

Procurement Provisions

Special Districts Association, November 2013

- By Alan S. Bachman (or equivalent)
- Assistant Attorney General
- Assigned to:
 - Division of Facilities Construction & Management
 - Division of Purchasing and General Services
 - Capitol Preservation Board
 - Prison Relocation and Development Authority, Building Board, etc.

Scope of Presentation

Multiple-stage bidding and proposing
Public notifications and records
State contract purchasing
State Procurement Policy Board

Note: I cannot be your legal advisor. Please consult with your own legal advisor on these matters.

Multi-Stage Process

➤ MULTI-STAGE PROCESSES

➤ 63G-6a-609. Multiple stage bidding process.

- (1) The division or a procurement unit with independent procurement authority may conduct a bid in multiple stages, to:
 - (a) narrow the number of bidders who will progress to a subsequent stage;
 - (b) prequalify bidders for subsequent stages, in accordance with Section 63G-6a-403;
 - (c) enter into a contract for a single procurement; or
 - (d) award multiple contracts for a series of upcoming procurements.
- (2) The invitation for bids for a multiple stage bidding process shall:
 - (a) describe the requirements for, and purpose of, each stage of the process;
 - (b) indicate whether the procurement unit intends to award:
 - (i) a single contract; or
 - (ii) multiple contracts for a series of upcoming procurements; and
 - (c) state that:
 - (i) the first stage is for prequalification only;
 - (ii) a bidder may not submit any pricing information in the first stage of the process; and
 - (iii) bids in the second stage will only be accepted from a person who prequalifies in the first stage.

- (3) During the first stage, the procurement unit:
 - (a) shall prequalify bidders to participate in subsequent stages, in accordance with Section 63G-6a-403;
 - (b) shall prohibit the submission of pricing information until the final stage; and
 - (c) may, before beginning the second stage, request additional information to clarify the qualifications of the bidders who submit timely responses.
- (4) Contracts may only be awarded for a procurement item described in stage one of the invitation for bids.

- (5) The division or a procurement unit with independent procurement authority may conduct a bid in as many stages as it determines to be appropriate.
- (6) Except as otherwise expressly provided in this section, the division or a procurement unit with independent procurement authority shall conduct a multiple stage process in accordance with this part.
- (7) The applicable rulemaking authority may make rules governing the use of a multiple stage process described in this section.
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- Amended by Chapter 445, 2013 General Session

- **63G-6a-710. Multiple stage process. (FOR RFPS!)**
- (1) The division or a procurement unit with independent procurement authority may conduct a **request for proposals in stages**, where **an earlier stage is used to qualify offerors** for subsequent stages or to narrow the number of offerors that will move on to subsequent stages.
- (2) Except as otherwise expressly provided in this section, the division or a procurement unit with independent procurement authority shall conduct a multiple stage process in accordance with this part.

PUBLIC NOTIFICATIONS AND RECORDS

63G-6a-406. Public notice of procurement process or sole source procurement.

- (1) **The division or a procurement unit with independent procurement authority that issues an invitation for bids, a request for proposals, or a notice of sole source** procurement required to be published in accordance with this section, shall provide **public notice that includes:**
 - (a) for an invitation for bids or a request for proposals, the name of the issuing procurement unit;
 - (b) the name of the procurement unit acquiring the procurement item;
 - (c) for an invitation for bids or a request for proposals, information on how to contact the issuing procurement unit in relation to the invitation for bids or request for proposals;
 - (d) for a notice of sole source procurement, contact information and other information relating to contesting, or obtaining additional information in relation to, the sole source procurement;
 - (e) for an invitation for bids or a request for proposals, the date of the opening and closing of the invitation for bids or request for proposals;
 - (f) **for a notice of sole source procurement, the earliest date that the procurement unit may make the sole source procurement;**
 - (g) information on how to obtain a copy of the invitation for bids, request for proposals, or further information related to the sole source procurement; and
 - (h) a general description of the procurement items that will be obtained through the standard procurement process or sole source procurement.

- (2) Except as provided in Subsection (4), for an invitation for bids or a request for proposals, the issuing procurement unit shall publish the notice described in Subsection (1), **using at least one of the following methods:**
 - (a) at least seven days before the day of the deadline for submission of a bid or other response, publish the notice:
 - (i) in a newspaper of general circulation in the state; or
 - (ii) in a newspaper of local circulation in the area:
 - (A) directly impacted by the procurement; or
 - (B) over which the procurement unit has jurisdiction; or
 - (b) at least seven consecutive days before the day of the deadline for submission of a bid or other response, publish the notice:
 - (i) on the main website for the issuing procurement unit or the procurement unit acquiring the procurement item; or
 - (ii) on a state website that is owned, managed by, or provided under contract with, the division for posting a public procurement notice.

