 58, Chapter 3a, Architects
818 Licensing Act; or

819 (b) an individual licensed as a professional engineer or professional land surveyor
820 under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing
821 Act.

822 (27) "Design professional procurement process" means the procurement process
823 described in Part 15, Design Professional Services.

824 ~~[(17)]~~ (28) "Design professional services" means:

825 (a) professional services within the scope of the practice of architecture as defined in
826 Section [58-3a-102](#);

827 (b) professional engineering as defined in Section [58-22-102](#); or

828 (c) master planning and programming services.

829 ~~[(18)] "Directed procurement" means a procurement of a procurement item in which the~~
830 ~~source of the funds used to procure the procurement item:]~~

831 ~~[(a) directs from whom the procurement item is to be procured; or]~~

832 ~~[(b) imposes requirements on how the procurement is to be administered.]~~

833 ~~[(19)]~~ (29) "Director" means the director of the division.

834 (30) "Division" means the Division of Purchasing and General Services, created in
835 Section [63A-2-101](#).

836 (31) "Educational procurement unit" means:

837 (a) a school district;

838 (b) a public school, including a local school board and a charter school;

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

840 (d) the Utah Education and Telehealth Network; or

841 (e) an institution of higher education of the state.

842 [~~(20)~~] (32) "Established catalogue price" means the price included in a catalogue, price
843 list, schedule, or other form that:

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

849 (33) "Executive branch procurement unit" means a department, division, office,
850 bureau, agency, or other organization within the state executive branch.

851 [~~(21)~~] (34) "Fixed price contract" means a contract that provides a price, for each
852 procurement item obtained under the contract, that is not subject to adjustment except to the
853 extent that:

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

857 [~~(22)~~] (35) "Fixed price contract with price adjustment" means a fixed price contract
858 that provides for an upward or downward revision of price, precisely described in the contract,
859 that:

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

863 [~~(23)~~] (36) "Grant" means an expenditure of public funds or other assistance, or an
864 agreement to expend public funds or other assistance, for a public purpose authorized by law,
865 without acquiring a procurement item in exchange.

866 [~~(24)~~] (37) "Head of a procurement unit" means:

- 867 (a) [~~as it relates to~~] for a legislative procurement unit, any person designated by rule
868 made by the applicable rulemaking authority;
- 869 (b) [~~as it relates to~~] for an executive branch procurement unit:

- 870 (i) the director of ~~[a]~~ the division; or
- 871 (ii) any other person designated by the board, by rule;
- 872 (c) ~~[as it relates to]~~ for a judicial procurement unit:
- 873 (i) the Judicial Council; or
- 874 (ii) any other person designated by the Judicial Council, by rule;
- 875 (d) ~~[as it relates to]~~ for a local government procurement unit:
- 876 (i) the legislative body of the local government procurement unit; or
- 877 (ii) any other person designated by the local government procurement unit;
- 878 (e) ~~[as it relates to]~~ for a local district other than a public transit district, the board of
- 879 trustees of the local district or a designee of the board of trustees;
- 880 (f) ~~[as it relates to]~~ for a special service district, the governing body of the special
- 881 service district or a designee of the governing body;
- 882 (g) ~~[as it relates to]~~ for a local building authority, the board of directors of the local
- 883 building authority or a designee of the board of directors;
- 884 (h) ~~[as it relates to]~~ for a conservation district, the board of supervisors of the
- 885 conservation district or a designee of the board of supervisors;
- 886 (i) ~~[as it relates to]~~ for a public corporation, the board of directors of the public
- 887 corporation or a designee of the board of directors;
- 888 (j) ~~[as it relates to]~~ for a school district or any school or entity within a school district,
- 889 the board of the school district, or the board's designee;
- 890 (k) ~~[as it relates to]~~ for a charter school, the individual or body with executive authority
- 891 over the charter school, or the individual's or body's designee;
- 892 (l) ~~[as it relates to]~~ for an institution of higher education of the state, the president of
- 893 the institution of higher education, or the president's designee; or
- 894 (m) ~~[as it relates to]~~ for a public transit district, the board of trustees or a designee of
- 895 the board of trustees.
- 896 (38) "Immaterial error":
- 897 (a) means an irregularity or abnormality that is:

- 898 (i) a matter of form that does not affect substance; or
- 899 (ii) an inconsequential variation from a requirement of a solicitation that has no, little,
- 900 or a trivial effect on the procurement process and that is not prejudicial to other vendors; and
- 901 (b) includes:
- 902 (i) a missing signature, missing acknowledgment of an addendum, or missing copy of a
- 903 professional license, bond, or insurance certificate;
- 904 (ii) a typographical error;
- 905 (iii) an error resulting from an inaccuracy or omission in the solicitation; and
- 906 (iv) any other error that the chief procurement officer or the head of a procurement unit
- 907 with independent procurement authority reasonably considers to be immaterial.

908 ~~[(25)]~~ (39) "Indefinite quantity contract" means a fixed price contract that:

- 909 (a) is for an indefinite amount of procurement items to be supplied as ordered by a
- 910 procurement unit; and
- 911 (b) (i) does not require a minimum purchase amount; or
- 912 (ii) provides a maximum purchase limit.

913 ~~[(26)]~~ (40) "Independent procurement authority" means authority granted to a

914 procurement unit under Subsection [63G-6a-106\(4\)\(a\)](#).

915 ~~[(27)]~~ (41) "Invitation for bids" ~~[includes all documents, including documents that are~~

916 ~~attached or incorporated by reference, used for soliciting];~~

917 (a) means a document used to solicit:

- 918 (i) bids to provide a procurement item to a procurement unit; or
- 919 (ii) quotes for a price of a procurement item to be provided to a procurement unit; and
- 920 (b) includes all documents attached to or incorporated by reference in a document

921 described in Subsection (41)(a).

922 ~~[(28)]~~ (42) "Issuing procurement unit" means a procurement unit that:

- 923 (a) reviews a solicitation to verify that it is in proper form;
- 924 (b) causes the notice of a solicitation to be published; and
- 925 (c) negotiates and approves the terms and conditions of a contract.

926 (43) "Judicial procurement unit" means:
927 (a) the Utah Supreme Court;
928 (b) the Utah Court of Appeals;
929 (c) the Judicial Council;
930 (d) a state judicial district; or
931 (e) an office, committee, subcommittee, or other organization within the state judicial
932 branch.

933 [~~(29)~~] (44) "Labor hour contract" is a contract [where] under which:
934 (a) the supplies and materials are not provided by, or through, the contractor; and
935 (b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and
936 profit for a specified number of labor hours or days.

937 (45) "Legislative procurement unit" means:
938 (a) the Legislature;
939 (b) the Senate;
940 (c) the House of Representatives;
941 (d) a staff office of the Legislature, the Senate, or the House of Representatives; or
942 (e) an office, committee, subcommittee, commission, or other organization within the
943 state legislative branch.

944 (46) "Local building authority" means the same as that term is defined in Section
945 [17D-2-102](#).

946 (47) "Local district" means the same as that term is defined in Section [17B-1-102](#).

947 (48) "Local government procurement unit" means:
948 (a) a county or municipality, and each office or agency of the county or municipality,
949 unless the county or municipality adopts its own procurement code by ordinance;
950 (b) a county or municipality that has adopted this entire chapter by ordinance, and each
951 office or agency of that county or municipality; or
952 (c) a county or municipality that has adopted a portion of this chapter by ordinance, to
953 the extent that a term in the ordinance is used in the adopted portion of this chapter, and each

954 office or agency of that county or municipality.

955 ~~[(30)]~~ (49) "Multiple award contracts" means the award of a contract for an indefinite
956 quantity of a procurement item to more than one bidder or offeror.

957 ~~[(31)]~~ (50) "Multiyear contract" means a contract that extends beyond a one-year
958 period, including a contract that permits renewal of the contract, without competition, beyond
959 the first year of the contract.

960 ~~[(32)]~~ (51) "Municipality" means a city or a town.

961 (52) "Nonadopting local government procurement unit" means:

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

965 (b) each office or agency of a county or municipality described in Subsection (52)(a).

966 ~~[(33)]~~ (53) "Offeror" means a person who ~~[responds]~~ submits a proposal in response to
967 a request for proposals.

968 (54) "Person" means the same as that term is defined in Section [68-3-12.5](#), excluding a
969 political subdivision and a government office, department, division, bureau, or other body of
970 government.

971 ~~[(34)]~~ (55) "Preferred bidder" means a bidder that is entitled to receive a reciprocal
972 preference under the requirements of this chapter.

973 ~~[(35)]~~ (56) "Procure" means to acquire a procurement item through a procurement.

974 ~~[(36)]~~ (57) "Procurement":

975 (a) means a procurement unit's acquisition of a procurement item through an
976 expenditure of public funds, or an agreement to expend public funds~~[, in exchange for a~~
977 ~~procurement item];~~

978 (b) includes all functions that pertain to the acquisition of a procurement item,
979 including:

980 ~~[(i) the description of requirements;]~~

981 ~~[(ii) the selection process;]~~

- 982 ~~[(iii) solicitation of sources;]~~
- 983 ~~[(iv) the preparation for soliciting a procurement item; and]~~
- 984 ~~[(v) the award of a contract; and]~~
- 985 (i) preparing and issuing a solicitation; and
- 986 (ii) (A) conducting a standard procurement process; or
- 987 (B) conducting a procurement process that is an exception to a standard procurement
- 988 process under Part 8, Exceptions to Standard Procurement Process; and
- 989 (c) does not include a grant.
- 990 ~~[(37) "Procurement item" means a supply, a service, construction, or technology.]~~
- 991 (58) "Procurement item" means a supply, a service, or construction.
- 992 ~~[(38)]~~ (59) "Procurement officer" means:
- 993 (a) ~~[as it relates to]~~ for a procurement unit with independent procurement authority:
- 994 (i) the head of the procurement unit;
- 995 (ii) a designee of the head of the procurement unit; or
- 996 (iii) a person designated by rule made by the applicable rulemaking authority; or
- 997 (b) ~~[as it relates to]~~ for the division or a procurement unit without independent
- 998 procurement authority, the chief procurement officer.
- 999 (60) "Procurement unit":
- 1000 (a) means:
- 1001 (i) a legislative procurement unit;
- 1002 (ii) an executive branch procurement unit;
- 1003 (iii) a judicial procurement unit;
- 1004 (iv) an educational procurement unit;
- 1005 (v) a local government procurement unit;
- 1006 (vi) a local district;
- 1007 (vii) a special service district;
- 1008 (viii) a local building authority;
- 1009 (ix) a conservation district;

- 1010 (x) a public corporation; or
- 1011 (xi) a public transit district; and
- 1012 (b) does not include a political subdivision created under Title 11, Chapter 13,
- 1013 Interlocal Cooperation Act.
- 1014 [~~(39) "Professional service" means a service that requires a high degree of specialized~~
- 1015 ~~knowledge and discretion in the performance of the service, including:]~~
- 1016 [~~(a) legal services;~~]
- 1017 [~~(b) consultation services;~~]
- 1018 [~~(c) architectural services;~~]
- 1019 [~~(d) engineering;~~]
- 1020 [~~(e) design;~~]
- 1021 [~~(f) underwriting;~~]
- 1022 [~~(g) bond counsel;~~]
- 1023 [~~(h) financial advice;~~]
- 1024 [~~(i) construction management;~~]
- 1025 [~~(j) medical services;~~]
- 1026 [~~(k) psychiatric services; or~~]
- 1027 [~~(l) counseling services.]~~
- 1028 (61) "Professional service" means labor, effort, or work that requires an elevated
- 1029 degree of specialized knowledge and discretion, including labor, effort, or work in the field of:
- 1030 (a) accounting;
- 1031 (b) architecture;
- 1032 (c) construction design and management;
- 1033 (d) engineering;
- 1034 (e) financial services;
- 1035 (f) information technology;
- 1036 (g) the law;
- 1037 (h) medicine;

1038 (i) psychiatry; or

1039 (j) underwriting.

1040 [~~(40)~~] (62) "Protest officer" means:

1041 (a) [~~as it relates to~~] for the division or a procurement unit with independent
1042 procurement authority:

1043 (i) the head of the procurement unit;

1044 (ii) a designee of the head of the procurement unit; or

1045 (iii) a person designated by rule made by the applicable rulemaking authority; or

1046 (b) [~~as it relates to~~] for a procurement unit without independent procurement authority,
1047 the chief procurement officer or the chief procurement officer's designee.

1048 (63) "Public corporation" means the same as that term is defined in Section [63E-1-102](#).

1049 (64) "Public entity" means any government entity of the state or political subdivision of
1050 the state, including:

1051 (a) a procurement unit;

1052 (b) a municipality or county, regardless of whether the municipality or county has
1053 adopted this chapter or any part of this chapter; and

1054 (c) any other government entity located in the state that expends public funds.

1055 (65) "Public facility" means a building, structure, infrastructure, improvement, or other
1056 facility of a public entity.

1057 (66) "Public funds" means money, regardless of its source, including from the federal
1058 government, that is owned or held by a procurement unit.

1059 (67) "Public transit district" means a public transit district organized under Title 17B,
1060 Chapter 2a, Part 8, Public Transit District Act.

1061 (68) "Qualified vendor" means a vendor who:

1062 (a) is responsible; and

1063 (b) submits a responsive statement of qualifications under Section [63G-6a-410](#) that
1064 meets the minimum mandatory requirements, evaluation criteria, and any applicable score
1065 thresholds set forth in the request for statement of qualifications.

1066 (69) "Real property" means land and any building, fixture, improvement, appurtenance,
1067 structure, or other development that is permanently affixed to land.

1068 ~~[(41)]~~ (70) "Request for information" means a nonbinding process ~~[where]~~ through
1069 which a procurement unit requests information relating to a procurement item.

1070 ~~[(42)]~~ (71) "Request for proposals" ~~[includes all documents, including documents that~~
1071 ~~are attached or incorporated by reference, used for soliciting]~~ means a document used to solicit
1072 proposals to provide a procurement item to a procurement unit, including all other documents
1073 that are attached to that document or incorporated in that document by reference.

1074 (72) "Request for proposals process" means the procurement process described in Part
1075 7, Request for Proposals.

1076 ~~[(43)]~~ (73) "Request for statement of qualifications" means ~~[all documents]~~ a document
1077 used to solicit information about the qualifications of [the] a person interested in responding to
1078 a potential procurement, including all other documents attached to that document or
1079 incorporated in that document by reference.

1080 ~~[(44)]~~ (74) "Requirements contract" means a contract:

1081 (a) ~~[where]~~ under which a contractor agrees to provide a procurement unit's entire
1082 requirements for certain procurement items at prices specified in the contract during the
1083 contract period; and

1084 (b) that:

1085 (i) does not require a minimum purchase amount; or

1086 (ii) provides a maximum purchase limit.

1087 ~~[(45)]~~ (75) "Responsible" means being capable, in all respects, of:

1088 (a) meeting all the requirements of a solicitation; and

1089 (b) fully performing all the requirements of the contract resulting from the solicitation,
1090 including being financially solvent with sufficient financial resources to perform the contract.

1091 ~~[(46)]~~ (76) "Responsive" means conforming in all material respects to the ~~[invitation~~
1092 ~~for bids or request for proposals]~~ requirements of a solicitation.

1093 ~~[(47)]~~ (77) "Sealed" means manually or electronically ~~[sealed and submitted bids or~~

1094 proposals] secured to prevent disclosure.

1095 ~~[(48)(a) "Services" means the furnishing of labor, time, or effort by a contractor, not~~
1096 ~~involving the delivery of a specific end product other than a report that is incidental to the~~
1097 ~~required performance.]~~

1098 ~~[(b) "Services" does not include an employment agreement or a collective bargaining~~
1099 ~~agreement.]~~

1100 (78) "Service":

1101 (a) means labor, effort, or work to produce a result that is beneficial to a procurement
1102 unit;

1103 (b) includes a professional service; and

1104 (c) does not include labor, effort, or work provided under an employment agreement or
1105 a collective bargaining agreement.

1106 (79) "Small purchase process" means the procurement process described in Section
1107 [63G-6a-506](#).

1108 ~~[(49)]~~ (80) "Sole source contract" means a contract resulting from a sole source
1109 procurement.

1110 ~~[(50)]~~ (81) "Sole source procurement" means a procurement without competition
1111 pursuant to a determination under Subsection [63G-6a-802](#)~~[(2)]~~(1)(a) that there is only one
1112 source for the procurement item.

1113 ~~[(51)]~~ (82) "Solicitation" means an invitation for bids, request for proposals, ~~[notice of~~
1114 ~~a sole source procurement;~~ request for statement of qualifications, or request for information];
1115 ~~or any document used to obtain bids, proposals, pricing, qualifications, or information for the~~
1116 ~~purpose of entering into a procurement contract].~~

1117 (83) "Solicitation response" means:

1118 (a) a bid submitted in response to an invitation for bids;

1119 (b) a proposal submitted in response to a request for proposals; or

1120 (c) a statement of qualifications submitted in response to a request for statement of
1121 qualifications.

1122 (84) "Special service district" means the same as that term is defined in Section
1123 17D-1-102.

1124 ~~[(52)]~~ (85) "Specification" means any description of the physical or functional
1125 characteristics[;] or of the nature of a procurement item included in an invitation for bids or a
1126 request for proposals, or otherwise specified or agreed to by a procurement unit, including a
1127 description of:

1128 (a) a requirement for inspecting or testing a procurement item; or

1129 (b) preparing a procurement item for delivery.

1130 ~~[(53)]~~ (86) "Standard procurement process" means [~~one of the following methods of~~
1131 obtaining a procurement item]:

1132 (a) the bidding[~~, as described in Part 6, Bidding~~] process;

1133 (b) the request for proposals[~~, as described in Part 7, Request for Proposals~~] process;

1134 [~~or~~]

1135 ~~[(c) small purchases, in accordance with the requirements established under Section~~
1136 ~~63G-6a-408.]~~

1137 (c) the approved vendor list process;

1138 (d) the small purchase process; or

1139 (e) the design professional procurement process.

1140 ~~[(54)]~~ (87) "State cooperative contract" means a contract awarded by the division for
1141 and in behalf of all public entities.

1142 ~~[(55)]~~ (88) "Statement of qualifications" means a written statement submitted to a
1143 procurement unit in response to a request for statement of qualifications.

1144 ~~[(56)(a)]~~ (89) "Subcontractor":

1145 (a) means a person under contract with a contractor or another subcontractor to provide
1146 services or labor for design or construction[;];

1147 (b) [~~"Subcontractor"~~] includes a trade contractor or specialty contractor[;]; and

1148 (c) [~~"Subcontractor"~~] does not include a supplier who provides only materials,
1149 equipment, or supplies to a contractor or subcontractor.

1150 ~~[(57) "Supplies" means all property, including equipment, materials, and printing.]~~

1151 (90) "Supply" means a good, material, technology, piece of equipment, or any other
1152 item of personal property.

1153 ~~[(58)]~~ (91) "Tie bid" means that the lowest responsive [and] bids of responsible [bids]
1154 bidders are identical in price.

1155 ~~[(59)]~~ (92) "Time and materials contract" means a contract [where] under which the
1156 contractor is paid:

1157 (a) the actual cost of direct labor at specified hourly rates;

1158 (b) the actual cost of materials and equipment usage; and

1159 (c) an additional amount, expressly described in the contract, to cover overhead and
1160 profit, that is not based on a percentage of the cost to the contractor.

1161 (93) "Transitional costs":

1162 (a) means the costs of changing:

1163 (i) from an existing provider of a procurement item to another provider of that
1164 procurement item; or

1165 (ii) from an existing type of procurement item to another type;

1166 (b) includes:

1167 (i) training costs;

1168 (ii) conversion costs;

1169 (iii) compatibility costs;

1170 (iv) costs associated with system downtime;

1171 (v) disruption of service costs;

1172 (vi) staff time necessary to implement the change;

1173 (vii) installation costs; and

1174 (viii) ancillary software, hardware, equipment, or construction costs; and

1175 (c) does not include:

1176 (i) the costs of preparing for or engaging in a procurement process; or

1177 (ii) contract negotiation or drafting costs.

1178 (94) "Trial use contract" means a contract for a procurement item that the procurement
 1179 unit acquires for a trial use or testing to determine whether the procurement item will benefit
 1180 the procurement unit.

1181 (95) "Vendor":

1182 (a) means a person who is seeking to enter into a contract with a procurement unit to
 1183 provide a procurement item; and

1184 (b) includes:

1185 (i) a bidder;

1186 (ii) an offeror;

1187 (iii) an approved vendor; and

1188 (iv) a design professional.

1189 Section 8. Section **63G-6a-105** is amended to read:

1190 **63G-6a-105. Application of chapter -- Ordinances or resolutions relating to**
 1191 **procurement of design professional services -- Rules.**

1192 [~~(1) The provisions of this chapter that are enacted on May 1, 2013, apply only to a~~
 1193 ~~procurement advertised, or begun on or after May 1, 2013, unless the parties agree to have the~~
 1194 ~~provisions apply with respect to a procurement that was advertised or begun before May 1,~~
 1195 ~~2013, but is not completed before May 1, 2013.]~~

1196 [(~~2~~)(a)] (1) Except as provided in Section **63G-6a-107**, this chapter [shall apply to
 1197 every expenditure of public funds irrespective of the source of the funds, including federal
 1198 assistance, by any procurement unit, under any contract] applies to every procurement.

1199 [(b) The provisions of this chapter do]

1200 (2) This chapter does not apply to a public entity that is not a procurement unit.

1201 (3) The following procurement units shall adopt ordinances or resolutions relating to
 1202 the procurement of design professional services not inconsistent with the provisions of Part 15,

1203 Design Professional Services:

1204 (a) an educational procurement unit;

1205 (b) a conservation district;

1206 (c) a local building authority;

1207 (d) a local district;

1208 (e) a public corporation; or

1209 (f) a special service district.

1210 (4) Any section of this chapter, or its implementing regulations, may be adopted by:

1211 (a) a county;

1212 (b) a municipality; or

1213 (c) the Utah Housing Corporation.

1214 (5) Rules adopted under this chapter shall be consistent with the provisions of this
1215 chapter.

1216 (6) An applicable rulemaking authority or a procurement unit may not adopt rules,
1217 policies, or regulations that are inconsistent with this chapter.

