

PROCUREMENT CHANGES

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Keven J. Stratton

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies the Utah Procurement Code.

Highlighted Provisions:

This bill:

- ▶ modifies definitions relating to grants and procurements in which the source of the funds imposes requirements on the procurement;
- ▶ modifies a provision regarding the application of the procurement code;
- ▶ modifies a provision relating to exemptions from the procurement code; and
- ▶ modifies a provision relating to issuing and conducting procurement units.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-6a-103, as last amended by Laws of Utah 2014, Chapter 196

63G-6a-105, as last amended by Laws of Utah 2013, Chapter 445

63G-6a-107, as last amended by Laws of Utah 2014, Chapters 180, 196, and 313

63G-6a-109, as enacted by Laws of Utah 2014, Chapter 196

63G-6a-1702, as last amended by Laws of Utah 2014, Chapter 196

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

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

31 **63G-6a-103. Definitions.**

32 As used in this chapter:

33 (1) "Architect-engineer services" means:

34 (a) professional services within the scope of the practice of architecture as defined in
35 Section **58-3a-102**;

36 (b) professional engineering as defined in Section **58-22-102**; or

37 (c) master planning and programming services.

38 (2) "Bidder" means a person who responds to an invitation for bids.

39 (3) "Change directive" means a written order signed by the procurement officer that
40 directs the contractor to suspend work or make changes, as authorized by contract, without the
41 consent of the contractor.

42 (4) "Change order" means a written alteration in specifications, delivery point, rate of
43 delivery, period of performance, price, quantity, or other provisions of a contract, upon mutual
44 agreement of the parties to the contract.

45 (5) "Chief procurement officer" means the chief procurement officer appointed under
46 Subsection **63G-6a-302(1)**.

47 (6) "Conducting procurement unit" means a procurement unit that conducts all aspects
48 of a procurement:

49 (a) except:

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

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

52 (b) including:

53 (i) preparing any solicitation document;

54 (ii) appointing an evaluation committee;

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

56 **63G-6a-707(5)(b)** relating to scores calculated for costs of proposals;

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

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

60 (vi) administering a contract.

61 (7) (a) "Construction" means the process of building, renovating, altering, improving,
62 or repairing a public building or public work.

63 (b) "Construction" does not include the routine operation, routine repair, or routine
64 maintenance of an existing structure, building, or real property.

65 (8) (a) "Construction manager/general contractor" means a contractor who enters into a
66 contract for the management of a construction project when the contract allows the contractor
67 to subcontract for additional labor and materials that are not included in the contractor's cost
68 proposal submitted at the time of the procurement of the contractor's services.

69 (b) "Construction manager/general contractor" does not include a contractor whose
70 only subcontract work not included in the contractor's cost proposal submitted as part of the
71 procurement of the contractor's services is to meet subcontracted portions of change orders
72 approved within the scope of the project.

73 (9) "Contract" means an agreement for the procurement or disposal of a procurement
74 item.

75 (10) "Contractor" means a person who is awarded a contract with a procurement unit.

76 (11) "Cooperative procurement" means procurement conducted by, or on behalf of:

77 (a) more than one procurement unit; or

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

79 (12) "Cost-plus-a-percentage-of-cost contract" means a contract where the contractor is
80 paid a percentage over and above the contractor's actual expenses or costs.

81 (13) "Cost-reimbursement contract" means a contract under which a contractor is
82 reimbursed for costs which are allowed and allocated in accordance with the contract terms and
83 the provisions of this chapter, and a fee, if any.

84 (14) "Days" means calendar days, unless expressly provided otherwise.

85 (15) "Definite quantity contract" means a fixed price contract that provides for the

86 supply of a specified amount of goods over a specified period, with deliveries scheduled
87 according to a specified schedule.

88 (16) "Design-build" means the procurement of architect-engineer services and
89 construction by the use of a single contract with the design-build provider.

90 (17) "Directed procurement" means a procurement of a procurement item in which the
91 source of the funds used to procure the procurement item:

92 (a) directs from whom the procurement item is to be procured; or

93 (b) imposes requirements on how the procurement is to be administered.

94 ~~[(17)]~~ (18) "Director" means the director of the division.