- (3) Except as provided in Subsection (4), **for a sole source procurement for which notice is required to be published in accordance with this section**, the procurement unit making the sole source procurement shall publish the notice described in Subsection (1), using at least one of the following methods:
 - (a) at least seven days before the day on which the procurement unit makes the sole source procurement, publish the notice:
 - (i) in a newspaper of general circulation in the state; or
 - (ii) in a newspaper of local circulation in the area:
 - (A) directly impacted by the procurement; or
 - (B) over which the procurement unit has jurisdiction; or
 - (b) at least seven consecutive days before the day on which the procurement unit makes the sole source procurement, publish the notice:
 - (i) on the main website for the procurement unit acquiring the procurement item; or
 - (ii) on a state website that is owned by, managed by, or provided under contract with, the division for posting a procurement notice.

- (4) An issuing procurement unit, or the procurement unit making a sole source procurement may reduce the seven-day period described in Subsection (2) or (3), if the procurement officer or the procurement officer's designee signs a written statement that:
 - (a) states that a shorter time is needed; and
 - (b) as it relates to an invitation for bids or a request for proposals, determines that competition from multiple sources may be obtained within the shorter period of time.
- (5) (a) An issuing procurement unit shall make a copy of an invitation for bids or a request for proposals available for public inspection at the main office of the issuing procurement unit or on the website described in Subsection (2)(b).
- (b) A procurement unit making a sole source procurement shall make a copy of information related to the sole source procurement available for public inspection at the main office of the procurement unit or on the website described in Subsection (3)(b).
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- Amended by Chapter 445, 2013 General Session

63G-6a-2001. Title.

This part is known as "Records."

➤ **63G-6a-2002. Records -- Retention.**

- (1) **All procurement records** shall be retained and disposed of in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.
- (2) Written determinations required by this chapter shall be retained in the appropriate official contract file of:
 - (a) the division;
 - (b) **the procurement unit with independent procurement authority**; or
 - (c) for a legislative procurement unit or a judicial procurement unit, the person designated by rule made by the applicable rulemaking authority.

- (3) A procurement unit shall keep, and make available to the public, upon request, written records of procurements for which an expenditure of \$50 or more is made, for the longer of:
 - (a) four years;
 - (b) the time otherwise required by law; or
 - (c) the time period provided by rule made by the applicable rulemaking authority.
- (4) The written record described in Subsection (3) shall include:
 - (a) the **name** of the provider from whom the procurement was made;
 - (b) a **description** of the procurement item;
 - (c) the **date of** the procurement; and
 - (d) the **expenditure** made for the procurement.
- Amended by Chapter 445, 2013 General Session

➤ **63G-6a-2003. Records of contracts made -- Audits -- Contract requirements.**

➤ The chief procurement officer, the procurement officer, or the head of a procurement unit with independent procurement authority shall maintain a **record of all contracts made under Section 63G-6a-408, 63G-6a-802, or 63G-6a-803**, in accordance with Title 63G, Chapter 2, Government Records Access and Management Act. The record shall contain each contractor's name, the amount and type of each contract, and a listing of the procurement items to which the contract relates. **[NOTE: small purchases, sole sources, emergency procurements]**

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➤ Amended by Chapter 445, 2013 General Session

➤ **63G-6a-1603. Decisions of protest officer to be in writing -- Effect of no writing.**

➤ (1) After a timely protest is filed in accordance with Section 63G-6a-1602, the protest officer:

➤ (a) shall consider the protest; and

➤ (b) may hold a hearing on the protest.

➤ (2) (a) The protest officer may:

➤ (i) subpoena witnesses and compel their attendance at a protest hearing; or

➤ (ii) subpoena documents for production at a protest hearing.

➤ (b) The Rules of Evidence do not apply to a protest hearing.

➤ (c) The applicable rulemaking authority shall make rules relating to intervention in a protest, including designating:

➤ (i) who may intervene; and

➤ (ii) the time and manner of intervention.

➤ **(d) If a hearing on a protest is held under this section, the protest officer shall:**

➤ **(i) record the hearing;**

➤ **(ii) preserve all evidence presented at the hearing; and**

➤ **(iii) preserve all records and other evidence relied upon in reaching the written decision described in this section.**

- (e) Regardless of whether a hearing on a protest is held under this section, the protest officer shall preserve all records and other evidence relied upon in reaching the written decision.
- (f) The records described in Subsections (2)(d) and (e) may not be destroyed until the decision, and any appeal of the decision, becomes final.
- (g) A protest officer who holds a hearing, considers a protest, or issues a written decision under this section does not waive the right to, at a later date, question or challenge the protest officer's jurisdiction to hold the hearing, consider the protest, or render the decision.
- (3) A protest officer, or the protest officer's designee, shall promptly issue a written decision regarding any protest, debarment, suspension, or contract controversy if it is not settled by mutual agreement. The decision shall state the reasons for the action taken and inform the protestor, contractor, or prospective contractor of the right to judicial or administrative review as provided in this chapter. .
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➤ STATE CONTRACTS

➤ Will discuss pricing and terms.