1218 (7) Unless otherwise provided by statute, this chapter does not apply to [~~procurement~~]
1219 the acquisition or disposal of real property or an interest in real property.

1220 (8) Notwithstanding any provision of this chapter, a procurement unit may administer a
1221 [~~direct~~] procurement in accordance with the requirements imposed by the source of the funds
1222 used to procure the procurement item.

1223 Section 9. Section **63G-6a-106** is amended to read:

1224 **63G-6a-106. Procurement units with specific statutory procurement authority --**
1225 **Independent procurement authority -- Authority of head of a procurement unit with**
1226 **independent procurement authority.**

1227 (1) A procurement unit with procurement authority under the following provisions has
1228 independent procurement authority to the extent of the applicable provisions and for the
1229 procurement items specified in the applicable provisions:

1230 (a) Title 53B, State System of Higher Education;

1231 (b) Title 63A, Chapter 5, State Building Board - Division of Facilities Construction
1232 and Management;

1233 (c) Title 67, Chapter 5, Attorney General;

- 1234 (d) Title 72, Transportation Code; and
1235 (e) Title 78A, Chapter 5, District Court.
1236 (2) Except as otherwise provided in Sections 63G-6a-105 and 63G-6a-107, a
1237 procurement unit shall conduct a procurement in accordance with this chapter.
1238 (3) (a) The Department of Transportation may make rules governing the procurement
1239 of highway construction or improvement.
1240 (b) The applicable rulemaking authority for a public transit district may make rules
1241 governing the procurement of a transit construction project or a transit improvement project.
1242 [~~(c) This Subsection (3) supersedes Subsections (1) and (2).~~]
1243 (4) (a) A procurement unit listed in Subsection (4)(b) may, without the supervision,
1244 interference, oversight, control, or involvement of the division or the chief procurement officer,
1245 but in accordance with the requirements of this chapter:
1246 (i) engage in a standard procurement process;
1247 (ii) procure an item under an exception, as provided in this chapter, to the requirement
1248 to use a standard procurement process; or
1249 (iii) otherwise engage in an act authorized or required by this chapter.
1250 (b) The procurement units to which Subsection (4)(a) applies are:
1251 (i) a legislative procurement unit;
1252 (ii) a judicial procurement unit;
1253 (iii) an educational procurement unit;
1254 (iv) a local government procurement unit;
1255 (v) a conservation district;
1256 (vi) a local building authority;
1257 (vii) a local district;
1258 (viii) a public corporation;
1259 (ix) a special service district;
1260 (x) a public transit district; and
1261 (xi) a procurement unit referred to in Subsection (1), to the extent authorized in

1262 Subsection (1).

1263 (c) A procurement unit with independent procurement authority shall comply with the
1264 requirements of this chapter.

1265 (d) Notwithstanding Subsection (4)(a), a procurement unit with independent
1266 procurement authority may agree in writing with the division to extend the authority of the
1267 division or the chief procurement officer to the procurement unit, as provided in the agreement.

1268 ~~[(e) At any stage of the procurement process, a head of a procurement unit with
1269 independent procurement authority who determines that a procurement over which the
1270 procurement unit has authority is out of compliance with this chapter or applicable rules may:]~~

1271 ~~[(i) correct or amend the procurement to bring it into compliance; or]~~

1272 ~~[(ii) cancel the procurement, if the head of the procurement unit determines that it is:]~~

1273 ~~[(A) not feasible to bring the procurement into compliance; or]~~

1274 ~~[(B) in the best interest of the procurement unit to cancel the procurement.]~~

1275 (e) With respect to a procurement or contract over which the head of a procurement
1276 unit with independent procurement authority has authority, the head of the procurement unit
1277 with independent procurement authority may:

1278 (i) manage and supervise the procurement to ensure to the extent practicable that
1279 taxpayers receive the best value;

1280 (ii) prepare and issue standard specifications for procurement items;

1281 (iii) review contracts, coordinate contract compliance, conduct contract audits, and
1282 approve change orders;

1283 (iv) delegate duties and authority to an employee of the procurement unit, as the head
1284 of the procurement unit with independent procurement authority considers appropriate;

1285 (v) for the head of an executive branch procurement unit with independent
1286 procurement authority, coordinate with the Department of Technology Services, created in
1287 Section 63F-1-103, with respect to the procurement unit's procurement of information
1288 technology services;

1289 (vi) correct, amend, or cancel a procurement at any stage of the procurement process if

1290 the procurement is out of compliance with this chapter or a rule adopted by the applicable
1291 rulemaking authority;

1292 (vii) after consultation with, as applicable, the attorney general's office or the
1293 procurement unit's legal counsel, correct, amend, or cancel a contract at any time during the
1294 term of the contract if:

1295 (A) the contract is out of compliance with this chapter or a board rule; and

1296 (B) the head of the procurement unit with independent procurement authority
1297 determines that correcting, amending, or canceling the contract is in the best interest of the
1298 procurement unit; and

1299 (viii) attempt to resolve a contract dispute in coordination with the legal counsel of the
1300 procurement unit with independent procurement authority.

1301 (f) The head of a procurement unit with independent procurement authority serves as
1302 the protest officer for a protest involving the procurement unit.

1303 ~~[(f)]~~ (g) If, at any time during the term of a contract awarded by a procurement unit
1304 with independent procurement authority, the head of the procurement unit determines that the
1305 contract is out of compliance with this chapter or applicable rules, the head of the procurement
1306 unit may correct or amend the contract to bring it into compliance or cancel the contract:

1307 (i) if the head of the procurement unit determines that correcting, amending, or
1308 canceling the contract is in the best interest of the procurement unit; and

1309 (ii) after consulting with legal counsel.

1310 (5) (a) The attorney general may, in accordance with the provisions of this chapter, but
1311 without involvement by the division or the chief procurement officer:

1312 (i) retain outside counsel, subject to Section 67-5-33 if the attorney general retains
1313 outside counsel under a contingent fee contract, as defined in that section; or

1314 (ii) procure litigation support services, including retaining an expert witness.

1315 (b) A procurement unit with independent procurement authority that is not represented
1316 by the attorney general's office may, in accordance with the provisions of this chapter, but
1317 without involvement by the division or the chief procurement officer:

- 1318 (i) retain outside counsel; or
- 1319 (ii) procure litigation support services, including retaining an expert witness.
- 1320 (6) The state auditor's office may, in accordance with the provisions of this chapter, but
- 1321 without involvement by the division or the chief procurement officer, procure audit services.
- 1322 (7) The state treasurer may, in accordance with the provisions of this chapter, but
- 1323 without involvement by the division or the chief procurement officer, procure:

- 1324 (a) deposit services; and
- 1325 (b) services related to issuing bonds.

1326 Section 10. Section **63G-6a-106.5** is enacted to read:

1327 **63G-6a-106.5. Policy for legislative procurement units.**

1328 The Legislative Management Committee shall adopt a policy establishing requirements
1329 applicable to a legislative procurement unit.

1330 Section 11. Section **63G-6a-107** is amended to read:

1331 **63G-6a-107. Exemptions from chapter -- Compliance with other provisions.**

1332 (1) Except for Part 24, Unlawful Conduct and Penalties, ~~the provisions of~~ this chapter
1333 ~~do~~ does not apply to:

- 1334 (a) funds administered under the Percent-for-Art Program of the Utah Percent-for-Art
- 1335 Act;
- 1336 (b) a grant;
- 1337 (c) a contract between procurement units;
- 1338 (d) medical supplies or medical equipment, including service agreements for medical

1339 equipment, obtained ~~[through a purchasing consortium by the Utah State Hospital, the Utah~~
1340 ~~State Developmental Center,] by the University of Utah Hospital[, or any other hospital owned~~
1341 ~~by the state or a political subdivision of the state,] through a purchasing consortium if:~~

- 1342 (i) the consortium uses a competitive procurement process; and
- 1343 (ii) the chief administrative officer of the hospital makes a written finding that the
- 1344 prices for purchasing medical supplies and medical equipment through the consortium are
- 1345 competitive with market prices;

1346 (e) the purchase of firefighting supplies or equipment by the Division of Forestry, Fire,
 1347 and State Lands, created in Section 65A-1-4, through the federal General Services
 1348 Administration or the National Fire Cache system;

1349 (f) ~~[goods]~~ supplies purchased for resale to the public; or

1350 (g) activities related to the management of investments by a public entity granted
 1351 investment authority by law.

1352 ~~[(2) This chapter does not prevent a procurement unit from complying with the terms
 1353 and conditions of any grant, gift, or bequest that is otherwise consistent with law.]~~

1354 ~~[(3)]~~ (2) Notwithstanding any conflicting provision of this chapter, ~~[when]~~ if a
 1355 procurement involves the expenditure of federal or state assistance, federal contract funds,
 1356 local matching funds, or federal financial participation funds, the procurement unit shall
 1357 comply with mandatory applicable federal or state law and regulations not reflected in this
 1358 chapter.

1359 ~~[(4)]~~ (3) This chapter does not supersede the requirements for retention or withholding
 1360 of construction proceeds and release of construction proceeds as provided in Section 13-8-5.

1361 (4) This chapter does not apply to a procurement unit's hiring a mediator, arbitrator, or
 1362 arbitration panel member to participate in the procurement unit's dispute resolution efforts.

1363 Section 12. Section 63G-6a-109 is amended to read:

1364 **63G-6a-109. Issuing procurement unit and conducting procurement unit.**

1365 (1) ~~[(a) Except as provided in Subsection (1)(b), with]~~ With respect to a procurement
 1366 by an executive branch procurement unit:

1367 ~~[(i)]~~ (a) the division is the issuing procurement unit; and

1368 ~~[(ii)]~~ (b) the executive branch procurement unit is the conducting procurement unit and
 1369 is responsible to ensure that the procurement is conducted in compliance with this chapter.

1370 ~~[(b) An executive branch procurement unit administering a directed procurement is
 1371 both the issuing procurement unit and the conducting procurement unit.]~~

1372 (2) With respect to a procurement by any other procurement unit, the procurement unit
 1373 is both the issuing procurement unit and the conducting procurement unit.

1374 (3) A conducting procurement unit is responsible for contract administration.

1375 Section 13. Section **63G-6a-110**, which is renumbered from Section 63G-6a-402 is
1376 renumbered and amended to read:

1377 ~~[63G-6a-402].~~ **63G-6a-110. Procurement unit required to comply with Utah**
1378 **Procurement Code and applicable rules -- Rulemaking authority -- Reporting.**

1379 (1) Except as otherwise provided in Section **63G-6a-107**, [~~Section 63G-6a-403, Part 8,~~
1380 ~~Exceptions to Procurement Requirements, or elsewhere in this chapter,~~] a procurement unit
1381 may not obtain a procurement item, unless:

1382 (a) if the procurement unit is the division or a procurement unit with independent
1383 procurement authority, the procurement unit:

1384 (i) uses:

1385 (A) a standard procurement process; or

1386 (B) an exception to a standard procurement process, described in Part 8, Exceptions to
1387 Procurement Requirements; and

1388 (ii) complies with:

1389 (A) the requirements of this chapter; and

1390 (B) the rules made pursuant to this chapter by the applicable rulemaking authority;

1391 (b) if the procurement unit is a county, a municipality, or the Utah Housing
1392 Corporation, the procurement unit complies with:

1393 (i) the requirements of this chapter that are adopted by the procurement unit; and

1394 (ii) all other procurement requirements that the procurement unit is required to comply
1395 with; or

1396 (c) if the procurement unit is not a procurement unit described in Subsection (1)(a) or
1397 (b), the procurement unit:

1398 (i) obtains the procurement item under the direction and approval of the division,
1399 unless otherwise provided by a rule made by the board;

1400 (ii) uses a standard procurement process; and

1401 (iii) complies with:

1402 (A) the requirements of this chapter; and
1403 (B) the rules made pursuant to this chapter by the applicable rulemaking authority.
1404 (2) Subject to Subsection (3), the applicable rulemaking authority shall make rules
1405 relating to the management and control of procurements and procurement procedures by a
1406 procurement unit.
1407 ~~[(3) (a) Rules made under Subsection (2) shall ensure compliance with the federal~~
1408 ~~contract prohibition provisions of the Sudan Accountability and Divestment Act of 2007 (Pub.~~
1409 ~~L. No. 110-174) that prohibit contracting with a person doing business in Sudan.]~~
1410 ~~[(b) The State Building Board]~~
1411 (3) Building board rules governing procurement of construction, design professional
1412 services, and leases apply to the procurement of construction, design professional services, and
1413 leases of real property by the Division of Facilities Construction and Management.
1414 ~~[(4) An applicable rulemaking authority that is subject to Title 63G, Chapter 3, Utah~~
1415 ~~Administrative Rulemaking Act, shall make the rules described in this chapter in accordance~~
1416 ~~with the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.]~~
1417 (4) An individual or body that makes rules as required or authorized in this chapter
1418 shall make the rules:
1419 (a) in accordance with Chapter 3, Utah Administrative Rulemaking Act, if the
1420 individual or body is subject to Chapter 3, Utah Administrative Rulemaking Act; or
1421 (b) in accordance with the established process for making rules or their equivalent, if
1422 the individual or body is not subject to Chapter 3, Utah Administrative Rulemaking Act.
1423 (5) The ~~[State Building Board]~~ building board shall make a report on or before July 1
1424 of each year to a legislative interim committee, designated by the Legislative Management
1425 Committee created under Section 36-12-6, on the establishment, implementation, and
1426 enforcement of the rules made by the ~~[State Building Board]~~ building board under this chapter.
1427 (6) The rules of the applicable rulemaking authority for the executive branch
1428 procurement unit shall require, for each contract and request for proposals, the inclusion of a
1429 clause that requires the issuing procurement unit, for the duration of the contract, to make

1430 available contact information of the winning contractor to the Department of Workforce
1431 Services in accordance with Section [35A-2-203](#). This requirement does not preclude a
1432 contractor from advertising job openings in other forums throughout the state.

1433 Section 14. Section **63G-6a-111**, which is renumbered from Section 63G-6a-407 is
1434 renumbered and amended to read:

1435 ~~[63G-6a-407]~~. **63G-6a-111. Purpose of specifications.**

1436 (1) All specifications shall seek to promote the overall economy and best use for the
1437 purposes intended and encourage competition in satisfying the needs of the procurement unit,
1438 and may not be unduly restrictive.

1439 (2) The requirements of this part regarding the purposes and nonrestrictiveness of
1440 specifications shall apply to all specifications, including those prepared by architects,
1441 engineers, designers, and draftsmen for public contracts.

1442 Section 15. Section **63G-6a-112**, which is renumbered from Section 63G-6a-406 is
1443 renumbered and amended to read:

1444 ~~[63G-6a-406]~~. **63G-6a-112. Required public notice.**

1445 (1) The division or a procurement unit with independent procurement authority that
1446 issues a solicitation required to be published in accordance with this section, shall provide
1447 public notice that includes:

- 1448 (a) the name of the conducting procurement unit;
- 1449 (b) the name of the procurement unit acquiring the procurement item;
- 1450 (c) information on how to contact the issuing procurement unit;
- 1451 (d) the date of the opening and closing of the solicitation;
- 1452 (e) information on how to obtain a copy of the procurement documents;
- 1453 (f) a general description of the procurement items that will be obtained through the
1454 standard procurement process or ~~[sole source]~~ procurement under Section [63G-6a-802](#); and
- 1455 (g) for a notice of a ~~[sole source]~~ procurement under Section [63G-6a-802](#);
- 1456 (i) contact information and other information relating to contesting or obtaining
1457 additional information relating to the ~~[sole source]~~ procurement; and

1458 (ii) the earliest date that the procurement unit may make the [~~sole source~~] procurement.

1459 (2) Except as provided in Subsection (4), the issuing procurement unit shall publish the
1460 notice described in Subsection (1):

1461 (a) at least seven days before the day of the deadline for submission of a bid or other
1462 response; and

1463 (b) (i) in a newspaper of general circulation in the state;

1464 (ii) in a newspaper of local circulation in the area:

1465 (A) directly impacted by the procurement; or

1466 (B) over which the procurement unit has jurisdiction;

1467 (iii) on the main website for the issuing procurement unit or the procurement unit
1468 acquiring the procurement item; or

1469 (iv) on a state website that is owned, managed by, or provided under contract with, the
1470 division for posting a public procurement notice.

1471 (3) Except as provided in Subsection (4), for a [~~sole source~~] procurement under Section
1472 63G-6a-802 for which notice is required to be published in accordance with this section, the
1473 issuing procurement unit shall publish the notice described in Subsection (1):

1474 (a) at least seven days before the acquisition of the [~~sole source~~] procurement item; and

1475 (b) (i) in a newspaper of general circulation in the state;

1476 (ii) in a newspaper of local circulation in the area:

1477 (A) directly impacted by the procurement; or

1478 (B) over which the procurement unit has jurisdiction;

1479 (iii) on the main website for the procurement unit acquiring the procurement item; or

1480 (iv) on a state website that is owned by, managed by, or provided under contract with,
1481 the division for posting a procurement notice.

1482 (4) An issuing procurement unit may reduce the seven-day period described in
1483 Subsection (2) or (3), if the procurement officer or the procurement officer's designee signs a
1484 written statement that:

1485 (a) states that a shorter time is needed; and

1486 (b) determines that competition from multiple sources may be obtained within the
1487 shorter period of time.

1488 (5) (a) An issuing procurement unit shall make a copy of the solicitation documents
1489 available for public inspection at the main office of the issuing procurement unit or on the
1490 website described in Subsection (2)(b) until the award of the contract or the cancellation of the
1491 procurement.

1492 (b) A procurement unit issuing a [~~sole source~~] procurement under Section 63G-6a-802
1493 shall make a copy of information related to the [~~sole source~~] procurement available for public
1494 inspection at the main office of the procurement unit or on the website described in Subsection
1495 (3)(b) until the award of the contract or the cancellation of the procurement.

1496 (c) A procurement unit shall maintain all records in accordance with Part 20, Records.

1497 (6) A procurement unit that issues a request for statement of qualifications as part of an
1498 approved vendor list process that results in the establishment of an open-ended vendor list, as
1499 defined in Section 63G-6a-507, shall keep the request for statement of qualifications posted on
1500 a website described in Subsection (2)(b)(iii) or (iv) during the entire period of the open-ended
1501 vendor list.

1502 Section 16. Section **63G-6a-113** is enacted to read:

1503 **63G-6a-113. Price based on established terms.**

1504 A procurement unit acquiring a procurement item may establish the price of the
1505 procurement item based on:

1506 (1) a price list, rate schedule, or price catalog:

1507 (a) submitted by a vendor and accepted by the procurement unit; or

1508 (b) mandated by the procurement unit or a federal agency; or

1509 (2) a federal regulation for a health and human services program.

1510 Section 17. Section **63G-6a-114** is enacted to read:

1511 **63G-6a-114. Correcting an immaterial error in a solicitation response.**

1512 (1) The chief procurement officer or the head of a procurement unit with independent
1513 procurement authority:

1514 (a) may allow a vendor to correct an immaterial error in a responsive solicitation
1515 response as provided in this section; and
1516 (b) may not allow a vendor to:
1517 (i) correct a deficiency, inaccuracy, or mistake in a responsive solicitation response that
1518 is not an immaterial error;
1519 (ii) correct an incomplete submission of documents that the solicitation required to be
1520 submitted with the solicitation response;
1521 (iii) correct a failure to submit a timely solicitation response;
1522 (iv) substitute or alter a required form or other document specified in the solicitation;
1523 (v) remedy a cause for a vendor being considered to be not responsible or a solicitation
1524 response not responsive; or
1525 (vi) correct a defect or inadequacy resulting in a determination that a vendor's
1526 solicitation response does not meet the mandatory minimum requirements, evaluation criteria,
1527 or applicable score thresholds established in the solicitation.
1528 (2) (a) The chief procurement officer or the head of a procurement unit with
1529 independent procurement authority shall establish a deadline by which a vendor is required to
1530 submit a correction under this section.
1531 (b) The chief procurement officer or the head of a procurement unit with independent
1532 procurement authority may not allow a vendor to correct an immaterial error in a solicitation
1533 response if the vendor submits the correction after the deadline established under Subsection
1534 (2)(a).
1535 (3) If the chief procurement officer or the head of a procurement unit with independent
1536 procurement authority allows a vendor to correct an immaterial error in a solicitation response,
1537 the chief procurement officer or head shall prepare and sign a written document supporting the
1538 reason for allowing the correction.
1539 Section 18. Section **63G-6a-115** is enacted to read:
1540 **63G-6a-115. Clarifying information in a solicitation response.**
1541 (1) A procurement unit may at any time make a written request to a vendor to clarify

1542 information contained in a responsive solicitation response.

1543 (2) A procurement unit may allow a vendor to respond to a request under Subsection

1544 (1):

1545 (a) in writing; or

1546 (b) by submitting a printed document.

1547 (3) (a) A procurement unit that requests a vendor to clarify information contained in a

1548 responsive solicitation response under this section shall establish a deadline by which the

1549 vendor is required to submit the clarifying information.

1550 (b) A procurement unit may not allow a vendor to submit clarifying information after

1551 the deadline established under Subsection (3)(a).

1552 (4) A vendor's response to a request under this section:

1553 (a) may only explain, illustrate, or interpret the contents of the vendor's original

1554 solicitation response;

1555 (b) may not be used to address criteria or specifications not contained in the vendor's

1556 original solicitation response; and

1557 (c) may not be used to:

1558 (i) correct a deficiency, inaccuracy, or mistake in a solicitation response that is not an

1559 immaterial error;

1560 (ii) correct an incomplete submission of documents that the solicitation required to be

1561 submitted with the solicitation response;

1562 (iii) correct a failure to submit a timely solicitation response;

1563 (iv) substitute or alter a required form or other document specified in the solicitation;

1564 (v) remedy a cause for a vendor being considered to be not responsible or a solicitation

1565 response not responsive; or

1566 (vi) correct a defect or inadequacy resulting in a determination that a vendor does not

1567 meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds

1568 established in the solicitation.

1569 Section 19. Section **63G-6a-203** is amended to read:

1570 **63G-6a-203. Powers and duties of board.**

1571 (1) In addition to making rules in accordance with Section [~~63G-6a-402~~] 63G-6a-110
1572 and the other provisions of this chapter, the board shall consider and decide matters of policy
1573 within the provisions of this chapter, including those referred to it by the chief procurement
1574 officer.