95 ~~[(18)]~~ (19) "Established catalogue price" means the price included in a catalogue, price
96 list, schedule, or other form that:

97 (a) is regularly maintained by a manufacturer or contractor;

98 (b) is either published or otherwise available for inspection by customers; and

99 (c) states prices at which sales are currently or were last made to a significant number
100 of any category of buyers or buyers constituting the general buying public for the supplies or
101 services involved.

102 ~~[(19)]~~ (20) "Fixed price contract" means a contract that provides a price, for each
103 procurement item obtained under the contract, that is not subject to adjustment except to the
104 extent that:

105 (a) the contract provides, under circumstances specified in the contract, for an
106 adjustment in price that is not based on cost to the contractor; or

107 (b) an adjustment is required by law.

108 ~~[(20)]~~ (21) "Fixed price contract with price adjustment" means a fixed price contract
109 that provides for an upward or downward revision of price, precisely described in the contract,
110 that:

111 (a) is based on the consumer price index or another commercially acceptable index,
112 source, or formula; and

113 (b) is not based on a percentage of the cost to the contractor.

114 ~~[(21)(a)]~~ (22) "Grant" means ~~[furnishing, by a public entity or by any other public or~~
115 ~~private source, financial or other assistance to a person to support a program authorized by law]~~
116 an expenditure of public funds or other assistance, or an agreement to expend public funds or
117 other assistance, for a public purpose authorized by law, without acquiring a procurement item
118 in exchange.

119 ~~[(b) "Grant" does not include:]~~

120 ~~[(i) an award whose primary purpose is to procure an end product or procurement item;~~
121 ~~or]~~

122 ~~[(ii) a contract that is awarded as a result of a procurement or a procurement process.]~~

123 ~~{(22)}~~ (23) "Head of a procurement unit" means:

124 (a) as it relates to a legislative procurement unit, any person designated by rule made
125 by the applicable rulemaking authority;

126 (b) as it relates to an executive branch procurement unit:

127 (i) the director of a division; or

128 (ii) any other person designated by the board, by rule;

129 (c) as it relates to a judicial procurement unit:

130 (i) the Judicial Council; or

131 (ii) any other person designated by the Judicial Council, by rule;

132 (d) as it relates to a local government procurement unit:

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

134 (ii) any other person designated by the local government procurement unit;

135 (e) as it relates to a local district, the board of trustees of the local district or a designee
136 of the board of trustees;

137 (f) as it relates to a special service district, the governing body of the special service
138 district or a designee of the governing body;

139 (g) as it relates to a local building authority, the board of directors of the local building
140 authority or a designee of the board of directors;

141 (h) as it relates to a conservation district, the board of supervisors of the conservation

142 district or a designee of the board of supervisors;

143 (i) as it relates to a public corporation, the board of directors of the public corporation
144 or a designee of the board of directors;

145 (j) as it relates to a school district or any school or entity within a school district, the
146 board of the school district, or the board's designee;

147 (k) as it relates to a charter school, the individual or body with executive authority over
148 the charter school, or the individual's or body's designee;

149 (l) as it relates to an institution of higher education of the state, the president of the
150 institution of higher education, or the president's designee; or

151 (m) as it relates to a public transit district, the board of trustees or a designee of the
152 board of trustees.

153 [~~23~~] (24) "Indefinite quantity contract" means a fixed price contract that:

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

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

157 (ii) provides a maximum purchase limit.

158 [~~24~~] (25) "Independent procurement authority" means authority granted to a
159 procurement unit under Subsection 63G-6a-106(4)(a).

160 [~~25~~] (26) "Invitation for bids" includes all documents, including documents that are
161 attached or incorporated by reference, used for soliciting bids to provide a procurement item to
162 a procurement unit.

163 [~~26~~] (27) "Issuing procurement unit" means a procurement unit that:

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

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

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

167 [~~27~~] (28) "Labor hour contract" is a contract where:

168 (a) the supplies and materials are not provided by, or through, the contractor; and

169 (b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and

170 profit for a specified number of labor hours or days.

171 ~~[(28)]~~ (29) "Multiple award contracts" means the award of a contract for an indefinite
172 quantity of a procurement item to more than one bidder or offeror.

173 ~~[(29)]~~ (30) "Multiyear contract" means a contract that extends beyond a one-year
174 period, including a contract that permits renewal of the contract, without competition, beyond
175 the first year of the contract.

176 ~~[(30)]~~ (31) "Municipality" means a city or a town.

177 ~~[(31)]~~ (32) "Offeror" means a person who responds to a request for proposals.

178 ~~[(32)]~~ (33) "Preferred bidder" means a bidder that is entitled to receive a reciprocal
179 preference under the requirements of this chapter.

180 ~~[(33)(a)]~~ (34) "Procure" ~~[or "procurement" means buying, purchasing, renting, leasing,~~
181 ~~leasing with an option to purchase, or otherwise acquiring a procurement item]~~ means to
182 acquire a procurement item through a procurement.

183 (35) "Procurement":

184 (a) means an expenditure of public funds, or an agreement to expend public funds, in
185 exchange for a procurement item;

186 (b) ~~["Procure" or "procurement"]~~ includes all functions that pertain to the ~~[obtaining]~~
187 acquisition of a procurement item, including:

188 (i) the description of requirements;

189 (ii) the selection process;

190 (iii) solicitation of sources;

191 (iv) the preparation for soliciting a procurement item; and

192 (v) the award of a contract~~[-];~~ and

193 (c) does not include a grant.

194 ~~[(34)]~~ (36) "Procurement item" means a supply, a service, construction, or technology.

195 ~~[(35)]~~ (37) "Procurement officer" means:

196 (a) as it relates to a procurement unit with independent procurement authority:

197 (i) the head of the procurement unit;

- 198 (ii) a designee of the head of the procurement unit; or
- 199 (iii) a person designated by rule made by the applicable rulemaking authority; or
- 200 (b) as it relates to the division or a procurement unit without independent procurement
- 201 authority, the chief procurement officer.

202 [~~36~~] (38) "Professional service" means a service that requires a high degree of

203 specialized knowledge and discretion in the performance of the service, including:

- 204 (a) legal services;
- 205 (b) consultation services;
- 206 (c) architectural services;
- 207 (d) engineering;
- 208 (e) design;
- 209 (f) underwriting;
- 210 (g) bond counsel;
- 211 (h) financial advice;
- 212 (i) construction management;
- 213 (j) medical services;
- 214 (k) psychiatric services; or
- 215 (l) counseling services.

216 [~~37~~] (39) "Protest officer" means:

- 217 (a) as it relates to the division or a procurement unit with independent procurement
- 218 authority:

- 219 (i) the head of the procurement unit;
- 220 (ii) a designee of the head of the procurement unit; or
- 221 (iii) a person designated by rule made by the applicable rulemaking authority; or
- 222 (b) as it relates to a procurement unit without independent procurement authority, the
- 223 chief procurement officer or the chief procurement officer's designee.

224 [~~38~~] (40) "Request for information" means a nonbinding process where a

225 procurement unit requests information relating to a procurement item.

226 [~~(39)~~] (41) "Request for proposals" includes all documents, including documents that
227 are attached or incorporated by reference, used for soliciting proposals to provide a
228 procurement item to a procurement unit.

229 [~~(40)~~] (42) "Request for statement of qualifications" means all documents used to
230 solicit information about the qualifications of the person interested in responding to a potential
231 procurement, including documents attached or incorporated by reference.

232 [~~(41)~~] (43) "Requirements contract" means a contract:

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

235 (b) that:

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

237 (ii) provides a maximum purchase limit.

238 [~~(42)~~] (44) "Responsible" means being capable, in all respects, of:

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

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

242 [~~(43)~~] (45) "Responsive" means conforming in all material respects to the invitation for
243 bids or request for proposals.

244 [~~(44)~~] (46) "Sealed" means manually or electronically sealed and submitted bids or
245 proposals.

246 [~~(45)~~] (47) (a) "Services" means the furnishing of labor, time, or effort by a contractor,
247 not involving the delivery of a specific end product other than a report that is incidental to the
248 required performance.

249 (b) "Services" does not include an employment agreement or a collective bargaining
250 agreement.