1575 (2) (a) The board may:

1576 (i) audit and monitor the implementation of its rules and the requirements of this
1577 chapter;

1578 (ii) upon the request of a procurement unit with an applicable rulemaking authority
1579 other than the board, review the procurement unit's proposed rules to ensure that they are not
1580 inconsistent with the provisions of this chapter or rules made by the board; and

1581 (iii) approve the use of innovative procurement processes.

1582 (b) Except as provided in Section 63G-6a-1702, the board may not exercise authority
1583 over:

1584 (i) the award or administration of any particular contract; or

1585 (ii) any dispute, claim, or litigation pertaining to any particular contract.

1586 (3) Except as otherwise expressly provided in this chapter, the board does not have
1587 authority over a matter involving a procurement unit with independent procurement authority.

1588 Section 20. Section 63G-6a-303 is repealed and reenacted to read:

1589 **63G-6a-303. Duties and authority of chief procurement officer.**

1590 (1) The chief procurement officer:

1591 (a) is the director of the division;

1592 (b) serves as the central procurement officer of the state;

1593 (c) serves as a voting member of the board; and

1594 (d) serves as the protest officer for a protest relating to a procurement of an executive
1595 branch procurement unit without independent procurement authority or a state cooperative
1596 contract procurement, unless the chief procurement officer designates another to serve as
1597 protest officer, as authorized in this chapter.

1598 (2) Except as otherwise provided in this chapter, the chief procurement officer shall:

1599 (a) develop procurement policies and procedures supporting ethical procurement
1600 practices, fair and open competition among vendors, and transparency within the state's
1601 procurement process;

1602 (b) administer the state's cooperative purchasing program, including state cooperative
1603 contracts and associated administrative fees;

1604 (c) enter into an agreement with a public entity for services provided by the division, if
1605 the agreement is in the best interest of the state;

1606 (d) ensure the division's compliance with any applicable law, rule, or policy, including
1607 a law, rule, or policy applicable to the division's role as an issuing procurement unit or
1608 conducting procurement unit, or as the state's central procurement organization;

1609 (e) manage the division's electronic procurement system;

1610 (f) oversee the recruitment, training, career development, certification requirements,
1611 and performance evaluation of the division's procurement personnel;

1612 (g) make procurement training available to procurement units and persons who do
1613 business with procurement units;

1614 (h) provide exemplary customer service and continually improve the division's
1615 procurement operations; and

1616 (i) exercise all other authority, fulfill all other duties and responsibilities, and perform
1617 all other functions authorized under this chapter.

1618 (3) With respect to a procurement or contract over which the chief procurement officer
1619 has authority under this chapter, the chief procurement officer, except as otherwise provided in
1620 this chapter:

1621 (a) shall:

1622 (i) manage and supervise a procurement to ensure to the extent practicable that
1623 taxpayers receive the best value;

1624 (ii) prepare and issue standard specifications for procurement items;

1625 (iii) review contracts, coordinate contract compliance, conduct contract audits, and

1626 approve change orders;

1627 (iv) in accordance with Section 63F-1-205, coordinate with the Department of
1628 Technology Services, created in Section 63F-1-103, with respect to the procurement of
1629 information technology services by an executive branch procurement unit;

1630 (v) correct, amend, or cancel a procurement at any stage of the procurement process if
1631 the procurement is out of compliance with this chapter or a board rule;

1632 (vi) after consultation with the attorney general's office, correct, amend, or cancel a
1633 contract at any time during the term of the contract if:

1634 (A) the contract is out of compliance with this chapter or a board rule; and

1635 (B) the chief procurement officer determines that correcting, amending, or canceling
1636 the contract is in the best interest of the state; and

1637 (vii) make a reasonable attempt to resolve a contract dispute, in coordination with the
1638 attorney general's office; and

1639 (b) may:

1640 (i) delegate limited purchasing authority to a state agency, with appropriate oversight
1641 and control to ensure compliance with this chapter;

1642 (ii) delegate duties and authority to an employee of the division, as the chief
1643 procurement officer considers appropriate;

1644 (iii) negotiate and settle contract overcharges, undercharges, and claims, in accordance
1645 with the law and after consultation with the attorney general's office;

1646 (iv) authorize a procurement unit to make a procurement pursuant to a regional
1647 solicitation, as defined in Subsection 63G-6a-2105(2), even if the procurement item is also
1648 offered under a state cooperative contract, if the chief procurement officer determines that the
1649 procurement pursuant to a regional solicitation is in the best interest of the acquiring
1650 procurement unit; and

1651 (v) remove an individual from the procurement process or contract administration for:

1652 (A) having a conflict of interest or the appearance of a conflict of interest with a person
1653 responding to a solicitation or with a contractor;

1654 (B) having a bias or the appearance of bias for or against a person responding to a
1655 solicitation or for or against a contractor;

1656 (C) making an inconsistent or unexplainable score for a solicitation response;

1657 (D) having inappropriate contact or communication with a person responding to a
1658 solicitation;

1659 (E) socializing inappropriately with a person responding to a solicitation or with a
1660 contractor;

1661 (F) engaging in any other action or having any other association that causes the chief
1662 procurement officer to conclude that the individual cannot fairly evaluate a solicitation
1663 response or administer a contract; or

1664 (G) any other violation of a law, rule, or policy.

1665 (4) The chief procurement officer may not delegate to an individual outside the
1666 division the chief procurement officer's authority over a procurement described in Subsection
1667 (3)(a)(iv).

1668 (5) The chief procurement officer has final authority to determine whether an executive
1669 branch procurement unit's anticipated expenditure of public funds, anticipated agreement to
1670 expend public funds, or provision of a benefit constitutes a procurement that is subject to this
1671 chapter.

1672 (6) Except as otherwise provided in this chapter, the chief procurement officer shall
1673 review, monitor, and audit the procurement activities and delegated procurement authority of
1674 an executive branch procurement unit without independent procurement authority to ensure
1675 compliance with this chapter, rules made by the applicable rulemaking authority, and division
1676 policies.

1677 Section 21. Section **63G-6a-401** is amended to read:

1678 **Part 4. Supplemental Procurement Procedures**

1679 **63G-6a-401. Title.**

1680 This part is known as [~~"General Procurement Provisions."~~] "Supplemental Procurement
1681 Procedures."

1682 Section 22. Section ~~63G-6a-409~~, which is renumbered from Section 63G-6a-502 is
1683 renumbered and amended to read:

1684 ~~[63G-6a-502]~~. 63G-6a-409. Request for information.

1685 (1) The purpose of a request for information is to:

1686 (a) obtain information, comments, or suggestions from potential bidders or offerors
1687 before issuing an invitation for bids or request for proposals;

1688 (b) determine whether to issue an invitation for bids or a request for proposals; and

1689 (c) generate interest in a potential invitation for bids or [a] request for proposals.

1690 (2) A request for information may be useful in order to:

1691 (a) prepare to issue an invitation for bids or request for proposals for an unfamiliar or
1692 complex procurement;

1693 (b) determine the market availability of a procurement item; or

1694 (c) determine best practices, industry standards, performance standards, product
1695 specifications, and innovations relating to a procurement item.

1696 (3) (a) A request for information is not a procurement process and may not be used to:

1697 (i) solicit cost, pricing, or rate information;

1698 (ii) negotiate fees;

1699 (iii) make a purchase; or

1700 (iv) enter into a contract.

1701 (b) To make a purchase or enter into a contract, a procurement unit is required to:

1702 (i) use a standard procurement process; or

1703 (ii) comply with an exception to the requirement to use a standard procurement
1704 process, as described in Part 8, Exceptions to Standard Procurement Process.

1705 (4) A response to a request for information is not an offer and may not be accepted to
1706 form a binding contract.

1707 (5) A request for information may seek a wide range of information, including:

1708 (a) availability of a procurement item;

1709 (b) delivery schedules;

- 1710 (c) industry standards and practices;
- 1711 (d) product specifications;
- 1712 (e) training;
- 1713 (f) new technologies;
- 1714 (g) capabilities of potential providers of a procurement item; and
- 1715 (h) alternate solutions.
- 1716 (6) A record containing information submitted to or by a governmental entity in
- 1717 response to a request for information is a protected record under Section [63G-2-305](#).
- 1718 Section 23. Section **63G-6a-410** is enacted to read:
- 1719 **63G-6a-410. Request for statement of qualifications -- Process.**
- 1720 (1) (a) A procurement unit may use the process described in this section:
- 1721 (i) as one of the stages of a multiple-stage:
- 1722 (A) bidding process;
- 1723 (B) request for proposals process; or
- 1724 (C) design professional procurement process; and
- 1725 (ii) to identify qualified vendors to participate in other stages of the multiple-stage
- 1726 procurement process.
- 1727 (b) A procurement unit shall use the process described in this section as part of the
- 1728 approved vendor list process, if the procurement unit intends to establish an approved vendor
- 1729 list.
- 1730 (2) A procurement unit may not:
- 1731 (a) award a contract based solely on the process described in this section; or
- 1732 (b) solicit costs, pricing, or rates or negotiate fees through the process described in this
- 1733 section.
- 1734 (3) The process of identifying qualified vendors in a multiple-stage procurement
- 1735 process or of establishing an approved vendor list under Section [63G-6a-507](#) is initiated by a
- 1736 procurement unit issuing a request for statement of qualifications.
- 1737 (4) A request for statement of qualifications in a multiple-stage procurement process

- 1738 shall include:
- 1739 (a) a statement indicating that participation in other stages of the multiple-stage
1740 procurement process will be limited to qualified vendors;
- 1741 (b) the minimum mandatory requirements, evaluation criteria, and applicable score
1742 thresholds that will be used to identify qualified vendors, including, as applicable:
- 1743 (i) experience and work history;
1744 (ii) management and staff requirements or standards;
1745 (iii) licenses, certifications, and other qualifications;
1746 (iv) performance ratings or references;
1747 (v) financial stability; and
1748 (vi) other information pertaining to vendor qualifications that the chief procurement
1749 officer or the head of a procurement unit with independent procurement authority considers
1750 relevant or important; and
- 1751 (c) the deadline by which a vendor is required to submit a statement of qualifications.
- 1752 (5) A request for statement of qualifications in an approved vendor list process under
1753 Section [63G-6a-507](#) shall include:
- 1754 (a) a general description of, as applicable:
- 1755 (i) the procurement item that the procurement unit seeks to acquire;
1756 (ii) the type of project or scope or category of work that will be the subject of a
1757 procurement by the procurement unit;
- 1758 (iii) the procurement process the procurement unit will use to acquire the procurement
1759 item; and
- 1760 (iv) the type of vendor the procurement unit seeks to provide the procurement item;
- 1761 (b) the minimum mandatory requirements, evaluation criteria, and applicable score
1762 thresholds that vendors are required to meet to be included on the approved vendor list;
- 1763 (c) a statement indicating that the approved vendor list will include only responsible
1764 vendors that:
- 1765 (i) submit a responsive statement of qualifications; and

1766 (ii) meet the minimum mandatory requirements, evaluation criteria, and applicable
1767 score thresholds described in the request for statement of qualifications;

1768 (d) a statement indicating that only vendors on the approved vendor list will be able to
1769 participate in the procurements identified in the request for statement of qualifications;

1770 (e) a statement indicating whether the procurement unit will use a performance rating
1771 system for evaluating the performance of vendors on the approved vendor list, including
1772 whether a vendor on the approved vendor list may be disqualified and removed from the list;

1773 (f) (i) a statement indicating whether the procurement unit uses a closed-ended
1774 approved vendor list, as defined in Section 63G-6a-507, or an open-ended approved vendor
1775 list, as defined in Section 63G-6a-507; and

1776 (ii) (A) if the procurement unit uses a closed-ended approved vendor list, the deadline
1777 by which a vendor is required to submit a statement of qualifications and a specified period of
1778 time after which the approved vendor list will expire; or

1779 (B) if the procurement unit uses an open-ended approved vendor list, the deadline by
1780 which a vendor is required to submit a statement of qualifications to be considered for the
1781 initial approved vendor list, a schedule indicating when a vendor not on the initial approved
1782 vendor list may submit a statement of qualifications to be considered to be added to the
1783 approved vendor list, and the specified period of time after which a vendor is required to
1784 submit a new statement of qualifications for evaluation before the vendor's status as an
1785 approved vendor on the approved vendor list may be renewed; and

1786 (g) a description of any other criteria or requirements specific to the procurement item
1787 or scope of work that is the subject of the procurement.

1788 (6) A procurement unit issuing a request for statement of qualifications shall publish
1789 the request as provided in Section 63G-6a-112.

1790 (7) After the deadline for submitting a statement of qualifications, the chief
1791 procurement officer or the head of a procurement unit with independent procurement authority
1792 may allow a vendor to correct an immaterial error in a statement of qualifications, as provided
1793 in Section 63G-6a-114.

1794 (8) (a) A conducting procurement unit may reject a statement of qualifications if the
1795 conducting procurement unit determines that:

1796 (i) the vendor who submitted the statement of qualifications:

1797 (A) is not responsible;

1798 (B) is in violation of a provision of this chapter;

1799 (C) has engaged in unethical conduct; or

1800 (D) receives a performance rating below the satisfactory performance threshold

1801 specified in the request for statement of qualifications;

1802 (ii) there has been a change in the vendor's circumstances after the vendor submits a
1803 statement of qualifications that, if the change had been known at the time the statement of
1804 qualifications was evaluated, would have caused the statement of qualifications not to have
1805 received a qualifying score; or

1806 (iii) the statement of qualifications:

1807 (A) is not responsive; or

1808 (B) does not meet the mandatory minimum requirements, evaluation criteria, or
1809 applicable score thresholds stated in the request for statement of qualifications.

1810 (b) A procurement unit that rejects a statement of qualifications under Subsection
1811 (8)(a) shall:

1812 (i) make a written finding, stating the reasons for the rejection; and

1813 (ii) provide a copy of the written finding to the vendor that submitted the rejected
1814 statement of qualifications.

1815 (9) (a) (i) After the issuance of a request for statement of qualifications, the conducting
1816 procurement unit shall appoint an evaluation committee consisting of at least three individuals
1817 with at least a general familiarity with or basic understanding of:

1818 (A) the technical requirements relating to the type of procurement item that is the
1819 subject of the request for statement of qualifications; or

1820 (B) the need that the procurement item is intended to address.

1821 (ii) The conducting procurement unit shall ensure that each member of the evaluation

1822 committee and each individual participating in the evaluation committee process:

1823 (A) does not have a conflict of interest with any vendor that submits a statement of
1824 qualifications;

1825 (B) can fairly evaluate each statement of qualifications;

1826 (C) does not contact or communicate with a vendor concerning the evaluation process
1827 or procurement outside the official evaluation committee process; and

1828 (D) conducts or participates in the evaluation in a manner that ensures a fair and
1829 competitive process and avoids the appearance of impropriety.

1830 (b) A conducting procurement unit may authorize an evaluation committee to receive
1831 assistance:

1832 (i) from an expert or consultant who:

1833 (A) is not a member of the evaluation committee; and

1834 (B) does not participate in the evaluation scoring; and

1835 (ii) to better understand a technical issue involved in the procurement.

1836 (c) An evaluation committee appointed under this Subsection (9):

1837 (i) shall evaluate and score statements of qualifications submitted in response to a
1838 request for statement of qualifications using the minimum mandatory requirements, evaluation
1839 criteria, and applicable score thresholds set forth in the request for statement of qualifications;

1840 (ii) may not evaluate or score a statement of qualifications using criteria not included in
1841 the request for statement of qualifications; and

1842 (iii) may, with the approval of the head of the conducting procurement unit, enter into
1843 discussions or conduct interviews with or attend presentations by vendors, for the purpose of
1844 clarifying information contained in statements of qualifications.

1845 (d) In a discussion, interview, or presentation under Subsection (9)(c)(iii), a vendor:

1846 (i) may only explain, illustrate, or interpret the contents of the vendor's original
1847 statement of qualifications; and

1848 (ii) may not:

1849 (A) address criteria or specifications not contained in the vendor's original statement of

1850 qualifications;

1851 (B) correct a deficiency, inaccuracy, or mistake in a statement of qualifications that is
1852 not an immaterial error;

1853 (C) correct an incomplete submission of documents that the request for statement of
1854 qualifications required to be submitted with the statement of qualifications;

1855 (D) correct a failure to submit a timely statement of qualifications;

1856 (E) substitute or alter a required form or other document specified in the statement of
1857 qualifications;

1858 (F) remedy a cause for a vendor being considered to be not responsible or a statement
1859 of qualifications not responsive; or

1860 (G) correct a defect or inadequacy resulting in a determination that a vendor does not
1861 meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds
1862 established in the statement of qualifications.

1863 (e) After the evaluation committee completes its evaluation and scoring of the
1864 statements of qualifications, the evaluation committee shall submit the statements of
1865 qualifications and evaluation scores to the head of the procurement unit for review and final
1866 determination of:

1867 (i) qualified vendors, if the request for statement of qualifications process is used as
1868 one of the stages of a multiple-stage process; or

1869 (ii) vendors to be included on an approved vendor list, if the request for statement of
1870 qualifications process is used as part of the approved vendor list process.

1871 (f) The issuing procurement unit shall review the evaluation committee's scores and
1872 correct any errors, scoring inconsistencies, and reported noncompliance with this chapter.

1873 (g) (i) The deliberations of an evaluation committee under this Subsection (9) may be
1874 held in private.

1875 (ii) If the evaluation committee is a public body, as defined in Section [52-4-103](#), the
1876 evaluation committee shall comply with Section [52-4-205](#) in closing a meeting for its
1877 deliberations.

1878 (10) A procurement unit may at any time request a vendor to clarify information
1879 contained in a statement of qualifications, as provided in Section 63G-6a-115.

1880 (11) A vendor may voluntarily withdraw a statement of qualifications at any time
1881 before a contract is awarded with respect to which the statement of qualifications was
1882 submitted.

1883 (12) If only one vendor meets the minimum qualifications, evaluation criteria, and
1884 applicable score thresholds set forth in the request for statement of qualifications that the
1885 procurement unit is using as part of an approved vendor list process, the conducting
1886 procurement unit:

1887 (a) shall cancel the request for statement of qualifications; and

1888 (b) may not establish an approved vendor list based on the canceled request for
1889 statement of qualifications or on statements of qualifications submitted in response to the
1890 request for statement of qualifications.

1891 (13) If a conducting procurement unit cancels a request for statement of qualifications,
1892 the conducting procurement unit shall make available for public inspection a written
1893 justification for the cancellation.

1894 (14) After receiving and reviewing the statements of qualifications and evaluation
1895 scores submitted by the evaluation committee under Subsection (9)(d), the head of the
1896 procurement unit using the request for statement of qualifications process under this section as
1897 one of the stages of a multiple-stage procurement process shall identify those vendors meeting
1898 the minimum mandatory requirements, evaluation criteria, and applicable score thresholds as
1899 qualified vendors who are allowed to participate in the remaining stages of the multiple-stage
1900 procurement process.

1901 (15) The applicable rulemaking authority may make rules pertaining to the request for
1902 statement of qualifications and the process described in this section.

1903 Section 24. Section **63G-6a-501** is amended to read:

1904 **Part 5. Other Standard Procurement Processes**

1905 **63G-6a-501. Title.**

1906 This part is known as [~~"Request for Information."~~] "Other Standard Procurement
 1907 Processes."

1908 Section 25. Section **63G-6a-506**, which is renumbered from Section 63G-6a-408 is
 1909 renumbered and amended to read:

1910 ~~**[63G-6a-408].**~~ **63G-6a-506. Small purchases.**

1911 (1) As used in this section:

1912 (a) "Annual cumulative threshold" means the maximum total annual amount,
 1913 established by the applicable rulemaking authority under Subsection (2)~~[(a)(i)]~~, that a
 1914 procurement unit may expend to obtain procurement items from the same source under this
 1915 section.

1916 (b) "Individual procurement threshold" means the maximum amount, established by
 1917 the applicable rulemaking authority under Subsection (2)~~[(a)(ii)]~~, for which a procurement unit
 1918 may purchase a procurement item under this section.

1919 (c) "Single procurement aggregate threshold" means the maximum total amount,
 1920 established by the applicable rulemaking authority under Subsection (2)~~[(a)(iii)]~~, that a
 1921 procurement unit may expend to obtain multiple procurement items from one source at one
 1922 time under this section.

1923 (2) (a) The applicable rulemaking authority may make rules governing small purchases
 1924 of any procurement item, including construction, job order contracting, design professional
 1925 services, other professional services, information technology, and goods.

1926 (b) Rules under Subsection (2)(a) may include provisions:

1927 (i) establishing expenditure thresholds, including:

1928 (A) an annual cumulative threshold;

1929 (B) an individual procurement threshold; and

1930 (C) a single procurement aggregate threshold;

1931 (ii) establishing procurement requirements relating to the thresholds described in
 1932 Subsection (2)(b)(i); and

1933 (iii) providing for the use of electronic, telephone, or written quotes.

1934 (3) Expenditures made under this section by a procurement unit may not exceed a
1935 threshold established by the applicable rulemaking authority, unless the chief procurement
1936 officer or the head of a procurement unit with independent procurement authority gives written
1937 authorization to exceed the threshold that includes the reasons for exceeding the threshold.

1938 (4) Except as provided in Subsection (5), an executive branch procurement unit may
1939 not obtain a procurement item through a small purchase standard procurement process if the
1940 procurement item may be obtained through a state cooperative contract or a contract awarded
1941 by the chief procurement officer under Subsection [63G-6a-2105\(1\)](#).