251 [~~(46)~~] (48) "Sole source contract" means a contract resulting from a sole source
252 procurement.

253 [~~(47)~~] (49) "Sole source procurement" means a procurement without competition

254 pursuant to a determination under Subsection [63G-6a-802\(2\)\(a\)](#) that there is only one source
255 for the procurement item.

256 ~~[(48)]~~ (50) "Solicitation" means an invitation for bids, request for proposals, notice of a
257 sole source procurement, request for statement of qualifications, request for information, or any
258 document used to obtain bids, proposals, pricing, qualifications, or information for the purpose
259 of entering into a procurement contract.

260 ~~[(49)]~~ (51) "Specification" means any description of the physical or functional
261 characteristics, or nature of a procurement item included in an invitation for bids or a request
262 for proposals, or otherwise specified or agreed to by a procurement unit, including a description
263 of:

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

266 ~~[(50)]~~ (52) "Standard procurement process" means one of the following methods of
267 obtaining a procurement item:

- 268 (a) bidding, as described in Part 6, Bidding;
- 269 (b) request for proposals, as described in Part 7, Request for Proposals; or
- 270 (c) small purchases, in accordance with the requirements established under Section
271 [63G-6a-408](#).

272 ~~[(51)]~~ (53) "State cooperative contract" means a contract awarded by the division for
273 and in behalf of all public entities.

274 ~~[(52)]~~ (54) "Statement of qualifications" means a written statement submitted to a
275 procurement unit in response to a request for statement of qualifications.

276 ~~[(53)]~~ (55) (a) "Subcontractor" means a person under contract with a contractor or
277 another subcontractor to provide services or labor for design or construction.

278 (b) "Subcontractor" includes a trade contractor or specialty contractor.

279 (c) "Subcontractor" does not include a supplier who provides only materials,
280 equipment, or supplies to a contractor or subcontractor.

281 ~~[(54)]~~ (56) "Supplies" means all property, including equipment, materials, and printing.

282 [~~(55)~~] (57) "Tie bid" means that the lowest responsive and responsible bids are
283 identical in price.

284 [~~(56)~~] (58) "Time and materials contract" means a contract where the contractor is
285 paid:

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

290 Section 2. Section **63G-6a-105** is amended to read:

291 **63G-6a-105. Application of chapter.**

292 (1) The provisions of this chapter that are enacted on May 1, 2013, apply only to a
293 procurement advertised, or begun on or after May 1, 2013, unless the parties agree to have the
294 provisions apply with respect to a procurement that was advertised or begun before May 1,
295 2013, but is not completed before May 1, 2013.

296 (2) (a) Except as provided in Section **63G-6a-107**, this chapter shall apply to every
297 expenditure of public funds irrespective of the source of the funds, including federal assistance,
298 by any procurement unit, under any contract.

299 (b) The provisions of this chapter do not apply to a public entity that is not a
300 procurement unit.

301 (3) Except as provided in Subsection **17B-1-108(3)** relating to local districts, the
302 following procurement units shall adopt ordinances or resolutions relating to the procurement
303 of architect-engineer services not inconsistent with the provisions of Part 15,

304 Architect-Engineer Services:

- 305 (a) an educational procurement unit;
- 306 (b) a conservation district;
- 307 (c) a local building authority;
- 308 (d) a local district;
- 309 (e) a public corporation; or

310 (f) a special service district.

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

312 (a) a county;

313 (b) a municipality; or

314 (c) the Utah Housing Corporation.

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

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

319 (7) Unless otherwise provided by statute, this chapter does not apply to procurement of
320 real property.

321 (8) Notwithstanding any provision of this chapter, a procurement unit may administer a
322 direct procurement in accordance with the requirements imposed by the source of the funds
323 used to procure the procurement item.

324 Section 3. Section **63G-6a-107** is amended to read:

325 **63G-6a-107. Exemptions from chapter -- Compliance with federal law.**

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

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

330 [~~(b) grants awarded by the state or contracts between the state and any of the~~
331 ~~following;~~]

332 [~~(i) an educational procurement unit;~~]

333 [~~(ii) a conservation district;~~]

334 [~~(iii) a local building authority;~~]

335 [~~(iv) a local district;~~]

336 [~~(v) a public corporation;~~]

337 [~~(vi) a special service district;~~]

338 ~~[(vii) a public transit district; or]~~
339 ~~[(viii) two or more of the entities described in Subsections (1)(b)(i) through (vii),~~
340 ~~acting under legislation that authorizes intergovernmental cooperation;]~~
341 (b) a grant;
342 (c) a contract between procurement units;
343 ~~[(e)]~~ (d) medical supplies or medical equipment, including service agreements for
344 medical equipment, obtained through a purchasing consortium by the Utah State Hospital, the
345 Utah State Developmental Center, the University of Utah Hospital, or any other hospital owned
346 by the state or a political subdivision of the state, if:
347 (i) the consortium uses a competitive procurement process; and
348 (ii) the chief administrative officer of the hospital makes a written finding that the
349 prices for purchasing medical supplies and medical equipment through the consortium are
350 competitive with market prices;
351 ~~[(d)]~~ (e) the purchase of firefighting supplies or equipment by the Division of Forestry,
352 Fire, and State Lands, created in Section [65A-1-4](#), through the federal General Services
353 Administration or the National Fire Cache system;
354 ~~[(e)]~~ (f) goods purchased for resale to the public; or
355 ~~[(f)]~~ (g) the Division of Parks and Recreation, during a fiscal emergency, as defined by
356 Subsection [79-4-1102](#)(1), if the division is acting under the authority described in Sections
357 [79-4-1101](#) through [79-4-1103](#).
358 (2) This chapter does not prevent a procurement unit from complying with the terms
359 and conditions of any grant, gift, or bequest that is otherwise consistent with law.
360 (3) This chapter does not apply to any action taken by a majority of both houses of the
361 Legislature.
362 (4) Notwithstanding any conflicting provision of this chapter, when a procurement
363 involves the expenditure of federal assistance, federal contract funds, local matching funds, or
364 federal financial participation funds, the procurement unit shall comply with mandatory
365 applicable federal law and regulations not reflected in this chapter.

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

368 Section 4. Section 63G-6a-109 is amended to read:

369 **63G-6a-109. Issuing procurement unit and conducting procurement unit.**

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

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

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

375 (b) An executive branch procurement unit administering a directed procurement is both
376 the issuing procurement unit and the conducting procurement unit.

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

379 Section 5. Section 63G-6a-1702 is amended to read:

380 **63G-6a-1702. Appeal to Utah State Procurement Policy Board -- Appointment of**
381 **procurement appeals panel -- Proceedings.**

382 (1) This part applies to all procurement units other than:

383 (a) a legislative procurement unit;

384 (b) a judicial procurement unit;

385 (c) a local government procurement unit; or

386 (d) a public transit district.

387 (2) (a) Subject to Section 63G-6a-1703, a party to a protest involving a procurement
388 unit other than a procurement unit listed in Subsection (1)(a), (b), (c), or (d) may appeal the
389 protest decision to the board by filing a written notice of appeal with the chair of the board
390 within seven days after:

391 (i) the day on which the written decision described in Section 63G-6a-1603 is:

392 (A) personally served on the party or the party's representative; or

393 (B) emailed or mailed to the address or email address of record provided by the party

394 under Subsection 63G-6a-1602~~[(3)]~~(2); or

395 (ii) the day on which the 30-day period described in Subsection 63G-6a-1603(7) ends,
396 if a written decision is not issued before the end of the 30-day period.

397 (b) A person appealing a debarment or suspension of a procurement unit other than a
398 procurement unit listed in Subsection (1)(a), (b), (c), or (d) shall file a written notice of appeal
399 with the chair of the board no later than seven days after the debarment or suspension.

400 (c) A notice of appeal under Subsection (2)(a) or (b) shall:

401 (i) include the address of record and email address of record of the party filing the
402 notice of appeal; and

403 (ii) be accompanied by a copy of any written protest decision or debarment or
404 suspension order.

405 (3) A person may not base an appeal of a protest under this section on a ground not
406 specified in the person's protest under Section 63G-6a-1602.