1942 (5) Subsection (4) does not apply if:

1943 (a) the procurement item is obtained for an unanticipated, urgent [~~or unanticipated~~], or
1944 emergency condition, including:

1945 (i) an item needed to avoid stopping a public construction project;

1946 (ii) an immediate repair to a facility or equipment; or

1947 (iii) another emergency condition; or

1948 (b) the chief procurement officer or the head of a procurement unit that is an executive
1949 branch procurement unit with independent procurement authority:

1950 (i) determines in writing that it is in the best interest of the procurement unit to obtain
1951 an individual procurement item outside of the state contract, comparing:

1952 (A) the contract terms and conditions applicable to the procurement item under the
1953 state contract with the contract terms and conditions applicable to the procurement item if the
1954 procurement item is obtained outside of the state contract;

1955 (B) the maintenance and service applicable to the procurement item under the state
1956 contract with the maintenance and service applicable to the procurement item if the
1957 procurement item is obtained outside of the state contract;

1958 (C) the warranties applicable to the procurement item under the state contract with the
1959 warranties applicable to the procurement item if the procurement item is obtained outside of
1960 the state contract;

1961 (D) the quality of the procurement item under the state contract with the quality of the

1962 procurement item if the procurement item is obtained outside of the state contract; and
1963 (E) the cost of the procurement item under the state contract with the cost of the
1964 procurement item if the procurement item is obtained outside of the state contract;
1965 (ii) for a procurement item that, if defective in its manufacture, installation, or
1966 performance, may result in serious physical injury, death, or substantial property damage,
1967 determines in writing that the terms and conditions, relating to liability for injury, death, or
1968 property damage, available from the source other than the contractor who holds the state
1969 contract, are similar to, or better than, the terms and conditions available under the state
1970 contract; and
1971 (iii) grants an exception, in writing, to the requirement described in Subsection (4).
1972 (6) Except as otherwise expressly provided in this section, a procurement unit:
1973 (a) may not use the small purchase standard procurement process described in this
1974 section for ongoing, continuous, and regularly scheduled procurements that exceed the annual
1975 cumulative threshold; and
1976 (b) shall make its ongoing, continuous, and regularly scheduled procurements that
1977 exceed the annual cumulative threshold through a contract awarded through another standard
1978 procurement process described in this chapter or an applicable exception to another standard
1979 procurement process, described in Part 8, Exceptions to Standard Procurement [Requirements]
1980 Process.
1981 (7) This section does not prohibit regularly scheduled payments for a procurement item
1982 obtained under another provision of this chapter.
1983 (8) (a) It is unlawful for a person to intentionally or knowingly divide a procurement
1984 into [~~one or more~~] smaller procurements with the intent to make a procurement:
1985 (i) qualify as a small purchase, if, before dividing the procurement, it would not have
1986 qualified as a small purchase; or
1987 (ii) meet a threshold established by rule made by the applicable rulemaking authority,
1988 if, before dividing the procurement, it would not have met the threshold.
1989 (b) A person who engages in the conduct made unlawful under Subsection (8)(a) is

1990 guilty of:

1991 (i) a second degree felony, if the value of the procurement before being divided is
1992 \$1,000,000 or more;

1993 (ii) a third degree felony, if the value of the procurement before being divided is
1994 \$250,000 or more but less than \$1,000,000;

1995 (iii) a class A misdemeanor, if the value of the procurement before being divided is
1996 \$100,000 or more but less than \$250,000; or

1997 (iv) a class B misdemeanor, if the value of the procurement before being divided is less
1998 than \$100,000.

1999 (9) A division of a procurement that is prohibited under Subsection (8) includes doing
2000 any of the following with the intent or knowledge described in Subsection (8):

2001 (a) making two or more separate purchases;

2002 (b) dividing an invoice or purchase order into two or more invoices or purchase orders;

2003 or

2004 (c) making smaller purchases over a period of time.

2005 ~~[(10) A person who violates Subsection (8) is subject to the criminal penalties~~
2006 ~~described in Section 63G-6a-2405.]~~

2007 ~~[(11)]~~ (10) The Division of Finance within the Department of Administrative Services
2008 may conduct an audit of an executive branch procurement unit to verify compliance with the
2009 requirements of this section.

2010 ~~[(12)]~~ (11) An executive branch procurement unit may not make a small purchase after
2011 January 1, 2014, unless the chief procurement officer certifies that the person responsible for
2012 procurements in the procurement unit has satisfactorily completed training on this section and
2013 the rules made under this section.

2014 Section 26. Section 63G-6a-507 is enacted to read:

2015 **63G-6a-507. Approved vendor list procurement process.**

2016 (1) As used in this section:

2017 (a) "Closed-ended approved vendor list" means an approved vendor list that is subject

2018 to:
2019 (i) a short period of time, specified by the procurement unit, during which vendors may
2020 be added to the list; and
2021 (ii) a specified period of time after which the list will expire.
2022 (b) "Open-ended approved vendor list" means an approved vendor list that is subject
2023 to:
2024 (i) an indeterminate period of time during which vendors may be added to the list;
2025 (ii) the addition of vendors to the list throughout the term of the list; and
2026 (iii) a specified period of time after which a vendor on the list is required to submit the
2027 vendor's qualifications for evaluation before the vendor may be renewed as an approved
2028 vendor.
2029 (2) A procurement unit may not establish an approved vendor list unless the
2030 procurement unit has first completed the statement of qualifications process described in
2031 Section [63G-6a-410](#).
2032 (3) (a) A procurement unit may establish an approved vendor list for:
2033 (i) a specific, fully defined procurement item; or
2034 (ii) a future procurement item that is not specifically and fully defined, if the request
2035 for statement of qualifications contains a general description of:
2036 (A) the procurement item; and
2037 (B) the type of vendor that the procurement unit seeks to provide the procurement item.
2038 (b) A procurement unit may not award a contract to a vendor on an approved vendor
2039 list for a procurement item that is outside the scope of the general description of the
2040 procurement item contained in the request for statement of qualifications.
2041 (4) After receiving the statements of qualifications and evaluation scores submitted by
2042 the evaluation committee under Subsection [63G-6a-410\(9\)\(d\)](#), the head of the conducting
2043 procurement unit using the request for statement of qualifications process under Section
2044 [63G-6a-410](#) as part of an approved vendor list process shall:
2045 (a) include on an approved vendor list those vendors meeting the minimum mandatory

2046 requirements, evaluation criteria, and applicable score thresholds; and

2047 (b) reject any vendor not meeting the minimum mandatory requirements, evaluation
2048 criteria, and applicable score thresholds as ineligible for inclusion on the approved vendor list.

2049 (5) (a) A procurement unit shall include approved vendors on a closed-ended approved
2050 vendor list or an open-ended approved vendor list.

2051 (b) (i) A closed-ended approved vendor list shall expire no later than 18 months after
2052 the publication of the closed-ended approved vendor list.

2053 (ii) A procurement unit shall require a vendor on an open-ended approved vendor list,
2054 in order to remain on the approved vendor list, to submit an updated statement of qualifications
2055 for evaluation no later than 18 months after the vendor was added to the list as an approved
2056 vendor.

2057 (6) A procurement unit may:

2058 (a) (i) using a bidding process, request for proposals process, small purchase process,
2059 or design professional procurement process, award a contract to a vendor on an approved
2060 vendor list for any procurement item or type of procurement item specified by the procurement
2061 unit in the request for statement of qualifications, including procurement items that the
2062 procurement unit intends to acquire in a series of future procurements described in the request
2063 for statement of qualifications; and

2064 (ii) limit participation in a bidding process, request for proposals process, small
2065 purchase process, or design professional procurement process to vendors on an approved
2066 vendor list; or

2067 (b) award a contract to a vendor on an approved vendor list at a price established as
2068 provided in Section [63G-6a-113](#).

2069 (7) After establishing an approved vendor list as provided in this section, the
2070 conducting procurement unit shall, before using the approved vendor list, submit the approved
2071 vendor list to the issuing procurement unit for publication by the issuing procurement unit.

2072 (8) A conducting procurement unit administering an open-ended approved vendor list
2073 shall:

2074 (a) require a vendor seeking inclusion on the approved vendor list to submit a
2075 statement of qualifications that complies with all requirements applicable at the time of the
2076 initial request for statement of qualifications;

2077 (b) if modifying the requirements for inclusion on the approved vendor list, apply any
2078 new or additional requirement to all vendors equally, whether a vendor is seeking inclusion on
2079 the approved vendor list for the first time or is already included on the approved vendor list;
2080 and

2081 (c) keep the request for statement of qualifications posted on a website as required
2082 under Subsection [63G-6a-112\(6\)](#).

2083 (9) The applicable rulemaking authority shall make rules pertaining to an approved
2084 vendor list process, including:

2085 (a) procedures to ensure that all vendors on an approved vendor list have a fair and
2086 equitable opportunity to compete for a contract for a procurement item; and

2087 (b) requirements for using an approved vendor list with the small purchase process.

2088 Section 27. Section **63G-6a-603** is amended to read:

2089 **63G-6a-603. Invitation for bids -- Requirements -- Publication.**

2090 (1) The bidding standard procurement process begins when the issuing procurement
2091 unit issues an invitation for bids.

2092 (2) An invitation for bids shall:

2093 (a) state the period of time during which bids will be accepted;

2094 (b) describe the manner in which a bid shall be submitted;

2095 (c) state the place where a bid shall be submitted; and

2096 (d) include, or incorporate by reference:

2097 (i) a description of the procurement items sought;

2098 (ii) the objective criteria that will be used to evaluate the bids; and

2099 (iii) the required contractual terms and conditions.

2100 (3) An issuing procurement unit shall publish an invitation for bids in accordance with
2101 the requirements of Section [~~63G-6a-406~~] [63G-6a-112](#).

2102 Section 28. Section **63G-6a-604** is amended to read:

2103 **63G-6a-604. Bid opening and acceptance.**

2104 (1) Bids shall be opened:

2105 (a) publicly, except as provided in Section **63G-6a-611**;

2106 (b) in the presence of one or more witnesses, unless an electronic bid opening process
2107 is used where bidders may see the opening of the bid electronically; and

2108 (c) at the time and place indicated in the invitation for bids.

2109 (2) Bids shall be accepted unconditionally, without alteration or correction, except as
2110 otherwise authorized by this chapter.

2111 (3) (a) The procurement officer shall reject a bid ~~[that]~~ if the bid is not responsive or
2112 the bid is submitted by a bidder who is not responsible.

2113 (b) A bid that is not responsive includes a bid that:

2114 (i) is conditional;

2115 (ii) attempts to modify the bid requirements;

2116 (iii) contains additional terms or conditions; or

2117 (iv) fails to conform with the requirements or specifications of the invitation for bids.

2118 (c) A bid that is submitted by a bidder who is not responsible includes a bid where the
2119 procurement officer reasonably concludes that the bidder or an employee, agent, or
2120 subcontractor of the bidder, at any tier, is unable to satisfactorily fulfill the bid requirements.

2121 (4) An issuing procurement unit may not accept a bid after the time for submission of a
2122 bid has expired.

2123 (5) The procurement officer shall:

2124 (a) record the name of each bidder and the amount of each bid; and

2125 (b) after the bid is awarded, make the information described in Subsection (5)(a)
2126 available for public disclosure.

2127 Section 29. Section **63G-6a-605** is repealed and reenacted to read:

2128 **63G-6a-605. Correction or clarification of bids.**

2129 (1) The chief procurement officer or the head of a procurement unit with independent

2130 procurement authority may:

2131 (a) allow a vendor to correct an immaterial error in a bid, as provided in Section
2132 63G-6a-114; and

2133 (b) request a vendor to clarify information contained in a bid, as provided in Section
2134 63G-6a-115.

2135 (2) (a) Notwithstanding Subsection (1), a vendor may not change the total bid price
2136 after the bid opening and before a contract is awarded.

2137 (b) Subsection (2)(a) does not apply to a change in the contract price during contract
2138 administration, as allowed under this chapter.

2139 Section 30. Section **63G-6a-606** is amended to read:

2140 **63G-6a-606. Evaluation of bids -- Award -- Cancellation -- Rejecting a bid.**

2141 (1) A procurement unit that conducts a procurement using a bidding standard
2142 procurement process shall evaluate each bid using the objective criteria described in the
2143 invitation for bids, which may include:

2144 (a) experience;

2145 (b) performance ratings;

2146 (c) inspection;

2147 (d) testing;

2148 (e) quality;

2149 (f) workmanship;

2150 (g) time and manner of delivery;

2151 (h) references;

2152 (i) financial stability;

2153 (j) cost;

2154 (k) suitability for a particular purpose;

2155 (l) the contractor's work site safety program, including any requirement that the
2156 contractor imposes on subcontractors for a work site safety program; or

2157 (m) other objective criteria specified in the invitation for bids.

2158 (2) Criteria not described in the invitation for bids may not be used to evaluate a bid.

2159 (3) The conducting procurement unit shall:

2160 (a) award the contract as soon as practicable to:

2161 (i) the ~~[lowest responsive and]~~ responsible bidder who submits the lowest responsive
2162 bid that meets the objective criteria described in the invitation for bids; or

2163 (ii) if, in accordance with Subsection (4), the procurement officer or the head of the
2164 conducting procurement unit ~~[disqualifies the bidder]~~ rejects a bid described in Subsection
2165 (3)(a)(i), the ~~[next lowest responsive and]~~ responsible bidder who submits the next lowest
2166 responsive bid that meets the objective criteria described in the invitation for bids; or

2167 (b) cancel the invitation for bids without awarding a contract.

2168 (4) In accordance with Subsection (5), the procurement officer or the head of the
2169 conducting procurement unit may ~~[disqualify a bidder]~~ reject a bid for:

2170 (a) a violation of this chapter by the bidder who submitted the bid;

2171 (b) a violation of a requirement of the invitation for bids;

2172 (c) unlawful or unethical conduct by the bidder who submitted the bid; or

2173 (d) a change in a bidder's circumstance that, had the change been known at the time the
2174 bid was submitted, would have caused the ~~[bidder to not be the lowest responsive and~~
2175 ~~responsible bidder who meets the objective criteria described in the invitation for bids]~~ bid to
2176 be rejected.

2177 (5) A procurement officer or head of a conducting procurement unit who ~~[disqualifies a~~
2178 ~~bidder]~~ rejects a bid under Subsection (4) shall:

2179 (a) make a written finding, stating the reasons for ~~[disqualification]~~ the rejection; and

2180 (b) provide a copy of the written finding to the ~~[disqualified]~~ bidder who submitted the
2181 rejected bid.

2182 (6) If a conducting procurement unit cancels an invitation for bids without awarding a
2183 contract, the conducting procurement unit shall make available for public inspection a written
2184 justification for the cancellation.

2185 Section 31. Section **63G-6a-609** is amended to read:

2186 **63G-6a-609. Multiple stage bidding process.**
2187 (1) The invitation for bids for a multiple stage bidding process shall:
2188 (a) describe the requirements for, and purpose of, each stage of the process;
2189 (b) indicate whether the procurement unit intends to award:
2190 (i) a single contract; or
2191 (ii) multiple contracts for a series of upcoming procurements; and
2192 (c) state that:
2193 (i) the first stage is for prequalification only;
2194 (ii) a bidder may not submit any pricing information in the first stage of the process;
2195 and
2196 (iii) bids in the second stage will only be accepted from a person who prequalifies in
2197 the first stage.
2198 (2) During the first stage, the conducting procurement unit:
2199 (a) shall prequalify bidders to participate in subsequent stages, in accordance with
2200 Section [~~63G-6a-403~~] [63G-6a-410](#);
2201 (b) shall prohibit the submission of pricing information until the final stage; and
2202 (c) may, before beginning the second stage, request additional information to clarify
2203 the qualifications of the bidders who submit timely responses.
2204 (3) Contracts may only be awarded for a procurement item described in stage one of
2205 the invitation for bids.
2206 (4) The conducting procurement unit may use as many stages as it determines to be
2207 appropriate.
2208 (5) Except as otherwise expressly provided in this section, a procurement unit
2209 conducting a multiple stage bidding process under this section shall ensure compliance with
2210 this part.
2211 (6) The applicable rulemaking authority may make rules governing the use of a
2212 multiple stage process described in this section.
2213 Section 32. Section **63G-6a-611** is amended to read:

2214 **63G-6a-611. Invitation for bids for reverse auction -- Requirements -- Publication**
2215 **of invitation.**

2216 (1) The reverse auction bidding process begins when the issuing procurement unit
2217 issues an invitation for bids to prequalify bidders to participate in the reverse auction.

2218 (2) The invitation for bids shall:

2219 (a) state the period of time during which bids will be accepted;

2220 (b) state that the bid will be conducted by reverse auction;

2221 (c) describe the procurement items sought;

2222 (d) describe the minimum requirements to become prequalified;

2223 (e) state the required contractual terms and conditions; and

2224 (f) describe the procedure that the conducting procurement unit will follow in the
2225 reverse auction.

2226 (3) In order to participate in a reverse auction, a bidder shall agree to:

2227 (a) the specifications, and contractual terms and conditions, of the procurement; and

2228 (b) be trained in, and abide by, the procedure that the division or the procurement unit
2229 with independent procurement authority will follow in conducting the reverse auction.

2230 (4) The division or a procurement unit with independent procurement authority shall
2231 publish an invitation for bids for a reverse auction in accordance with the requirements of
2232 Section [~~63G-6a-406~~] [63G-6a-112](#).

2233 Section 33. Section **63G-6a-703** is amended to read:

2234 **63G-6a-703. Request for proposals -- Requirements -- Publication of request.**

2235 (1) The request for proposals standard procurement process begins when the division
2236 or a procurement unit with independent procurement authority issues a request for proposals.

2237 (2) A request for proposals shall:

2238 (a) state the period of time during which a proposal will be accepted;

2239 (b) describe the manner in which a proposal shall be submitted;

2240 (c) state the place where a proposal shall be submitted;

2241 (d) include, or incorporate by reference:

- 2242 (i) a description of the procurement items sought;
- 2243 (ii) a description of the subjective and objective criteria that will be used to evaluate
- 2244 the proposal; and
- 2245 (iii) the standard contractual terms and conditions required by the authorized
- 2246 purchasing entity;
- 2247 (e) state the relative weight that will be given to each score for the criteria described in
- 2248 Subsection (2)(d)(ii), including cost;
- 2249 (f) state the formula that will be used to determine the score awarded for the cost of
- 2250 each proposal;
- 2251 (g) if the request for proposals will be conducted in multiple stages, as described in
- 2252 Section [63G-6a-710](#), include a description of the stages and the criteria and scoring that will be
- 2253 used to screen offerors at each stage; and
- 2254 ~~[(h) state that discussions may be conducted with offerors who submit proposals~~
- 2255 ~~determined to be reasonably susceptible of being selected for award, followed by an~~
- 2256 ~~opportunity to make best and final offers, but that proposals may be accepted without~~
- 2257 ~~discussions.]~~
- 2258 (h) state that best and final offers may be allowed, as provided in Section
- 2259 [63G-6a-707.5](#), from responsible offerors who submit responsive proposals that meet minimum
- 2260 qualifications, evaluation criteria, or applicable score thresholds identified in the request for
- 2261 proposals.
- 2262 (3) The division or a procurement unit with independent procurement authority shall
- 2263 publish a request for proposals in accordance with the requirements of Section [~~63G-6a-406~~]
- 2264 [63G-6a-112](#).
- 2265 Section 34. Section [63G-6a-706](#) is repealed and reenacted to read:
- 2266 **63G-6a-706. Correction or clarification of proposal.**
- 2267 (1) The chief procurement officer or the head of a procurement unit with independent
- 2268 procurement authority may:
- 2269 (a) allow a vendor to correct an immaterial error in a proposal, as provided in Section

2270 [63G-6a-114](#); and

2271 (b) request a vendor to clarify information contained in a proposal, as provided in
2272 Section [63G-6a-115](#).

2273 (2) (a) Notwithstanding Subsection (1) and except as provided in Section
2274 [63G-6a-707.5](#), after the deadline for submitting a cost proposal and before a contract is
2275 awarded, a vendor may not change the total amount of a cost proposal.

2276 (b) Subsection (2)(a) does not apply to a change in the contract price during contract
2277 administration, as allowed under this chapter.

2278 Section 35. Section **63G-6a-707** is amended to read:

2279 **63G-6a-707. Evaluation of proposals -- Evaluation committee.**

2280 (1) To determine which proposal provides the best value to the procurement unit, the
2281 evaluation committee shall evaluate each responsive and responsible proposal that has not been
2282 disqualified from consideration under the provisions of this chapter, using the criteria described
2283 in the request for proposals, which may include:

2284 (a) experience;

2285 (b) performance ratings;

2286 (c) inspection;

2287 (d) testing;

2288 (e) quality;

2289 (f) workmanship;

2290 (g) time, manner, or schedule of delivery;

2291 (h) references;

2292 (i) financial solvency;

2293 (j) suitability for a particular purpose;

2294 (k) management plans;

2295 (l) the presence and quality of a work site safety program, including any requirement
2296 that the offeror imposes on subcontractors for a work site safety program;

2297 (m) cost; or

- 2298 (n) other subjective or objective criteria specified in the request for proposals.
- 2299 (2) Criteria not described in the request for proposals may not be used to evaluate a
- 2300 proposal.
- 2301 (3) The conducting procurement unit shall:
- 2302 (a) appoint an evaluation committee consisting of at least three individuals with at least
- 2303 a general familiarity with or basic understanding of:
- 2304 (i) the technical requirements relating to the type of procurement item that is the
- 2305 subject of the procurement; or
- 2306 (ii) the need that the procurement item is intended to address; and
- 2307 (b) ensure that the evaluation committee and each [~~member of the evaluation~~
- 2308 ~~committee~~] individual participating in the evaluation committee process:
- 2309 (i) does not have a conflict of interest with any of the offerors;
- 2310 (ii) can fairly evaluate each proposal;
- 2311 (iii) does not contact or communicate with an offeror concerning the procurement
- 2312 outside the official evaluation committee process; and
- 2313 (iv) conducts or participates in the evaluation in a manner that ensures a fair and
- 2314 competitive process and avoids the appearance of impropriety.
- 2315 (4) A conducting procurement unit may authorize an evaluation committee to receive
- 2316 assistance:
- 2317 (a) from an expert or consultant who:
- 2318 (i) is not a member of the evaluation committee; and
- 2319 (ii) does not participate in the evaluation scoring; and
- 2320 (b) to better understand a technical issue involved in the procurement.
- 2321 [~~(4) The~~] (5) (a) An evaluation committee may, with the approval of the head of the
- 2322 conducting procurement unit, enter into discussions or conduct interviews with, or attend
- 2323 presentations by, the offerors, for the purpose of clarifying information contained in proposals.
- 2324 (b) In a discussion, interview, or presentation under Subsection (5)(a), an offeror:
- 2325 (i) may only explain, illustrate, or interpret the contents of the offeror's original

2326 proposal; and
2327 (ii) may not:
2328 (A) address criteria or specifications not contained in the offeror's original proposal;
2329 (B) correct a deficiency, inaccuracy, or mistake in a proposal that is not an immaterial
2330 error;
2331 (C) correct an incomplete submission of documents that the solicitation required to be
2332 submitted with the proposal;
2333 (D) correct a failure to submit a timely proposal;
2334 (E) substitute or alter a required form or other document specified in the solicitation;
2335 (F) remedy a cause for an offeror being considered to be not responsible or a proposal
2336 not responsive; or
2337 (G) correct a defect or inadequacy resulting in a determination that an offeror does not
2338 meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds
2339 established in the solicitation.
2340 ~~[(5)]~~ (6) (a) Except as provided in [Subsections (5)(b) and (8)] Subsection (7)(b)
2341 relating to access to management fee information, and except as provided in Subsection (9),
2342 each member of the evaluation committee is prohibited from knowing, or having access to, any
2343 information relating to the cost, or the scoring of the cost, of a proposal until after the
2344 evaluation committee submits its final recommended scores on all other criteria to the issuing
2345 procurement unit.
2346 (b) The issuing procurement unit shall:
2347 (i) if applicable, assign an individual who is not a member of the evaluation committee
2348 to calculate scores for cost based on the applicable scoring formula, weighting, and other
2349 scoring procedures contained in the request for proposals;
2350 (ii) review the evaluation committee's scores and correct any errors, scoring
2351 inconsistencies, and reported noncompliance with this chapter;
2352 (iii) add the scores calculated for cost, if applicable, to the evaluation committee's final
2353 recommended scores on criteria other than cost to derive the total combined score for each

2354 responsive and responsible proposal; and

2355 (iv) provide to the evaluation committee the total combined score calculated for each
2356 responsive and responsible proposal, including any applicable cost formula, weighting, and
2357 scoring procedures used to calculate the total combined scores.

2358 (c) The evaluation committee may not:

2359 (i) change its final recommended scores described in Subsection ~~[(5)]~~ (6)(a) after the
2360 evaluation committee has submitted those scores to the issuing procurement unit; or

2361 (ii) change cost scores calculated by the issuing procurement unit.

2362 ~~[(6)]~~ (7) (a) As used in this Subsection ~~[(6)]~~ (7), "management fee" includes only the
2363 following fees of the construction manager/general contractor:

2364 (i) preconstruction phase services;

2365 (ii) monthly supervision fees for the construction phase; and

2366 (iii) overhead and profit for the construction phase.

2367 (b) When selecting a construction manager/general contractor for a construction
2368 project, the evaluation committee:

2369 (i) may score a construction manager/general contractor based upon criteria contained
2370 in the solicitation, including qualifications, performance ratings, references, management plan,
2371 certifications, and other project specific criteria described in the solicitation;

2372 (ii) may, as described in the solicitation, weight and score the management fee as a
2373 fixed rate or as a fixed percentage of the estimated contract value;

2374 (iii) may, at any time after the opening of the responses to the request for proposals,
2375 have access to, and consider, the management fee proposed by the offerors; and

2376 (iv) except as provided in Subsection ~~[(8)]~~ (9), may not know or have access to any
2377 other information relating to the cost of construction submitted by the offerors, until after the
2378 evaluation committee submits its final recommended scores on all other criteria to the issuing
2379 procurement unit.

2380 ~~[(7)]~~ (8) (a) The deliberations of an evaluation committee may be held in private.

2381 (b) If the evaluation committee is a public body, as defined in Section 52-4-103, the

2382 evaluation committee shall comply with Section 52-4-205 in closing a meeting for its
2383 deliberations.

2384 ~~[(8)]~~ (9) An issuing procurement unit is not required to comply with Subsection ~~[(5)]~~
2385 (6) or (7)(b)(iv), as applicable, if the head of the issuing procurement unit or a person
2386 designated by rule made by the applicable rulemaking authority:

2387 (a) signs a written statement:

2388 (i) indicating that, due to the nature of the proposal or other circumstances, it is in the
2389 best interest of the procurement unit to waive compliance with Subsection ~~[(5)]~~ (6) or
2390 (7)(b)(iv), as the case may be; and

2391 (ii) describing the nature of the proposal and the other circumstances relied upon to
2392 waive compliance with Subsection ~~[(5)]~~ (6) or (7)(b)(iv); and

2393 (b) makes the written statement available to the public, upon request.

2394 Section 36. Section 63G-6a-707.5 is amended to read:

2395 **63G-6a-707.5. Best and final offers.**

2396 (1) At any time during the evaluation process, the evaluation committee, with the
2397 approval of the director or the head of the issuing procurement unit, may:

2398 (a) request best and final offers from responsible ~~[and]~~ offerors who have submitted
2399 responsive [offerors] proposals that meet the minimum qualifications, evaluation criteria, or
2400 applicable score thresholds identified in the request for proposals, if:

2401 (i) no single proposal addresses all the specifications stated in the request for
2402 proposals;

2403 (ii) all or a significant number of the proposals are ambiguous on a material point and
2404 the evaluation committee requires further clarification in order to conduct a fair evaluation of
2405 proposals;

2406 (iii) the evaluation committee needs additional information from all offerors to
2407 complete the evaluation of proposals;

2408 (iv) the differences between proposals in one or more material aspects are too slight to
2409 allow the evaluation committee to distinguish between proposals;

2410 (v) all cost proposals are too high or over budget; or
2411 (vi) another reason exists supporting a request for best and final offers, as provided in
2412 rules established by the applicable rulemaking authority; and

2413 (b) evaluate those best and final offers.

2414 (2) In requesting and evaluating best and final offers under Subsection (1), the
2415 evaluation committee shall:

2416 (a) ensure that each offeror receives fair and equal treatment with respect to the other
2417 offerors;

2418 (b) establish a schedule and procedures for conducting discussions;

2419 (c) ensure that information in each proposal and information gathered during
2420 discussions is not shared with other offerors until the contract is awarded;

2421 (d) ensure that auction tactics are not used in the discussion process, including
2422 discussing and comparing the costs and features of other proposals; and

2423 (e) set a common date and time for the submission of best and final offers.

2424 (3) In a best and final offer, an offeror:

2425 (a) may address only the issues described in the request for best and final offers; and

2426 (b) may not correct a material error or deficiency in the offeror's proposal or address
2427 any other issue not described in the request for best and final offers.

2428 [~~3~~] (4) If an offeror chooses not to participate in a discussion or does not make a
2429 timely best and final offer, the offer submitted by the offeror before the conduct of discussions
2430 shall be treated as the offeror's best and final offer.

2431 (5) An applicable rulemaking authority shall make rules governing best and final offers
2432 under this section.

2433 Section 37. Section **63G-6a-708** is amended to read:

2434 **63G-6a-708. Justification statement -- Cost-benefit analysis.**

2435 (1) (a) In determining which proposal provides the best value to the procurement unit,
2436 the evaluation committee and the conducting procurement unit shall prepare a written
2437 justification statement that:

- 2438 (i) explains the score assigned to each evaluation category;
- 2439 (ii) explains how the proposal with the highest total combined score provides the best
2440 value to the procurement unit in comparison to the other proposals;
- 2441 (iii) if applicable, includes the cost-benefit analysis described in Subsection (2) and
2442 how the cost-benefit analysis relates to the best value to the procurement unit; and
- 2443 (iv) if applicable, includes the written determination described in Subsection (5).
- 2444 (b) An explanation under Subsection (1)(a)(i) need not address each criterion within
2445 each category.
- 2446 (2) If, in determining the best value to the procurement unit, the evaluation committee
2447 awards the highest score, including the score for cost, to a proposal other than the lowest cost
2448 proposal, and the difference between the cost of the highest scored proposal and the lowest cost
2449 proposal exceeds the greater of \$10,000 or 5% of the lowest cost proposal, the evaluation
2450 committee and the conducting procurement unit shall prepare an informal written cost-benefit
2451 analysis that:
- 2452 (a) explains, in general terms, the advantage to the procurement unit of awarding the
2453 contract to the higher cost offeror; and
- 2454 (b) except as provided in Subsection (5):
- 2455 (i) includes the estimated added financial value to the procurement unit of each
2456 criterion that justifies awarding the contract to the higher cost offeror; and
- 2457 (ii) demonstrates that the value of the advantage to the procurement unit of awarding
2458 the contract to the higher cost offeror exceeds the value of the difference between the cost of
2459 the higher cost proposal and the cost of the lower cost proposals.
- 2460 (3) If the informal cost-benefit analysis described in Subsection (2) does not justify
2461 awarding the contract to the offeror that received the highest score, the issuing procurement
2462 unit:
- 2463 (a) may not award the contract to the offeror that received the highest score; and
- 2464 (b) may award the contract to the offeror that received the next highest score, unless:
- 2465 (i) an informal cost-benefit analysis is required, because the difference between the

2466 cost proposed by the offeror that received the next highest score and the lowest cost proposal
2467 exceeds the greater of \$10,000 or 5% of the lowest cost proposal; and

2468 (ii) the informal cost-benefit analysis does not justify award of the contract to the
2469 offeror that received the next highest score.

2470 (4) If the informal cost-benefit analysis described in Subsection (2) does not justify
2471 award of the contract to the offeror, described in Subsection (3), that received the next highest
2472 score, the issuing procurement unit:

2473 (a) may not award the contract to the offeror that received the next highest score; and

2474 (b) shall continue with the process described in Subsection (3) for each offeror that
2475 received the next highest score, until the issuing procurement unit:

2476 (i) awards the contract in accordance with the provisions of this section; or

2477 (ii) cancels the request for proposals.

2478 (5) (a) The evaluation committee, with the issuing procurement unit's approval, may
2479 waive, in whole or in part, a requirement under Subsection (2)(b) if the evaluation committee
2480 determines in writing that assigning a financial value to a particular procurement item or
2481 evaluation criterion is not practicable.

2482 (b) A written determination under Subsection (5)(a):

2483 (i) shall explain:

2484 (A) why it is not practicable to assign a financial value to the procurement item or
2485 evaluation criterion; and

2486 (B) in nonfinancial terms, why awarding the contract to the higher cost offeror
2487 provides the best value to the procurement unit; and

2488 (ii) may be included as part of the justification statement.

2489 (6) (a) An issuing procurement unit is not required to make the cost-benefit analysis
2490 described in this section for a contract with a construction manager/general contractor if the
2491 contract is awarded based solely on the qualifications of the construction manager/general
2492 contractor and the management fee described in Subsection ~~63G-6a-707~~(~~6~~)(7).

2493 (b) The applicable rulemaking authority shall make rules that establish procedures and

2494 criteria for awarding a contract described in Subsection (6)(a) to ensure that:

2495 (i) a competitive process is maintained; and

2496 (ii) the contract awarded is in the best interest of the procurement unit.

2497 Section 38. Section **63G-6a-709** is amended to read:

2498 **63G-6a-709. Award of contract -- Cancellation -- Rejection of proposal.**

2499 (1) After the completion of the evaluation and scoring of proposals and the justification
2500 statement, including any required cost-benefit analysis, the evaluation committee shall submit
2501 the proposals, evaluation scores, and justification statement to the head of the procurement unit
2502 or designee for review and final determination of a contract award.

2503 (2) After reviewing the proposals, evaluation scores, and justification statement,
2504 including any required cost-benefit analysis, the head of the issuing procurement unit [~~or~~
2505 ~~designee~~] shall:

2506 (a) (i) award the contract as soon as practicable to~~[(i)]~~ the ~~[responsive and]~~
2507 ~~responsible offeror with the responsive proposal receiving the highest total score; or~~

2508 ~~[(ii) if, in accordance with Subsection (3), the procurement officer or the head of the~~
2509 ~~issuing procurement unit disqualifies the offeror described in Subsection (2)(a)(i), the~~
2510 ~~responsive and responsible offeror with the next highest total score; or]~~

2511 (ii) (A) if the head of the issuing procurement unit disqualifies an offeror under
2512 Subsection (3) who would otherwise have been awarded a contract, award the contract to the
2513 responsible offeror with the responsive proposal receiving the next highest total score; and

2514 (B) if the head of the issuing procurement unit disqualifies an offeror under Subsection
2515 (3) who would otherwise have been awarded a contract under Subsection (2)(a)(ii)(A), repeat
2516 the process described in Subsection (2)(a)(ii)(A) as many times as necessary until a contract is
2517 awarded to a responsible offeror who is not disqualified; or

2518 (b) cancel the request for proposals without awarding a contract.

2519 ~~[(3) In accordance with Subsection (4), the procurement officer or the head of the~~
2520 ~~issuing procurement unit may disqualify an offeror for:]~~

2521 ~~[(a) a violation of this chapter;]~~

- 2522 ~~[(b) not being responsive or responsible;]~~
- 2523 ~~[(c) a violation of a requirement of the request for proposals;]~~
- 2524 ~~[(d) unlawful or unethical conduct; or]~~
- 2525 ~~[(e) a change in circumstance that, had the change been known at the time the proposal~~
- 2526 ~~was submitted, would have caused the proposal to not have the highest score.]~~
- 2527 (3) The head of an issuing procurement unit may reject a proposal if:
- 2528 (a) the offeror who submitted the proposal:
- 2529 (i) is not responsible;
- 2530 (ii) is in violation of a provision of this chapter;
- 2531 (iii) has engaged in unethical conduct; or
- 2532 (iv) fails to sign a contract within:
- 2533 (A) 90 days after the contract award, if no time is specified in the solicitation; or
- 2534 (B) a time authorized in writing by the head of the issuing procurement unit;
- 2535 (b) there is a change in the offeror's circumstances that, if the change had been known
- 2536 at the time the offeror's proposal was evaluated, would have caused the proposal not to have
- 2537 received the highest score; or
- 2538 (c) the proposal:
- 2539 (i) is not responsive; or
- 2540 (ii) does not meet the mandatory minimum requirements, evaluation criteria, or
- 2541 applicable score thresholds stated in the solicitation.
- 2542 (4) A ~~[procurement officer or]~~ head of an issuing procurement unit who ~~[disqualifies~~
- 2543 ~~an offeror]~~ rejects a proposal under Subsection (3) shall:
- 2544 (a) make a written finding, stating the reasons for ~~[disqualification]~~ the rejection; and
- 2545 (b) provide a copy of the written finding to the ~~[disqualified]~~ offeror whose proposal is
- 2546 rejected.
- 2547 (5) If an issuing procurement unit cancels a request for proposals without awarding a
- 2548 contract, the issuing procurement unit shall make available for public inspection a written
- 2549 justification for the cancellation.

2550 Section 39. Section ~~63G-6a-802~~ is amended to read:

2551 **Part 8. Exceptions to Standard Procurement Process**

2552 **63G-6a-802. Award of contract without engaging in a standard procurement**
 2553 **process -- Notice -- Duty to negotiate contract terms in best interest of procurement unit.**

2554 [~~(1) As used in this section:~~]

2555 [~~(a) "Transitional costs" mean the costs of changing from an existing provider of, or~~
 2556 ~~type of, a procurement item to another provider of, or type of, procurement item.;~~]

2557 [~~(b) "Transitional costs" include:~~]

2558 [~~(i) training costs;~~]

2559 [~~(ii) conversion costs;~~]

2560 [~~(iii) compatibility costs;~~]

2561 [~~(iv) system downtime;~~]

2562 [~~(v) disruption of service;~~]

2563 [~~(vi) staff time necessary to put the transition into effect;~~]

2564 [~~(vii) installation costs; and~~]

2565 [~~(viii) ancillary software, hardware, equipment, or construction costs.;~~]

2566 [~~(c) "Transitional costs" do not include:~~]

2567 [~~(i) the costs of preparing for or engaging in a procurement process; or~~]

2568 [~~(ii) contract negotiation or contract drafting costs.;~~]

2569 [~~(d) "Trial use contract" means a contract between a procurement unit and a vendor for~~
 2570 ~~a procurement item that the procurement unit acquires for trial use or testing to determine~~
 2571 ~~whether the procurement item will benefit the procurement unit.;~~]

2572 [~~(2) The division or~~] (1) The chief procurement officer or the head of a procurement
 2573 unit with independent procurement authority may award a contract for a procurement item
 2574 without [competition] engaging in a standard procurement process if the chief procurement
 2575 officer[;] or the head of the procurement unit[; or a designee of either who is senior to the
 2576 procurement officer or the head of the procurement unit,] with independent procurement
 2577 authority determines in writing that:

- 2578 (a) there is only one source for the procurement item;
- 2579 ~~[(b) the award to a specific supplier, service provider, or contractor is a condition of a~~
- 2580 ~~donation that will fund the full cost of the supply, service, or construction item; or]~~
- 2581 ~~[(c) the procurement item is needed for trial use or testing to determine whether the~~
- 2582 ~~procurement item will benefit the procurement unit.]~~
- 2583 ~~[(3) Circumstances under which there is only one source for a procurement item may~~
- 2584 ~~include:]~~
- 2585 ~~[(a) where the most important consideration in obtaining a procurement item is the~~
- 2586 ~~compatibility of equipment, technology, software, accessories, replacement parts, or service;]~~
- 2587 ~~[(b) where transitional costs are unreasonable or cost prohibitive; or]~~
- 2588 ~~[(c) procurement of public utility services.]~~
- 2589 (b) (i) transitional costs are a significant consideration in selecting a procurement item;
- 2590 and
- 2591 (ii) the results of a cost-benefit analysis demonstrate that transitional costs are
- 2592 unreasonable or cost-prohibitive, and that the award of a contract without engaging in a
- 2593 standard procurement process is in the best interest of the procurement unit; or
- 2594 (c) the award of a contract is under circumstances, described in rules adopted by the
- 2595 applicable rulemaking authority, that make awarding the contract through a standard
- 2596 procurement process impractical and not in the best interest of the procurement unit.
- 2597 (2) Transitional costs associated with a trial use or testing of a procurement item under
- 2598 a trial use contract may not be included in a consideration of transitional costs under
- 2599 Subsection (1)(b).
- 2600 ~~[(4)]~~ (3) (a) Subject to Subsection ~~[(4)]~~ (3)(b), the applicable rulemaking authority
- 2601 shall make rules regarding the publication of notice for a ~~[sole source]~~ procurement under this
- 2602 section that, at a minimum, require publication of notice of ~~[a sole source]~~ the procurement, in
- 2603 accordance with Section ~~[63G-6a-406]~~ 63G-6a-112, if the cost of the procurement exceeds
- 2604 \$50,000.
- 2605 (b) Publication of notice under Section ~~[63G-6a-406]~~ 63G-6a-112 is not required for:

2606 (i) the procurement of public utility services pursuant to a sole source contract; or
2607 (ii) other ~~[sole source procurements provided by rule]~~ procurements under this section
2608 for which an applicable rule provides that notice is not required.

2609 ~~[(5) The division or]~~ (4) The chief procurement officer or the head of a procurement
2610 unit with independent procurement authority who awards a ~~[sole source contract on behalf of~~
2611 ~~another procurement unit]~~ contract under this section shall negotiate with the contractor to
2612 ensure that the terms of the contract, including price and delivery, are in the best interest of the
2613 procurement unit.

2614 ~~[(6) (a) The period of trial use or testing of a procurement item under a trial use~~
2615 ~~contract may not exceed 18 months, unless the procurement officer provides a written~~
2616 ~~exception documenting the reason for a longer period.]~~

2617 ~~[(b) A trial use contract shall:]~~

2618 ~~[(i) state that the purpose of the contract is strictly for the purpose of the trial use or~~
2619 ~~testing of a procurement item;]~~

2620 ~~[(ii) state that the contract terminates upon completion of the trial use or testing~~
2621 ~~period;]~~

2622 ~~[(iii) state that, after the trial use or testing period, the procurement unit is not obligated~~
2623 ~~to purchase or enter into a contract for the procurement item, regardless of the trial use or~~
2624 ~~testing result;]~~

2625 ~~[(iv) state that any purchase of the procurement item beyond the terms of the trial use~~
2626 ~~contract will be made in accordance with this chapter; and]~~

2627 ~~[(v) include, as applicable:]~~

2628 ~~[(A) test schedules;]~~

2629 ~~[(B) deadlines and a termination date;]~~

2630 ~~[(C) measures that will be used to evaluate the performance of the procurement item;]~~

2631 ~~[(D) any fees and associated expenses or an explanation of the circumstances~~
2632 ~~warranting a waiver of those fees and expenses;]~~

2633 ~~[(E) the obligations of the procurement unit and vendor;]~~

- 2634 [~~(F)~~ provisions regarding the ownership of the procurement item during and after the
2635 trial use or testing period;]
- 2636 [~~(G)~~ an explanation of the grounds upon which the contract may be terminated;]
- 2637 [~~(H)~~ a limitation of liability;]
- 2638 [~~(I)~~ a consequential damage waiver provision;]
- 2639 [~~(J)~~ a statement regarding the confidentiality or nondisclosure of information;]
- 2640 [~~(K)~~ a provision relating to any required bond or security deposit; and]
- 2641 [~~(L)~~ other requirements unique to the procurement item for trial use or testing;]
- 2642 [~~(e)~~ Publication of notice under Section ~~63G-6a-406~~ is not required for a procurement
2643 pursuant to a trial use contract.]
- 2644 [~~(7)~~ The division or a procurement unit with independent procurement authority may
2645 extend a contract for a reasonable period of time without engaging in a standard procurement
2646 process, if:]
- 2647 [~~(a)~~ the award of a new contract for the procurement item is delayed due to a protest or
2648 appeal;]
- 2649 [~~(b)~~ the standard procurement process is delayed due to unintentional error;]
- 2650 [~~(c)~~ changes in industry standards require significant changes to specifications for the
2651 procurement item;]
- 2652 [~~(d)~~ the extension is necessary to prevent the loss of federal funds;]
- 2653 [~~(e)~~ the extension is necessary to address a circumstance where the appropriation of
2654 state or federal funds has been delayed;]
- 2655 [~~(f)~~ the extension covers the period of time during which contract negotiations with a
2656 new provider are being conducted; or]
- 2657 [~~(g)~~ the extension is necessary to avoid a lapse in critical governmental services that
2658 may negatively impact public health, safety, or welfare.]
- 2659 Section 40. Section ~~63G-6a-802.3~~ is enacted to read:
- 2660 **63G-6a-802.3. Trial use contracts.**
- 2661 (1) A procurement unit may award a trial use contract without engaging in a standard

2662 procurement process if the contract is:

2663 (a) awarded for a procurement item that is not already available to the procurement unit
2664 under an existing contract;

2665 (b) restricted to the procurement of a procurement item in the minimum quantity and
2666 for the minimum period of time necessary to test the procurement item;

2667 (c) the only trial use contract for that procurement unit for the same procurement item;
2668 and

2669 (d) not used to circumvent the purposes and policies of this chapter as set forth in
2670 Section [63G-6a-102](#).