407 (4) A person may not appeal from a protest described in Section 63G-6a-1602, unless:

408 (a) a decision on the protest has been issued; or

409 (b) a decision is not issued and the 30-day period described in Subsection
410 63G-6a-1603(7), or a longer period agreed to by the parties, has passed.

411 (5) The chair of the board or a designee of the chair who is not employed by the
412 procurement unit responsible for the solicitation, contract award, or other action complained of:

413 (a) shall, within seven days after the day on which the chair receives a timely written
414 notice of appeal under Subsection (2), and if all the requirements of Subsection (2) and Section
415 63G-6a-1703 have been met, appoint:

416 (i) a procurement appeals panel to hear and decide the appeal, consisting of at least
417 three individuals, each of whom is:

418 (A) a member of the board; or

419 (B) a designee of a member appointed under Subsection ~~[(4)]~~ (5)(a)(i)(A), if the
420 designee is approved by the chair; and

421 (ii) one of the members of the procurement appeals panel to be the chair of the panel;

422 (b) may:

423 (i) appoint the same procurement appeals panel to hear more than one appeal; or

424 (ii) appoint a separate procurement appeals panel for each appeal;

425 (c) may not appoint a person to a procurement appeals panel if the person is employed

426 by the procurement unit responsible for the solicitation, contract award, or other action

427 complained of; and

428 (d) shall, at the time the procurement appeals panel is appointed, provide appeals panel

429 members with a copy of the protest officer's written decision and all other records and other

430 evidence that the protest officer relied on in reaching the decision.

431 (6) A procurement appeals panel described in Subsection (5) shall:

432 (a) consist of an odd number of members;

433 (b) conduct an informal proceeding on the appeal within 60 days after the day on which

434 the procurement appeals panel is appointed:

435 (i) unless all parties stipulate to a later date; and

436 (ii) subject to Subsection (8);

437 (c) at least seven days before the proceeding, mail, email, or hand-deliver a written

438 notice of the proceeding to the parties to the appeal; and

439 (d) within seven days after the day on which the proceeding ends:

440 (i) issue a written decision on the appeal; and

441 (ii) mail, email, or hand-deliver the written decision on the appeal to the parties to the

442 appeal and to the protest officer.

443 (7) (a) The deliberations of a procurement appeals panel may be held in private.

444 (b) If the procurement appeals panel is a public body, as defined in Section [52-4-103](#),

445 the procurement appeals panel shall comply with Section [52-4-205](#) in closing a meeting for its

446 deliberations.

447 (8) A procurement appeals panel may continue a procurement appeals proceeding

448 beyond the 60-day period described in Subsection (6)(b) if the procurement appeals panel

449 determines that the continuance is in the interests of justice.

- 450 (9) A procurement appeals panel:
- 451 (a) shall, subject to Subsection (9)(c), consider the appeal based solely on:
- 452 (i) the protest decision;
- 453 (ii) the record considered by the person who issued the protest decision; and
- 454 (iii) if a protest hearing was held, the record of the protest hearing;
- 455 (b) may not take additional evidence;
- 456 (c) notwithstanding Subsection (9)(b), may, during an informal hearing, ask questions
- 457 and receive responses regarding the appeal, the protest decision, or the record in order to assist
- 458 the panel to understand the appeal, the protest decision, and the record; and
- 459 (d) shall uphold the decision of the protest officer, unless the decision is arbitrary and
- 460 capricious or clearly erroneous.
- 461 (10) If a procurement appeals panel determines that the decision of the protest officer is
- 462 arbitrary and capricious or clearly erroneous, the procurement appeals panel:
- 463 (a) shall remand the matter to the protest officer, to cure the problem or render a new
- 464 decision;
- 465 (b) may recommend action that the protest officer should take; and
- 466 (c) may not order that:
- 467 (i) a contract be awarded to a certain person;
- 468 (ii) a contract or solicitation be cancelled; or
- 469 (iii) any other action be taken other than the action described in Subsection (10)(a).
- 470 (11) The board shall make rules relating to the conduct of an appeals proceeding,
- 471 including rules that provide for:
- 472 (a) expedited proceedings; and
- 473 (b) electronic participation in the proceedings by panel members and participants.
- 474 (12) The Rules of Evidence do not apply to an appeals proceeding.