2671 (2) The period of trial use or testing of a procurement item under a trial use contract
2672 may not exceed 18 months, unless the procurement officer provides a written exception
2673 documenting the reason for a longer period.

2674 (3) A trial use contract shall:

2675 (a) state that the contract is strictly for the trial use or testing of a procurement item;

2676 (b) state that the contract terminates upon completion of the trial use or testing period;

2677 (c) state that the procurement unit is not obligated to purchase or enter into a contract
2678 for the procurement item, regardless of the trial use or testing result;

2679 (d) state that any purchase of the procurement item that is the subject of the trial use
2680 contract will be made in accordance with this chapter; and

2681 (e) include, as applicable:

2682 (i) test schedules;

2683 (ii) deadlines and a termination date;

2684 (iii) measures that will be used to evaluate the performance of the procurement item;

2685 (iv) any fees and associated expenses or an explanation of the circumstances
2686 warranting a waiver of those fees and expenses;

2687 (v) the obligations of the procurement unit and vendor;

2688 (vi) provisions regarding the ownership of the procurement item during and after the
2689 trial use or testing period;

2690 (vii) an explanation of the grounds upon which the contract may be terminated;
2691 (viii) a provision relating to any required bond or security deposit; and
2692 (ix) other requirements unique to the procurement item for trial use or testing.
2693 (4) Publication of notice under Section 63G-6a-112 is not required for a trial use
2694 contract.

2695 (5) The applicable rulemaking authority may make rules pertaining to a trial use
2696 contract.

2697 Section 41. Section **63G-6a-802.7** is enacted to read:

2698 **63G-6a-802.7. Extension of a contract without engaging in a standard**
2699 **procurement process.**

2700 The chief procurement officer or the head of a procurement unit with independent
2701 procurement authority may extend an existing contract without engaging in a standard
2702 procurement process:

2703 (1) for a period of time not to exceed 120 days, if:

2704 (a) an extension of the contract is necessary to:

2705 (i) avoid a lapse in a critical government service; or

2706 (ii) to mitigate a circumstance that is likely to have a negative impact on public health,
2707 safety, welfare, or property; and

2708 (b) (i) (A) the procurement unit is engaged in a standard procurement process for a
2709 procurement item that is the subject of the contract being extended; and

2710 (B) the standard procurement process is delayed due to an unintentional error;

2711 (ii) a change in an industry standard requires one or more significant changes to
2712 specifications for the procurement item; or

2713 (iii) an extension is necessary:

2714 (A) to prevent the loss of federal funds;

2715 (B) to mitigate the effects of a delay of a state or federal appropriation;

2716 (C) to enable the procurement unit to continue to receive a procurement item during a
2717 delay in the implementation of a contract awarded pursuant to a procurement that has already

2718 been conducted; or

2719 (D) to enable the procurement unit to continue to receive a procurement item during a
 2720 period of time during which negotiations with a vendor under a new contract for the
 2721 procurement item are being conducted;

2722 (2) for the period of a protest, appeal, or court action, if the protest, appeal, or court
 2723 action is the reason for delaying the award of a new contract; or

2724 (3) for a period of time exceeding 120 days, if the attorney general or the procurement
 2725 unit's attorney determines in writing that the contract extension does not violate state or federal
 2726 antitrust laws and is consistent with the purpose of ensuring the fair and equitable treatment of
 2727 all persons who deal with the procurement system.

2728 Section 42. Section **63G-6a-803** is amended to read:

2729 **63G-6a-803. Emergency procurement.**

2730 (1) Notwithstanding any other provision of this chapter, [~~a~~] the chief procurement
 2731 officer or the [~~procurement officer's designee may authorize~~] head of a procurement unit with
 2732 independent procurement authority may authorize a procurement unit to engage in an
 2733 emergency procurement without using a standard procurement process [~~when an emergency~~
 2734 ~~condition exists~~] if the procurement is necessary to:

2735 (a) avoid a lapse in a critical government service;

2736 (b) mitigate a circumstance that is likely to have a negative impact on public health,
 2737 safety, welfare, or property; or

2738 (c) protect the legal interests of a public entity.

2739 (2) A procurement [~~officer who authorizes~~] unit conducting an emergency procurement
 2740 under Subsection (1) shall:

2741 [~~(a) make the authorization in writing, stating the emergency condition upon which the~~
 2742 ~~emergency procurement is made; and~~]

2743 [~~(b)~~] (a) ensure that the procurement is made with as much competition as reasonably
 2744 practicable while;

2745 (i) avoiding a lapse in a critical government service;

2746 (ii) avoiding harm, or a risk of harm, to the public health, safety, welfare, or
2747 property[-]; or
2748 (iii) protecting the legal interests of a public entity; and
2749 (b) after the emergency has abated, prepare a written document explaining the
2750 emergency condition that necessitated the emergency procurement under Subsection (1).

2751 Section 43. Section **63G-6a-806** is amended to read:

2752 **63G-6a-806. Exception for public transit district contracting with a county or**
2753 **municipality.**

2754 A public transit district, organized under Title 17B, Chapter 2a, Part 8, Public Transit
2755 District Act, may, without going through a standard procurement process or ~~an~~ another
2756 exception to a standard procurement process described in ~~[Part 8, Exception to Procurement~~
2757 ~~Requirements]~~ this part:

- 2758 (1) contract with a county or municipality to receive money from the county or
2759 municipality; and
- 2760 (2) use the money described in Subsection (1) to fund a transportation project or a
2761 transit-related program in accordance with rules made by the applicable rulemaking authority.

2762 Section 44. Section **63G-6a-1206** is amended to read:

2763 **63G-6a-1206. Rules and regulations to determine allowable incurred costs --**
2764 **Required information.**

2765 (1) (a) The applicable rulemaking authority may, by rule, establish the cost principles
2766 to be included in a cost-reimbursement contract to determine incurred costs for the purpose of
2767 calculating a reimbursement.

2768 (b) The cost principles established by rule under Subsection (1)(a) may be modified, by
2769 contract, if the procurement officer or the head of the issuing procurement unit approves the
2770 modification.

2771 (2) Except as provided in Subsection (5), a person who seeks to be, or is, a party in a
2772 cost-based contract with a procurement unit shall:

- 2773 (a) submit cost or pricing data relating to determining the cost or pricing amount; and

2774 (b) certify that, to the best of the contractor's knowledge and belief, the cost or pricing
2775 data submitted is accurate and complete as of the date specified by the procurement unit.

2776 (3) The procurement officer shall ensure that the date specified under Subsection (2)(b)
2777 is before:

2778 (a) the pricing of any contract awarded by a standard procurement process or pursuant
2779 to a sole source procurement, if the total contract price is expected to exceed an amount
2780 established by rule made by the applicable rulemaking authority; or

2781 (b) the pricing of any change order that is expected to exceed an amount established by
2782 rule made by the applicable rulemaking authority.

2783 (4) A contract or change order that requires a certification described in Subsection (2)
2784 shall include a provision that the price to the procurement unit, including profit or fee, shall be
2785 adjusted to exclude any significant sums by which the procurement unit finds that the price was
2786 increased because the contractor provided cost or pricing data that was inaccurate, incomplete,
2787 or not current as of the date specified by the procurement officer.

2788 (5) A procurement unit is not required to comply with Subsection (2) if:

2789 (a) the contract price is based on adequate price competition;

2790 (b) the contract price is based on established catalogue prices or market prices;

2791 (c) the contract price is set by law or rule; or

2792 (d) the procurement states, in writing:

2793 (i) that, in accordance with rules made by the applicable rulemaking authority, the
2794 requirements of Subsection (2) may be waived; and

2795 (ii) the reasons for the waiver.

2796 ~~[(6) The procurement officer or audit entity under contract with the procurement unit
2797 may, at reasonable times and places, only to the extent that the books and records relate to the
2798 applicable cost or pricing data, audit the books and records of:]~~

2799 ~~[(a) a person who has submitted cost or pricing data pursuant to this section; or]~~

2800 ~~[(b) a contractor or subcontractor under a contract or subcontract other than a firm
2801 fixed price contract.]~~

2802 ~~[(7) Unless a shorter time is provided for by contract:]~~
 2803 ~~[(a) a person described in Subsection (6)(a) shall maintain the books and records~~
 2804 ~~described in Subsection (6) for three years after the day on which the fiscal year in which final~~
 2805 ~~payment is made under the contract ends;]~~
 2806 ~~[(b) a contractor shall maintain the books and records described in Subsection (6) for~~
 2807 ~~three years after the day on which the fiscal year in which final payment under the prime~~
 2808 ~~contract ends; and]~~
 2809 ~~[(c) a subcontractor shall maintain the books and records described in Subsection (6)~~
 2810 ~~for three years after the day on which the fiscal year in which final payment is made under the~~
 2811 ~~subcontract ends;]~~

2812 Section 45. Section **63G-6a-1206.3** is enacted to read:

2813 **63G-6a-1206.3. Auditing of books of contractor or subcontractor.**

2814 (1) A procurement officer or an audit entity under contract with the procurement unit
 2815 may audit the books and records of a contractor or subcontractor.

2816 (2) An audit under Subsection (1):

2817 (a) is limited to the books and records that relate to the applicable contract or
 2818 subcontract; and

2819 (b) may occur only at a reasonable time and place.

2820 (3) A contractor shall maintain all books and records relating to a contract for six years
 2821 after the day on which the contractor receives the final payment under the contract, or until all
 2822 audits initiated under this section within the six-year period have been completed, whichever is
 2823 later.

2824 (4) A subcontractor shall maintain all books and records relating to a subcontract for
 2825 six years after the day on which the subcontractor receives the final payment under the
 2826 subcontract, or until all audits initiated under this section within the six-year period have been
 2827 completed, whichever is later.

2828 Section 46. Section **63G-6a-1206.5** is amended to read:

2829 **63G-6a-1206.5. Change in contract price.**

2830 A contractor may:

2831 (1) increase the contract price only in accordance with the terms of the contract[-]; and

2832 (2) lower the contract price at any time during the time a contract is in effect.

2833 Section 47. Section **63G-6a-1502** is amended to read:

2834 **63G-6a-1502. Requirements regarding procurement of design professional**
2835 **services.**

2836 (1) A procurement unit seeking to procure design professional services shall:

2837 (a) publicly announce all requirements for those services through a request for
2838 statement of qualifications, as provided in this part; and

2839 (b) negotiate contracts for design professional services:

2840 (i) on the basis of demonstrated competence and qualification for the type of services
2841 required; and

2842 (ii) at fair and reasonable prices.

2843 (2) A procurement unit shall procure design professional services as provided in this

2844 part, except as otherwise provided in Sections [~~63G-6a-403, 63G-6a-404, 63G-6a-408;~~]

2845 63G-6a-506, 63G-6a-802, and 63G-6a-803.

2846 (3) This part does not affect the authority of, and does not apply to procedures
2847 undertaken by, a procurement unit to obtain the services of architects or engineers in the
2848 capacity of employees of the procurement unit.

2849 Section 48. Section **63G-6a-1503.5** is amended to read:

2850 **63G-6a-1503.5. Evaluation of statements of qualifications.**

2851 (1) An evaluation committee appointed under Section 63G-6a-1503 shall evaluate and
2852 score each responsive [~~and responsible~~] statement of qualifications that has not been
2853 [~~disqualified~~] eliminated from consideration under this chapter, using the criteria described in
2854 the request for statement of qualifications.

2855 (2) Criteria not described in the request for statement of qualifications may not be used
2856 to evaluate a statement of qualifications.

2857 (3) An evaluation committee may enter into discussions or conduct interviews with, or

2858 attend presentations by, the design professionals whose statements of qualifications are under
2859 consideration.

2860 (4) An evaluation committee shall rank the top three highest scoring design
2861 professionals, in order of their scores, for the purpose of entering into fee negotiations as
2862 provided in Section 63G-6a-1505.

2863 (5) If fewer than three responsible design professionals submit statements of
2864 qualifications [~~or~~] that are determined to be responsive [~~and responsible~~], the chief
2865 procurement officer or head of a procurement unit with independent procurement authority
2866 shall issue a written determination explaining why it is in the best interest of the procurement
2867 unit to continue the fee negotiation and the contracting process with less than three design
2868 professionals.

2869 (6) (a) The deliberations of an evaluation committee may be held in private.

2870 (b) If the evaluation committee is a public body, as defined in Section 52-4-103, the
2871 evaluation committee shall comply with Section 52-4-205 in closing a meeting for its
2872 deliberations.

2873 Section 49. Section 63G-6a-1601 is amended to read:

2874 **Part 16. Protests**

2875 **63G-6a-1601. Title.**

2876 This part is known as "~~[Controversies and]~~ Protests."

2877 Section 50. Section 63G-6a-1601.5 is enacted to read:

2878 **63G-6a-1601.5. Definitions.**

2879 As used in this part:

2880 (1) "Constructive knowledge":

2881 (a) means knowledge or information that a protestor would have if the protestor had
2882 exercised reasonable care or diligence, regardless of whether the protestor actually has the
2883 knowledge or information; and

2884 (b) includes knowledge of:

2885 (i) applicable provisions of this chapter and other law and administrative rule;

2886 (ii) instructions, criteria, deadlines, and requirements contained in the solicitation or in
2887 other documents made available to persons interested in the solicitation or provided in a
2888 mandatory pre-solicitation meeting;

2889 (iii) relevant facts and evidence supporting the protest or leading the protestor to
2890 contend that the protestor has been aggrieved in connection with a procurement;

2891 (iv) communications or actions, pertaining to the procurement, of all persons within the
2892 protestor's organization or under the supervision of the protestor; and

2893 (v) any other applicable information discoverable by the exercise of reasonable care or
2894 diligence.

2895 (2) "Protestor" means a person who files a protest under this part.

2896 (3) "Standing" means to have suffered an injury or harm or to be about to suffer
2897 imminent injury or harm, if:

2898 (a) the cause of the injury or harm is:

2899 (i) an infringement of the protestor's own right and not the right of another person who
2900 is not a party to the procurement;

2901 (ii) reasonably connected to the procurement unit's conduct; and

2902 (iii) the sole reason the protestor is not considered, or is no longer considered, for an
2903 award of a contract under the procurement that is the subject of the protest;

2904 (b) a decision on the protest in favor of the protestor:

2905 (i) is likely to redress the injury or harm; and

2906 (ii) would give the protestor a reasonable likelihood of being awarded a contract; and

2907 (c) the protestor has the legal authority to file the protest on behalf of the actual or
2908 prospective bidder or offeror or prospective contractor involved in the procurement that is the
2909 subject of the protest.

2910 Section 51. Section **63G-6a-1602** is amended to read:

2911 **63G-6a-1602. Protest -- Time for filing -- Basis of protest -- Authority to resolve**
2912 **protest.**

2913 (1) [(a)] A protest may be filed with the protest officer by [:(i) an actual or prospective

2914 ~~bidder or offeror]~~ a person who:

2915 (a) has standing; and

2916 (b) is aggrieved in connection with a procurement[;] or an award of a contract.

2917 ~~[(ii) a prospective contractor who]~~

2918 ~~[is aggrieved in connection with an award of a contract.]~~

2919 ~~[(b) (i) A protest under Subsection (1)(a) relating to an invitation for bids or a request~~

2920 ~~for proposals shall be filed:]~~

2921 ~~[(A) before the opening of bids or the closing date for proposals; or]~~

2922 ~~[(B) if the person filing the protest did not know and should not have known of the~~

2923 ~~facts giving rise to the protest before the bid opening or the closing date for proposals, within~~

2924 ~~seven days after the day on which the person knows or should have known of the facts giving~~

2925 ~~rise to the protest.]~~

2926 ~~[(ii) A protest under Subsection (1)(a) relating to a form of procurement not described~~

2927 ~~in Subsection (1)(b)(i) but involving a deadline established for the submission of a price or~~

2928 ~~response shall be filed:]~~

2929 ~~[(A) before the deadline for the submission of a price or response; or]~~

2930 ~~[(B) if the person filing the protest did not know and reasonably should not have~~

2931 ~~known of the facts giving rise to the protest before the deadline for the submission of a price or~~

2932 ~~response, within seven days after the day on which the person knows or reasonably should have~~

2933 ~~known of the facts giving rise to the protest.]~~

2934 ~~[(iii) A protest under Subsection (1)(a) relating to a form of procurement not described~~

2935 ~~in Subsection (1)(b)(i) or (ii) shall be filed within seven days after the day on which the person~~

2936 ~~filing the protest knows or should have known of the facts giving rise to the protest.]~~

2937 ~~[(2) A person who files a protest under this section shall include in the filing~~

2938 ~~document:]~~

2939 (2) A protest may not be filed after:

2940 (a) (i) (A) the opening of bids, for a protest relating to a procurement under a bidding

2941 process; or

- 2942 (B) the deadline for submitting responses to the solicitation, for a protest relating to
2943 another standard procurement process; or
- 2944 (ii) the closing of the procurement stage that is the subject of the protest:
2945 (A) if the protest relates to a multiple-stage procurement; and
2946 (B) notwithstanding Subsections (2)(a)(i)(A) and (B); or
2947 (b) the day that is seven days after the day on which the person knows or first has
2948 constructive knowledge of the facts giving rise to the protest, if:
- 2949 (i) the protestor did not know and did not have constructive knowledge of the facts
2950 giving rise to the protest before:
- 2951 (A) the opening of bids, for a protest relating to a procurement under a bidding process;
2952 (B) the deadline for submitting responses to the solicitation, for a protest relating to
2953 another standard procurement process; or
- 2954 (C) the closing of the procurement stage that is the subject of the protest, if the protest
2955 relates to a multiple-stage procurement; or
- 2956 (ii) the protest relates to a procurement process not described in Subsection (2)(a).
- 2957 (3) (a) A protestor shall include in a protest:
- 2958 [~~(a)~~] (i) the [~~person's~~] protestor's mailing address [~~of record~~] and email address [~~of~~
2959 record]; and
- 2960 [~~(b)~~] (ii) a concise statement of the [~~grounds upon which the protest is made.~~] facts and
2961 evidence:
- 2962 (A) leading the protestor to claim that the protestor has been aggrieved in connection
2963 with a procurement and providing the grounds for the protestor's protest; and
- 2964 (B) supporting the protestor's claim of standing.
- 2965 (b) A protest may not be considered unless it contains facts and evidence that, if true,
2966 would establish:
- 2967 (i) a violation of this chapter or other applicable law or rule;
2968 (ii) the procurement unit's failure to follow a provision of a solicitation;
2969 (iii) an error made by an evaluation committee or conducting procurement unit;

2970 (iv) a bias exercised by an evaluation committee or an individual committee member,
 2971 excluding a bias that is a preference arising during the evaluation process because of how well
 2972 a solicitation response meets criteria in the solicitation;

2973 (v) a failure to correctly apply or calculate a scoring criterion; or

2974 (vi) that specifications in a solicitation are unduly restrictive or unduly anticompetitive.

2975 (4) A protest may not be based on:

2976 (a) the rejection of a solicitation response due to a protestor's failure to attend or
 2977 participate in a mandatory conference, meeting, or site visit held before the deadline for
 2978 submitting a solicitation response; or

2979 (b) a vague or unsubstantiated allegation.

2980 (5) A protest may not include a request for:

2981 (a) an explanation of the rationale or scoring of evaluation committee members;

2982 (b) the disclosure of a protected record or protected information in addition to the
 2983 information provided under the disclosure provisions of this chapter; or

2984 (c) other information, documents, or explanations not explicitly provided for in this
 2985 chapter.

2986 ~~[(3)]~~ (6) A person ~~[described in Subsection (1)]~~ who fails to file a protest within the
 2987 time prescribed in Subsection ~~[(1)(b)]~~ (2) may not:

2988 (a) protest to the protest officer a solicitation or award of a contract; or

2989 (b) file an action or appeal challenging a solicitation or award of a contract before an
 2990 appeals panel, a court, or any other forum.

2991 ~~[(4)]~~ (7) Subject to the applicable requirements of Section [63G-10-403](#), a protest
 2992 officer or the head of a procurement unit may enter into a settlement agreement to resolve a
 2993 protest.

2994 Section 52. Section **63G-6a-1603** is amended to read:

2995 **63G-6a-1603. Protest officer responsibilities and authority -- Proceedings on**
 2996 **protest -- Effect of decision.**

2997 (1) After a protest is filed, the protest officer shall determine whether the protest is

2998 timely filed and complies fully with the requirements of Section 63G-6a-1602.

2999 (2) If the protest officer determines that the protest is not timely filed or that the protest
3000 does not fully comply with Section 63G-6a-1602, the protest officer shall dismiss the protest.

3001 (3) If the protest officer determines that the protest is timely filed and complies fully
3002 with Section 63G-6a-1602, the protest officer shall:

3003 (a) dismiss the protest if the protest officer determines that the protest alleges facts that,
3004 if true, do not provide an adequate basis for the protest;

3005 (b) uphold the protest without holding a hearing if the protest officer determines that
3006 the undisputed facts of the protest indicate that the protest should be upheld; or

3007 (c) hold a hearing on the protest if there is a genuine issue of material fact that needs to
3008 be resolved in order to determine whether the protest should be upheld.

3009 (4) (a) If a hearing is held on a protest, the protest officer may:

3010 (i) subpoena witnesses and compel their attendance at the protest hearing;

3011 (ii) subpoena documents for production at the protest hearing;

3012 (iii) obtain additional factual information; and

3013 (iv) obtain testimony from experts, the person filing the protest, representatives of the
3014 procurement unit, or others to assist the protest officer to make a decision on the protest.

3015 (b) The Rules of Evidence do not apply to a protest hearing.

3016 (c) The applicable rulemaking authority shall make rules relating to intervention in a
3017 protest, including designating:

3018 (i) who may intervene; and

3019 (ii) the time and manner of intervention.

3020 (d) A protest officer shall:

3021 (i) record each hearing held on a protest under this section;

3022 (ii) regardless of whether a hearing on a protest is held under this section, preserve all
3023 records and other evidence relied upon in reaching the protest officer's written decision until
3024 the decision, and any appeal of the decision, becomes final; and

3025 (iii) submit to the procurement policy board chair a copy of the protest officer's written

3026 decision and all records and other evidence relied upon in reaching the decision, within seven
3027 days after receiving:

3028 (A) notice that an appeal of the protest officer's decision has been filed under Section
3029 [63G-6a-1702](#); or

3030 (B) a request from the chair of the procurement policy board.

3031 (e) A protest officer's holding a hearing, considering a protest, or issuing a written
3032 decision under this section does not affect a person's right to later question or challenge the
3033 protest officer's jurisdiction to hold the hearing, consider the protest, or issue the decision.

3034 (5) (a) The deliberations of a protest officer may be held in private.

3035 (b) If the protest officer is a public body, as defined in Section [52-4-103](#), the protest
3036 officer shall comply with Section [52-4-205](#) in closing a meeting for its deliberations.

3037 (6) (a) A protest officer, or the protest officer's designee, shall promptly issue a written
3038 decision regarding any protest, unless the protest is settled by mutual agreement.

3039 (b) The decision shall:

3040 (i) state the reasons for the action taken;

3041 (ii) inform the protestor of the right to judicial or administrative review as provided in
3042 this chapter; and

3043 (iii) indicate the amount of the security deposit or bond required under Section
3044 [63G-6a-1703](#).

3045 (c) A person who issues a decision under Subsection (6)(a) shall mail, email, or
3046 otherwise immediately furnish a copy of the decision to the protestor.

3047 (7) A decision described in this section is effective until stayed or reversed on appeal,
3048 except to the extent provided in Section [63G-6a-1903](#).

3049 (8) (a) A decision described in Subsection (6)(a) that is issued in relation to a
3050 procurement unit other than a legislative procurement unit, a judicial procurement unit, a
3051 nonadopting local government procurement unit, or a public transit district is final and
3052 conclusive unless the protestor files an appeal under Section [63G-6a-1702](#).

3053 (b) A decision described in Subsection (6)(a) that is issued in relation to a legislative

3054 procurement unit, a judicial procurement unit, a nonadopting local government procurement
 3055 unit, or a public transit district is final and conclusive unless the protestor files an appeal under
 3056 Section 63G-6a-1802.

3057 (9) If the protest officer does not issue the written decision regarding a protest [~~or a~~
 3058 ~~contract controversy~~] within 30 calendar days after the day on which [~~a written request for a~~
 3059 ~~final decision is~~] the protest was filed with the protest officer, or within a longer period as may
 3060 be agreed upon by the parties, the protester[, ~~prospective contractor, or contractor~~] may proceed
 3061 as if an adverse decision had been received.

3062 (10) A determination under this section by the protest officer regarding an issue of fact
 3063 may not be overturned on appeal unless the decision is arbitrary and capricious or clearly
 3064 erroneous.

3065 Section 53. Section 63G-6a-1702 is amended to read:

3066 **63G-6a-1702. Appeal to Utah State Procurement Policy Board -- Appointment of**
 3067 **procurement appeals panel -- Proceedings.**

3068 (1) This part applies to all procurement units other than:

- 3069 (a) a legislative procurement unit;
 3070 (b) a judicial procurement unit;
 3071 (c) a nonadopting local government procurement unit; or
 3072 (d) a public transit district.

3073 (2) (a) Subject to Section 63G-6a-1703, a party to a protest involving a procurement
 3074 unit other than a procurement unit listed in Subsection (1)(a), (b), (c), or (d) may appeal the
 3075 protest decision to the board by filing a written notice of appeal with the chair of the board
 3076 within seven days after:

- 3077 (i) the day on which the written decision described in Section 63G-6a-1603 is:
 3078 (A) personally served on the party or the party's representative; or
 3079 (B) emailed or mailed to the address or email address [~~of record~~] provided by the party
 3080 under Subsection 63G-6a-1602[~~(2)~~](3); or
 3081 (ii) the day on which the 30-day period described in Subsection 63G-6a-1603(9) ends,

3082 if a written decision is not issued before the end of the 30-day period.

3083 (b) A person appealing a debarment or suspension of a procurement unit other than a
3084 procurement unit listed in Subsection (1)(a), (b), (c), or (d) shall file a written notice of appeal
3085 with the chair of the board no later than seven days after the debarment or suspension.

3086 (c) A notice of appeal under Subsection (2)(a) or (b) shall:

3087 (i) include the address of record and email address of record of the party filing the
3088 notice of appeal; and

3089 (ii) be accompanied by a copy of any written protest decision or debarment or
3090 suspension order.

3091 (3) A person may not base an appeal of a protest under this section on a ground not
3092 specified in the person's protest under Section [63G-6a-1602](#).

3093 (4) A person may not appeal from a protest described in Section [63G-6a-1602](#), unless:

3094 (a) a decision on the protest has been issued; or

3095 (b) a decision is not issued and the 30-day period described in Subsection
3096 [63G-6a-1603](#)(9), or a longer period agreed to by the parties, has passed.

3097 (5) The chair of the board or a designee of the chair who is not employed by the
3098 procurement unit responsible for the solicitation, contract award, or other action complained of:

3099 (a) shall, within seven days after the day on which the chair receives a timely written
3100 notice of appeal under Subsection (2), and if all the requirements of Subsection (2) and Section
3101 [63G-6a-1703](#) have been met, appoint:

3102 (i) a procurement appeals panel to hear and decide the appeal, consisting of at least
3103 three individuals, each of whom is:

3104 (A) a member of the board; or

3105 (B) a designee of a member appointed under Subsection (5)(a)(i)(A), if the designee is
3106 approved by the chair; and

3107 (ii) one of the members of the procurement appeals panel to be the chair of the panel;

3108 (b) may:

3109 (i) appoint the same procurement appeals panel to hear more than one appeal; or

- 3110 (ii) appoint a separate procurement appeals panel for each appeal;
- 3111 (c) may not appoint a person to a procurement appeals panel if the person is employed
- 3112 by the procurement unit responsible for the solicitation, contract award, or other action
- 3113 complained of; and
- 3114 (d) shall, at the time the procurement appeals panel is appointed, provide appeals panel
- 3115 members with a copy of the protest officer's written decision and all other records and other
- 3116 evidence that the protest officer relied on in reaching the decision.
- 3117 (6) A procurement appeals panel described in Subsection (5) shall:
- 3118 (a) consist of an odd number of members;
- 3119 (b) conduct an informal proceeding on the appeal within 60 days after the day on which
- 3120 the procurement appeals panel is appointed:
- 3121 (i) unless all parties stipulate to a later date; and
- 3122 (ii) subject to Subsection (8);
- 3123 (c) at least seven days before the proceeding, mail, email, or hand-deliver a written
- 3124 notice of the proceeding to the parties to the appeal; and
- 3125 (d) within seven days after the day on which the proceeding ends:
- 3126 (i) issue a written decision on the appeal; and
- 3127 (ii) mail, email, or hand-deliver the written decision on the appeal to the parties to the
- 3128 appeal and to the protest officer.
- 3129 (7) (a) The deliberations of a procurement appeals panel may be held in private.
- 3130 (b) If the procurement appeals panel is a public body, as defined in Section [52-4-103](#),
- 3131 the procurement appeals panel shall comply with Section [52-4-205](#) in closing a meeting for its
- 3132 deliberations.
- 3133 (8) A procurement appeals panel may continue a procurement appeals proceeding
- 3134 beyond the 60-day period described in Subsection (6)(b) if the procurement appeals panel
- 3135 determines that the continuance is in the interests of justice.
- 3136 (9) A procurement appeals panel:
- 3137 (a) shall, subject to Subsection (9)(c), consider the appeal based solely on:

- 3138 (i) the protest decision;
- 3139 (ii) the record considered by the person who issued the protest decision; and
- 3140 (iii) if a protest hearing was held, the record of the protest hearing;
- 3141 (b) may not take additional evidence;
- 3142 (c) notwithstanding Subsection (9)(b), may, during an informal hearing, ask questions
- 3143 and receive responses regarding the appeal, the protest decision, or the record in order to assist
- 3144 the panel to understand the appeal, the protest decision, and the record; and
- 3145 (d) shall uphold the decision of the protest officer, unless the decision is arbitrary and
- 3146 capricious or clearly erroneous.

3147 (10) If a procurement appeals panel determines that the decision of the protest officer is

3148 arbitrary and capricious or clearly erroneous, the procurement appeals panel:

- 3149 (a) shall remand the matter to the protest officer, to cure the problem or render a new
- 3150 decision;
- 3151 (b) may recommend action that the protest officer should take; and
- 3152 (c) may not order that:
 - 3153 (i) a contract be awarded to a certain person;
 - 3154 (ii) a contract or solicitation be cancelled; or
 - 3155 (iii) any other action be taken other than the action described in Subsection (10)(a).

3156 (11) The board shall make rules relating to the conduct of an appeals proceeding,

3157 including rules that provide for:

- 3158 (a) expedited proceedings; and
- 3159 (b) electronic participation in the proceedings by panel members and participants.

3160 (12) The Rules of Evidence do not apply to an appeals proceeding.

3161 Section 54. Section **63G-6a-1703** is amended to read:

3162 **63G-6a-1703. Requirement to pay a security deposit or post a bond -- Exceptions**

3163 **-- Amount -- Forfeiture of security deposit or bond.**

3164 (1) [~~Except as provided by rule made under Subsection (2)(a), a~~] A person who files a

3165 notice of appeal under Section **63G-6a-1702** shall, before the expiration of the time provided

3166 under Subsection [63G-6a-1702\(2\)](#) for filing a notice of appeal, pay a security deposit or post a
3167 bond with the office of the protest officer.

3168 (2) The amount of a security deposit or bond required under Subsection (1) is:

3169 (a) for an appeal relating to an invitation for bids or request for proposals and except as
3170 provided in Subsection (2)(b)(ii):

3171 (i) \$20,000, if the total contract value is under \$500,000;

3172 (ii) \$25,000, if the total contract value is \$500,000 or more but less than \$1,000,000;

3173 (iii) \$50,000, if the total contract value is \$1,000,000 or more but less than \$2,000,000;

3174 (iv) \$95,000, if the total contract value is \$2,000,000 or more but less than \$4,000,000;

3175 (v) \$180,000, if the total contract value is \$4,000,000 or more but less than \$8,000,000;

3176 (vi) \$320,000, if the total contract value is \$8,000,000 or more but less than
3177 \$16,000,000;

3178 (vii) \$600,000, if the total contract value is \$16,000,000 or more but less than
3179 \$32,000,000;

3180 (viii) \$1,100,000, if the total contract value is \$32,000,000 or more but less than
3181 \$64,000,000;

3182 (ix) \$1,900,000, if the total contract value is \$64,000,000 or more but less than
3183 \$128,000,000;

3184 (x) \$3,500,000, if the total contract value is \$128,000,000 or more but less than
3185 \$256,000,000;

3186 (xi) \$6,400,000, if the total contract value is \$256,000,000 or more but less than
3187 \$512,000,000; and

3188 (xii) \$10,200,000, if the total contract value is \$512,000,000 or more; or

3189 (b) \$20,000, for an appeal:

3190 (i) relating to any type of procurement process other than an invitation for bids or
3191 request for proposals;

3192 (ii) relating to an invitation for bids or request for proposals, if the estimated total
3193 contract value cannot be determined; or

3194 (iii) of a debarment or suspension.

3195 (3) (a) For an appeal relating to an invitation for bids, the estimated total contract value
3196 shall be based on:

3197 (i) the lowest responsible and responsive bid amount for the entire term of the contract,
3198 excluding any renewal period, if the bid opening has occurred;

3199 (ii) the total budget for the procurement item for the entire term of the contract,
3200 excluding any renewal period, if bids are based on unit or rate pricing; or

3201 (iii) if the contract is being rebid, the historical usage and amount spent on the contract
3202 over the life of the contract.

3203 (b) For an appeal relating to a request for proposals, the estimated total contract value
3204 shall be based on:

3205 (i) the lowest cost proposed in a response to a request for proposals, considering the
3206 entire term of the contract, excluding any renewal period, if the opening of proposals has
3207 occurred;

3208 (ii) the total budget for the procurement item over the entire term of the contract,
3209 excluding any renewal period, if opened cost proposals are based on unit or rate pricing; or

3210 (iii) if the contract is being reissued, the historical usage and amount spent on the
3211 contract over the life of the contract that is being reissued.

3212 (4) The protest officer shall:

3213 (a) retain the security deposit or bond until the protest and any appeal of the protest
3214 decision is final;

3215 (b) as it relates to a security deposit:

3216 (i) deposit the security deposit into an interest-bearing account; and

3217 (ii) after any appeal of the protest decision becomes final, return the security deposit
3218 and the interest it accrues to the person who paid the security deposit, unless the security
3219 deposit is forfeited to the general fund of the procurement unit under Subsection (5); and

3220 (c) as it relates to a bond:

3221 (i) retain the bond until the protest and any appeal of the protest decision becomes

3222 final; and

3223 (ii) after the protest and any appeal of the protest decision becomes final, return the
3224 bond to the person who posted the bond, unless the bond is forfeited to the general fund of the
3225 procurement unit under Subsection (5).

3226 (5) A security deposit that is paid, or a bond that is posted, under this section shall
3227 forfeit to the general fund of the procurement unit if:

3228 (a) the person who paid the security deposit or posted the bond fails to ultimately
3229 prevail on appeal; and

3230 (b) the procurement appeals panel finds that the protest or appeal is frivolous or that its
3231 primary purpose is to harass or cause a delay.

3232 Section 55. Section **63G-6a-1903** is amended to read:

3233 **63G-6a-1903. Effect of timely protest or appeal.**

3234 A procurement unit, other than a legislative procurement unit, a judicial procurement
3235 unit, a nonadopting local government procurement unit, or a public transit district, may not
3236 proceed further with a solicitation or with the award of a contract:

3237 (1) during the pendency of a timely:

3238 (a) protest under [~~Subsection~~] Section 63G-6a-1602~~[(1)]~~;

3239 (b) appeal of a protest under Section 63G-6a-1702; or

3240 (c) appeal of a procurement appeals panel decision under Section 63G-6a-1802; and

3241 (2) until:

3242 (a) all administrative and judicial remedies are exhausted;

3243 (b) for a protest under Section 63G-6a-1602 or an appeal under Section 63G-6a-1702:

3244 (i) the chief procurement officer, after consultation with the attorney general's office
3245 and the head of the using agency, makes a written determination that award of the contract
3246 without delay is in the best interest of the procurement unit or the state;

3247 (ii) the head of a procurement unit with independent procurement authority, after
3248 consultation with the procurement unit's attorney, makes a written determination that award of
3249 the contract without delay is in the best interest of the procurement unit or the state; or

3250 (iii) for a procurement unit that is not represented by the attorney general's office, the
3251 procurement unit, after consulting with the attorney for the procurement unit, makes a written
3252 determination that award of the contract without delay is in the best interest of the procurement
3253 unit or the state; or

3254 (c) for an appeal under Section 63G-6a-1802, or an appeal to a higher court than
3255 district court:

3256 (i) the chief procurement officer, after consultation with the attorney general's office
3257 and the head of the using agency, makes a written determination that award of the contract
3258 without delay is in the best interest of the procurement unit or the state;

3259 (ii) the head of a procurement unit with independent procurement authority, after
3260 consultation with the procurement unit's attorney, makes a written determination that award of
3261 the contract without delay is in the best interest of the procurement unit or the state; or

3262 (iii) for a procurement unit that is not represented by the attorney general's office, the
3263 procurement unit, after consulting with the attorney for the procurement unit, makes a written
3264 determination that award of the contract without delay is necessary to protect the best interest
3265 of the procurement unit or the state.

3266 Section 56. Section 63G-6a-2002 is amended to read:

3267 **63G-6a-2002. Records -- Retention.**

3268 (1) All procurement records shall be retained and disposed of in accordance with Title
3269 63G, Chapter 2, Government Records Access and Management Act.

3270 (2) Written determinations required by this chapter shall be retained in the appropriate
3271 official contract file of:

3272 (a) the division;

3273 (b) the procurement unit with independent procurement authority; or

3274 (c) for a legislative procurement unit or a judicial procurement unit, the person
3275 designated by rule made by the applicable rulemaking authority.

3276 (3) A procurement unit shall keep, and make available to the public, upon request,
3277 written records of procurements for which an expenditure of \$50 or more is made, for the

3278 longer of:

- 3279 (a) [~~four~~] six years;
- 3280 (b) the time otherwise required by law; or
- 3281 (c) the time period provided by rule made by the applicable rulemaking authority.
- 3282 (4) The written record described in Subsection (3) shall include:
- 3283 (a) the name of the provider from whom the procurement was made;
- 3284 (b) a description of the procurement item;
- 3285 (c) the date of the procurement; and
- 3286 (d) the expenditure made for the procurement.

3287 Section 57. Section **63G-6a-2003** is amended to read:

3288 **63G-6a-2003. Record of contracts made.**

3289 The chief procurement officer, the procurement officer, or the head of a procurement
3290 unit with independent procurement authority shall maintain a record of all contracts made
3291 under Section [~~63G-6a-408~~] [63G-6a-506](#), [63G-6a-802](#), or [63G-6a-803](#), in accordance with
3292 Title 63G, Chapter 2, Government Records Access and Management Act. The record shall
3293 contain each contractor's name, the amount and type of each contract, and a listing of the
3294 procurement items to which the contract relates.

3295 Section 58. Section **63G-6a-2105** is amended to read:

3296 **63G-6a-2105. Cooperative procurements -- Contracts with federal government --**
3297 **Regional solicitations.**

3298 (1) The chief procurement officer may, in accordance with the requirements of this
3299 chapter, enter into a cooperative procurement, and a contract that is awarded as a result of a
3300 cooperative procurement, with:

- 3301 (a) another state;
- 3302 (b) a cooperative purchasing organization; or
- 3303 (c) a public entity inside or outside the state.

3304 (2) A public entity, nonprofit organization, or, as permitted under federal law, an
3305 agency of the federal government, may obtain a procurement item from a state cooperative

3306 contract or a contract awarded by the chief procurement officer under Subsection (1), without
3307 signing a participating addendum if the solicitation issued by the chief procurement officer to
3308 obtain the contract includes a statement indicating that the resulting contract will be issued for
3309 the benefit of public entities and, as applicable, nonprofit organizations and agencies of the
3310 federal government.

3311 (3) Except as provided in Section [~~63G-6a-408~~] [63G-6a-506](#), or as otherwise provided
3312 in this chapter, an executive branch procurement unit may not obtain a procurement item from
3313 a source other than a state cooperative contract or a contract awarded by the chief procurement
3314 officer under Subsection (1), if the procurement item is available under a state cooperative
3315 contract or a contract awarded by the chief procurement officer under Subsection (1).

3316 (4) A Utah procurement unit may:

3317 (a) contract with the federal government without going through a standard procurement
3318 process or an exception to a standard procurement process, described in Part 8, Exceptions to
3319 Procurement Requirements, if the procurement item obtained under the contract is provided:

3320 (i) directly by the federal government and not by a person contracting with the federal
3321 government; or

3322 (ii) by a person under contract with the federal government that obtained the contract in
3323 a manner that substantially complies with the provisions of this chapter;

3324 (b) participate in, sponsor, conduct, or administer a cooperative procurement with
3325 another Utah procurement unit or another public entity in Utah, if:

3326 (i) each party unit involved in the cooperative procurement enters into an agreement
3327 describing the rights and duties of each party;

3328 (ii) the procurement is conducted, and the contract awarded, in accordance with the
3329 requirements of this chapter;

3330 (iii) the solicitation:

3331 (A) clearly indicates that the procurement is a cooperative procurement; and

3332 (B) identifies each party that may purchase under the resulting contract; and

3333 (iv) each party involved in the cooperative procurement signs a participating addendum

3334 describing its rights and obligations in relation to the resulting contract; or

3335 (c) purchase under, or otherwise participate in, an agreement or contract of a
3336 cooperative purchasing organization, if:

3337 (i) each party involved in the cooperative procurement enters into an agreement
3338 describing the rights and duties of each party;

3339 (ii) the procurement was conducted in accordance with the requirements of this
3340 chapter;

3341 (iii) the solicitation:

3342 (A) clearly indicates that the procurement is a cooperative procurement; and

3343 (B) identifies each party that may purchase under the resulting contract; and

3344 (iv) each party involved in the cooperative procurement signs a participating addendum
3345 describing its rights and obligations in relation to the resulting contract.

3346 (5) A procurement unit may not obtain a procurement item under a contract that results
3347 from a cooperative procurement described in Subsection (4), [if] unless the procurement unit:

3348 (a) is [~~not~~] identified under Subsection (4)(b)(iii)(B) or (4)(c)(iii)(B); [~~or~~] and

3349 (b) [~~does not sign~~] signs a participating addendum to the contract as required by this
3350 section.

3351 (6) A procurement unit, other than a legislative procurement unit or a judicial
3352 procurement unit, may not obtain a procurement item under a contract held by the United
3353 States General Services Administration, unless, based upon documentation provided by the
3354 procurement unit, the Director of the State Division of Purchasing and General Services
3355 determines in writing that the United States General Services Administration procured the
3356 contract in a manner that substantially complies with the provisions of this chapter.

3357 (7) (a) As used in this Subsection (7), "regional solicitation" means a solicitation issued
3358 by the chief procurement officer for the procurement of a procurement item within a specified
3359 geographical region of the state.

3360 (b) In addition to any other duty or authority under this section, the chief procurement
3361 officer shall:

3362 (i) after considering board recommendations, develop a plan for issuing regional
3363 solicitations;

3364 (ii) present the plan to the Government Operations Interim Committee by September 1,
3365 2014; and

3366 (iii) after developing a plan, issue regional solicitations for procurement items in
3367 accordance with the plan and this chapter.

3368 (c) A plan under Subsection (7)(b) shall:

3369 (i) define the proposed regional boundaries for regional solicitations;

3370 (ii) specify the types of procurement items for which a regional solicitation may be
3371 issued; and

3372 (iii) identify the regional solicitations that the chief procurement officer plans to issue.

3373 (d) A regional solicitation shall require that a person responding to the solicitation offer
3374 similar warranties and submit to similar obligations as are standard under other state
3375 cooperative contracts.

3376 (e) ~~[A] Except as authorized by the chief procurement officer, a procurement item that~~
3377 ~~is available under a state cooperative contract may not be provided under a contract pursuant to~~
3378 ~~a regional solicitation until after the expiration of the state cooperative contract.~~

3379 Section 59. Section **63G-6a-2407** is amended to read:

3380 **63G-6a-2407. Duty to report unlawful conduct.**

3381 ~~[(1) A procurement professional shall notify the attorney general or other appropriate~~
3382 ~~prosecuting attorney if the procurement professional has actual knowledge that a person has~~
3383 ~~engaged in:]~~

3384 (1) As used in this section, "unlawful conduct" means:

3385 (a) conduct made unlawful under this part; or

3386 (b) conduct, including bid rigging, improperly steering a contract to a favored vendor,
3387 exercising undue influence on an individual involved in the procurement process, or
3388 participating in collusion or other anticompetitive practices, made unlawful under other
3389 applicable law.

3390 (2) (a) A procurement professional with actual knowledge that a person has engaged in
3391 unlawful conduct shall report the person's unlawful conduct to:

3392 (i) the state auditor; or

3393 (ii) the attorney general or other appropriate prosecuting attorney.

3394 (b) An individual not subject to the requirement of Subsection (2)(a) who has actual
3395 knowledge that a person has engaged in unlawful conduct may report the person's unlawful
3396 conduct to:

3397 (i) the state auditor; or

3398 (ii) the attorney general or other appropriate prosecuting attorney.

3399 [~~2~~] (3) A procurement professional who fails to comply with the requirement of
3400 Subsection [~~1~~] (2)(a) is subject to any applicable disciplinary action or civil penalty identified
3401 in Subsection 63G-6a-2404(5).

3402 Section 60. Section 63G-10-403 is amended to read:

3403 **63G-10-403. Department of Transportation bid or request for proposals protest**
3404 **settlement agreement approval and review.**

3405 (1) As used in this section:

3406 (a) "Department" means the Department of Transportation created in Section 72-1-201.

3407 (b) "Settlement agreement" includes stipulations, consent decrees, settlement
3408 agreements, or other legally binding documents or representations resolving a dispute between
3409 the department and another party when the department is required to pay money or required to
3410 take legally binding action.

3411 (2) The department shall obtain the approval of the Transportation Commission or the
3412 governor or review by the Legislative Management Committee of a settlement agreement that
3413 involves a bid or request for proposal protest in accordance with this section.

3414 (3) A settlement agreement that is being settled by the department as part of a bid or
3415 request for proposal protest, in accordance with Subsection 63G-6a-1602[~~4~~](7), that might
3416 cost government entities more than \$100,000 to implement shall be presented to the
3417 Transportation Commission for approval or rejection.

3418 (4) A settlement agreement that is being settled by the department as part of a bid or
3419 request for proposal protest, in accordance with Subsection 63G-6a-1602[(4)](7), that might
3420 cost government entities more than \$500,000 to implement shall be presented:

- 3421 (a) to the Transportation Commission for approval or rejection; and
- 3422 (b) to the governor for approval or rejection.

3423 (5) (a) A settlement agreement that is being settled by the department as part of a bid or
3424 request for proposal protest, in accordance with Subsection 63G-6a-1602[(4)](7), that might
3425 cost government entities more than \$1,000,000 to implement shall be presented:

- 3426 (i) to the Transportation Commission for approval or rejection;
- 3427 (ii) to the governor for approval or rejection; and
- 3428 (iii) if the settlement agreement is approved by the Transportation Commission and the
3429 governor, to the Legislative Management Committee.

3430 (b) The Legislative Management Committee may recommend approval or rejection of
3431 the settlement agreement.

3432 (6) (a) The department may not enter into a settlement agreement that resolves a bid or
3433 request for proposal protest, in accordance with Subsection 63G-6a-1602[(4)](7), that might
3434 cost government entities more than \$100,000 to implement until the Transportation
3435 Commission has approved the agreement.

3436 (b) The department may not enter into a settlement agreement that resolves a bid or
3437 request for proposal protest, in accordance with Subsection 63G-6a-1602[(4)](7), that might
3438 cost government entities more than \$500,000 to implement until the Transportation
3439 Commission and the governor have approved the agreement.

3440 (c) The department may not enter into a settlement agreement that resolves a bid or
3441 request for proposal protest, in accordance with Subsection 63G-6a-1602[(4)](7), that might
3442 cost government entities more than \$1,000,000 to implement until:

- 3443 (i) the Transportation Commission has approved the agreement;
- 3444 (ii) the governor has approved the agreement; and
- 3445 (iii) the Legislative Management Committee has reviewed the agreement.

3446 Section 61. Section 72-6-107.5 is amended to read:

3447 **72-6-107.5. Construction of improvements of highway -- Contracts -- Health**
3448 **insurance coverage.**

3449 (1) For purposes of this section:

3450 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
3451 34A-2-104 who:

3452 (i) works at least 30 hours per calendar week; and

3453 (ii) meets employer eligibility waiting requirements for health care insurance which
3454 may not exceed the first day of the calendar month following 60 days from the date of hire.

3455 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

3456 (c) "Qualified health insurance coverage" is as defined in Section 26-40-115.

3457 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

3458 (2) (a) Except as provided in Subsection (3), this section applies to contracts entered
3459 into by the department on or after July 1, 2009, for construction or design of highways and to a
3460 prime contractor or to a subcontractor in accordance with Subsection (2)(b).

3461 (b) (i) A prime contractor is subject to this section if the prime contract is in the
3462 amount of \$1,500,000 or greater.

3463 (ii) A subcontractor is subject to this section if a subcontract is in the amount of
3464 \$750,000 or greater.

3465 (3) This section does not apply if:

3466 (a) the application of this section jeopardizes the receipt of federal funds;

3467 (b) the contract is a sole source contract; or

3468 (c) the contract is an emergency procurement.

3469 (4) (a) This section does not apply to a change order as defined in Section 63G-6a-103,
3470 or a modification to a contract, when the contract does not meet the initial threshold required
3471 by Subsection (2).

3472 (b) A person who intentionally uses change orders or contract modifications to
3473 circumvent the requirements of Subsection (2) is guilty of an infraction.

3474 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the department that
3475 the contractor has and will maintain an offer of qualified health insurance coverage for the
3476 contractor's employees and the employees' dependents during the duration of the contract.

3477 (b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall
3478 demonstrate to the department that the subcontractor has and will maintain an offer of qualified
3479 health insurance coverage for the subcontractor's employees and the employees' dependents
3480 during the duration of the contract.

3481 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
3482 the duration of the contract is subject to penalties in accordance with administrative rules
3483 adopted by the department under Subsection (6).

3484 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
3485 requirements of Subsection (5)(b).

3486 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
3487 the duration of the contract is subject to penalties in accordance with administrative rules
3488 adopted by the department under Subsection (6).

3489 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
3490 requirements of Subsection (5)(a).

3491 (6) The department shall adopt administrative rules:

3492 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

3493 (b) in coordination with:

3494 (i) the Department of Environmental Quality in accordance with Section [19-1-206](#);

3495 (ii) the Department of Natural Resources in accordance with Section [79-2-404](#);

3496 (iii) the State Building Board in accordance with Section [63A-5-205](#);

3497 (iv) the State Capitol Preservation Board in accordance with Section [63C-9-403](#);

3498 (v) a public transit district in accordance with Section [17B-2a-818.5](#); and

3499 (vi) the Legislature's Administrative Rules Review Committee; and

3500 (c) which establish:

3501 (i) the requirements and procedures a contractor must follow to demonstrate to the

3502 department compliance with this section which shall include:

3503 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or
3504 (b) more than twice in any 12-month period; and

3505 (B) that the actuarially equivalent determination required for qualified health insurance
3506 coverage in Subsection (1) is met by the contractor if the contractor provides the department or
3507 division with a written statement of actuarial equivalency from either:

3508 (I) the Utah Insurance Department;

3509 (II) an actuary selected by the contractor or the contractor's insurer; or

3510 (III) an underwriter who is responsible for developing the employer group's premium
3511 rates;

3512 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
3513 violates the provisions of this section, which may include:

3514 (A) a three-month suspension of the contractor or subcontractor from entering into
3515 future contracts with the state upon the first violation;

3516 (B) a six-month suspension of the contractor or subcontractor from entering into future
3517 contracts with the state upon the second violation;

3518 (C) an action for debarment of the contractor or subcontractor in accordance with
3519 Section [63G-6a-904](#) upon the third or subsequent violation; and

3520 (D) monetary penalties which may not exceed 50% of the amount necessary to
3521 purchase qualified health insurance coverage for an employee and a dependent of the employee
3522 of the contractor or subcontractor who was not offered qualified health insurance coverage
3523 during the duration of the contract; and

3524 (iii) a website on which the department shall post the benchmark for the qualified
3525 health insurance coverage identified in Subsection (1)(c).

3526 (7) (a) (i) In addition to the penalties imposed under Subsection (6), a contractor or
3527 subcontractor who intentionally violates the provisions of this section shall be liable to the
3528 employee for health care costs that would have been covered by qualified health insurance
3529 coverage.

3530 (ii) An employer has an affirmative defense to a cause of action under Subsection
3531 (7)(a)(i) if:

3532 (A) the employer relied in good faith on a written statement of actuarial equivalency
3533 provided by:

3534 (I) an actuary; or

3535 (II) an underwriter who is responsible for developing the employer group's premium
3536 rates; or

3537 (B) the department determines that compliance with this section is not required under
3538 the provisions of Subsection (3) or (4).

3539 (b) An employee has a private right of action only against the employee's employer to
3540 enforce the provisions of this Subsection (7).

3541 (8) Any penalties imposed and collected under this section shall be deposited into the
3542 Medicaid Restricted Account created in Section [26-18-402](#).

3543 (9) The failure of a contractor or subcontractor to provide qualified health insurance
3544 coverage as required by this section:

3545 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
3546 or contractor under Section [~~63G-6a-1603~~] [63G-6a-1602](#) or any other provision in Title 63G,
3547 Chapter 6a, Utah Procurement Code; and

3548 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
3549 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
3550 or construction.

3551 Section 62. Section **79-2-404** is amended to read:

3552 **79-2-404. Contracting powers of department -- Health insurance coverage.**

3553 (1) For purposes of this section:

3554 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
3555 [34A-2-104](#) who:

3556 (i) works at least 30 hours per calendar week; and

3557 (ii) meets employer eligibility waiting requirements for health care insurance which

3558 may not exceed the first day of the calendar month following 60 days from the date of hire.

3559 (b) "Health benefit plan" has the same meaning as provided in Section [31A-1-301](#).

3560 (c) "Qualified health insurance coverage" is as defined in Section [26-40-115](#).

3561 (d) "Subcontractor" has the same meaning provided for in Section [63A-5-208](#).

3562 (2) (a) Except as provided in Subsection (3), this section applies a design or
3563 construction contract entered into by, or delegated to, the department or a division, board, or
3564 council of the department on or after July 1, 2009, and to a prime contractor or to a
3565 subcontractor in accordance with Subsection (2)(b).

3566 (b) (i) A prime contractor is subject to this section if the prime contract is in the
3567 amount of \$1,500,000 or greater.

3568 (ii) A subcontractor is subject to this section if a subcontract is in the amount of
3569 \$750,000 or greater.

3570 (3) This section does not apply to contracts entered into by the department or a
3571 division, board, or council of the department if:

3572 (a) the application of this section jeopardizes the receipt of federal funds;

3573 (b) the contract or agreement is between:

3574 (i) the department or a division, board, or council of the department; and

3575 (ii) (A) another agency of the state;

3576 (B) the federal government;

3577 (C) another state;

3578 (D) an interstate agency;

3579 (E) a political subdivision of this state; or

3580 (F) a political subdivision of another state; or

3581 (c) the contract or agreement is:

3582 (i) for the purpose of disbursing grants or loans authorized by statute;

3583 (ii) a sole source contract; or

3584 (iii) an emergency procurement.

3585 (4) (a) This section does not apply to a change order as defined in Section [63G-6a-103](#),

3586 or a modification to a contract, when the contract does not meet the initial threshold required
3587 by Subsection (2).

3588 (b) A person who intentionally uses change orders or contract modifications to
3589 circumvent the requirements of Subsection (2) is guilty of an infraction.

3590 (5) (a) A contractor subject to Subsection (2)(b)(i) shall demonstrate to the department
3591 that the contractor has and will maintain an offer of qualified health insurance coverage for the
3592 contractor's employees and the employees' dependents during the duration of the contract.

3593 (b) If a subcontractor of the contractor is subject to Subsection (2)(b)(ii), the contractor
3594 shall demonstrate to the department that the subcontractor has and will maintain an offer of
3595 qualified health insurance coverage for the subcontractor's employees and the employees'
3596 dependents during the duration of the contract.

3597 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
3598 the duration of the contract is subject to penalties in accordance with administrative rules
3599 adopted by the department under Subsection (6).

3600 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
3601 requirements of Subsection (5)(b).

3602 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
3603 the duration of the contract is subject to penalties in accordance with administrative rules
3604 adopted by the department under Subsection (6).

3605 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
3606 requirements of Subsection (5)(a).

3607 (6) The department shall adopt administrative rules:

3608 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

3609 (b) in coordination with:

3610 (i) the Department of Environmental Quality in accordance with Section [19-1-206](#);

3611 (ii) a public transit district in accordance with Section [17B-2a-818.5](#);

3612 (iii) the State Building Board in accordance with Section [63A-5-205](#);

3613 (iv) the State Capitol Preservation Board in accordance with Section [63C-9-403](#);

3614 (v) the Department of Transportation in accordance with Section [72-6-107.5](#); and
3615 (vi) the Legislature's Administrative Rules Review Committee; and
3616 (c) which establish:
3617 (i) the requirements and procedures a contractor must follow to demonstrate
3618 compliance with this section to the department which shall include:
3619 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or
3620 (b) more than twice in any 12-month period; and
3621 (B) that the actuarially equivalent determination required for qualified health insurance
3622 coverage in Subsection (1) is met by the contractor if the contractor provides the department or
3623 division with a written statement of actuarial equivalency from either:
3624 (I) the Utah Insurance Department;
3625 (II) an actuary selected by the contractor or the contractor's insurer; or
3626 (III) an underwriter who is responsible for developing the employer group's premium
3627 rates;
3628 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
3629 violates the provisions of this section, which may include:
3630 (A) a three-month suspension of the contractor or subcontractor from entering into
3631 future contracts with the state upon the first violation;
3632 (B) a six-month suspension of the contractor or subcontractor from entering into future
3633 contracts with the state upon the second violation;
3634 (C) an action for debarment of the contractor or subcontractor in accordance with
3635 Section [63G-6a-904](#) upon the third or subsequent violation; and
3636 (D) monetary penalties which may not exceed 50% of the amount necessary to
3637 purchase qualified health insurance coverage for an employee and a dependent of an employee
3638 of the contractor or subcontractor who was not offered qualified health insurance coverage
3639 during the duration of the contract; and
3640 (iii) a website on which the department shall post the benchmark for the qualified
3641 health insurance coverage identified in Subsection (1)(c).

3642 (7) (a) (i) In addition to the penalties imposed under Subsection (6), a contractor or
3643 subcontractor who intentionally violates the provisions of this section shall be liable to the
3644 employee for health care costs that would have been covered by qualified health insurance
3645 coverage.

3646 (ii) An employer has an affirmative defense to a cause of action under Subsection
3647 (7)(a)(i) if:

3648 (A) the employer relied in good faith on a written statement of actuarial equivalency
3649 provided by:

3650 (I) an actuary; or

3651 (II) an underwriter who is responsible for developing the employer group's premium
3652 rates; or

3653 (B) the department determines that compliance with this section is not required under
3654 the provisions of Subsection (3) or (4).

3655 (b) An employee has a private right of action only against the employee's employer to
3656 enforce the provisions of this Subsection (7).

3657 (8) Any penalties imposed and collected under this section shall be deposited into the
3658 Medicaid Restricted Account created in Section [26-18-402](#).

3659 (9) The failure of a contractor or subcontractor to provide qualified health insurance
3660 coverage as required by this section:

3661 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
3662 or contractor under Section [~~63G-6a-1603~~] [63G-6a-1602](#) or any other provision in Title 63G,
3663 Chapter 6a, Utah Procurement Code; and

3664 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
3665 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
3666 or construction.

3667 **Section 63. Repealer.**

3668 This bill repeals:

3669 Section [63G-6a-104](#), **Definitions relating to governmental bodies.**

3670 Section **63G-6a-403, Prequalification of potential vendors.**

3671 Section **63G-6a-404, Approved vendor list.**

3672 Section **63G-6a-503, Request for information and response nonbinding.**

3673 Section **63G-6a-504, Contents of request for information.**

3674 Section **63G-6a-505, Protected information.**

3675 Section 64. **Effective date.**

3676 If approved by two-thirds of all the members elected to each house, this bill takes effect
3677 upon approval by the governor, or the day following the constitutional time limit of Utah
3678 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
3679 the date of veto override.

3680 Section 65. **Coordinating S.B. 184 with S.B. 135 -- Merging technical and**
3681 **substantive amendments.**

3682 If this S.B. 184 and S.B. 135, Administrative Law Judge Amendments, both pass and
3683 become law, it is the intent of the Legislature that the Office of Legislative Research and
3684 General Counsel shall prepare the Utah Code database for publication by:

3685 (1) modifying Subsection 63G-6a-103(2), as enacted in S.B. 135, to read:

3686 "(2) "Administrative law judge service" means service provided by an administrative
3687 law judge.";

3688 (2) modifying Subsection 63G-6a-103(41)(m), as enacted in S.B. 135, to read:

3689 "(m) administrative law judge service.";

3690 (3) inserting a newly enacted Section 63G-6a-116 to read:

3691 **63G-6a-116. Procurement of administrative law judge service.**

3692 (1) A procurement unit shall use a standard procurement process under this chapter for
3693 the procurement of administrative law judge service.

3694 (2) Within 30 days after the day on which a conducting procurement unit awards a
3695 contract for administrative law judge service, the conducting procurement unit shall give
3696 written notice to the Department of Human Resource Management that states:

3697 (a) that the conducting procurement unit awarded a contract for administrative law

3698 judge service;
3699 (b) the name of the conducting procurement unit; and
3700 (c) the expected term of the contract.";
3701 (4) modifying language in Subsection 63G-6a-408(2)(c), as enacted in S.B. 135, by
3702 replacing the word "services" in the two places it appears with the word "service" and replacing
3703 "Section 63G-6a-409" with "Subsection 63G-6a-707(3)(a)";
3704 (5) not enacting Section 63G-6a-409 from S.B. 135;
3705 (6) modifying Subsection 63G-6a-410(9)(a), as enacted in this bill, to read:
3706 "(9) (a) (i) After the issuance of a request for statement of qualifications, the
3707 conducting procurement unit shall appoint an evaluation committee consisting of membership
3708 as provided in Subsection (9)(a)(ii) or (iii), as applicable.
3709 (ii) An evaluation committee for a procurement of administrative law judge service
3710 shall consist of:
3711 (A) the head of the conducting procurement unit, or the head's designee;
3712 (B) the head of an executive branch procurement unit other than the conducting
3713 procurement unit, appointed by the executive director of the Department of Human Resource
3714 Management, or the head's designee; and
3715 (C) the executive director of the Department of Human Resource Management, or the
3716 executive director's designee.
3717 (iii) An evaluation committee for each other procurement shall consist of at least three
3718 individuals with at least a general familiarity with or basic understanding of:
3719 (A) the technical requirements relating to the type of procurement item that is the
3720 subject of the request for statement of qualifications; or
3721 (B) the need that the procurement item is intended to address.
3722 (iv) The conducting procurement unit shall ensure that each member of the evaluation
3723 committee under Subsection (9)(a)(iii) and each individual participating in the evaluation
3724 committee process:
3725 (A) does not have a conflict of interest with any vendor that submits a statement of

3726 qualifications;
3727 (B) can fairly evaluate each statement of qualifications;
3728 (C) does not contact or communicate with a vendor concerning the evaluation process
3729 or procurement outside the official evaluation committee process; and
3730 (D) conducts or participates in the evaluation in a manner that ensures a fair and
3731 competitive process and avoids the appearance of impropriety."; and
3732 (7) modifying Subsection 63G-6a-707(3) to read:
3733 "(3) [The] (a) For a procurement of administrative law judge service, an evaluation
3734 committee shall consist of:
3735 (i) the head of the conducting procurement unit, or the head's designee;
3736 (ii) the head of an executive branch procurement unit other than the conducting
3737 procurement unit, appointed by the executive director of the Department of Human Resource
3738 Management, or the head's designee; and
3739 (iii) the executive director of the Department of Human Resource Management, or the
3740 executive director's designee.
3741 (b) For every other procurement requiring an evaluation by an evaluation committee,
3742 the conducting procurement unit shall:
3743 [~~(a)~~] (i) appoint an evaluation committee consisting of at least three individuals with at
3744 least a general familiarity with or basic understanding of:
3745 (A) the technical requirements relating to the type of procurement item that is the
3746 subject of the procurement; or
3747 (B) the need that the procurement item is intended to address; and
3748 [~~(b)~~] (ii) ensure that the evaluation committee and each [~~member of the evaluation~~
3749 ~~committee~~] individual participating in the evaluation committee process:
3750 [~~(i)~~] (A) does not have a conflict of interest with any of the offerors;
3751 [~~(ii)~~] (B) can fairly evaluate each proposal;
3752 [~~(iii)~~] (C) does not contact or communicate with an offeror concerning the procurement
3753 outside the official evaluation committee process; and

3754 [(iv)] (D) conducts or participates in the evaluation in a manner that ensures a fair and
3755 competitive process and avoids the appearance of impropriety.".