Sometimes the terms in a negotiated large contract, including insurance, indemnification and warranty, is better than in a small contract. Even though Special Districts are not required to buy from State contracts, they may want to do so.

➤ **63G-6a-408. Small purchases.**

➤ (1) As used in this section:

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

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

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

➤ (2) The applicable rulemaking authority may make rules governing small purchases, including:

➤ (a) establishing expenditure thresholds, including:

➤ (i) an annual cumulative threshold;

➤ (ii) an individual procurement threshold; and

➤ (iii) a single procurement aggregate threshold;

➤ (b) establishing procurement requirements relating to the thresholds described in Subsection (2)(a); and

➤ (c) the use of electronic, telephone, or written quotes.

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

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

- (5) Subsection (4) does not apply if:
 - (a) the procurement item is obtained for an unanticipated, urgent or unanticipated, emergency condition, including:
 - (i) an item needed to avoid stopping a public construction project;
 - (ii) an immediate repair to a facility or equipment; or
 - (iii) another emergency condition; or

- (b) the chief procurement officer or the head of a procurement unit that is an **executive branch procurement unit** with independent procurement authority:
 - (i) **determines in writing** that it is in the best interest of the procurement unit to obtain an individual procurement item outside of the state contract, comparing:
 - (A) **the contract terms and conditions applicable to the procurement item under the state contract with the contract terms and conditions applicable to the procurement item if the procurement item is obtained outside of the state contract;**
 - (B) **the maintenance and service** applicable to the procurement item under the state contract with the maintenance and service applicable to the procurement item if the procurement item is obtained outside of the state contract;
 - (C) **the warranties applicable** to the procurement item under the state contract with the warranties applicable to the procurement item if the procurement item is obtained outside of the state contract;
 - (D) **the quality of the procurement item** under the state contract with the quality of the procurement item if the procurement item is obtained outside of the state contract; and
 - (E) **the cost of the procurement item** under the state contract with the cost of the procurement item if the procurement item is obtained outside of the state contract;
 - (ii) for a procurement item that, if defective in its manufacture, installation, or performance, may result in serious physical injury, death, or substantial property damage, determines in writing that the terms and conditions, relating to liability for injury, death, or property damage, available from the source other than the contractor who holds the state contract, are similar to, or better than, the terms and conditions available under the state contract; and
 - (iii) grants an exception, in writing, to the requirement described in Subsection (4).

- (6) Except as otherwise expressly provided in this section, a procurement unit:
- (a) may not use the small purchase standard procurement process described in this section for ongoing, continuous, and regularly scheduled procurements that exceed the annual cumulative threshold; and
- (b) shall make its ongoing, continuous, and regularly scheduled procurements that exceed the annual cumulative threshold through a contract awarded through another standard procurement process described in this chapter or an applicable exception to another standard procurement process, described in Part 8, Exceptions to Procurement Requirements.

- (7) This section does not prohibit regularly scheduled payments for a procurement item obtained under another provision of this chapter.
- (8) It is unlawful for a person to intentionally or knowingly divide a procurement into one or more smaller procurements with the intent to make a procurement:
 - (a) qualify as a small purchase, if, before dividing the procurement, it would not have qualified as a small purchase; or
 - (b) meet a threshold established by rule made by the applicable rulemaking authority, if, before dividing the procurement, it would not have met the threshold.
- (9) A division of a procurement that is prohibited under Subsection (8) includes doing any of the following with the intent or knowledge described in Subsection (8):
 - (a) making two or more separate purchases;
 - (b) dividing an invoice or purchase order into two or more invoices or purchase orders; or
 - (c) making smaller purchases over a period of time.

- (10) A person who violates Subsection (8) is subject to the criminal penalties described in Section 63G-6a-2305.
- (11) The Division of Finance within the Department of Administrative Services may conduct an audit of an executive branch procurement unit to verify compliance with the requirements of this section.
- (12) An executive branch procurement unit may not make a small purchase after January 1, 2014, unless the chief procurement officer certifies that the person responsible for procurements in the procurement unit has satisfactorily completed training on this section and the rules made under this section.
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- Amended by Chapter 445, 2013 General Session

➤ **63G-6a-2101. Title.**

➤ This part is known as "Interaction Between Procurement Units."



➤ Amended by Chapter 445, 2013 General Session

➤ **63G-6a-2102. Agreements between procurement units.**

➤ A procurement unit may enter into an agreement with one or more other procurement units to:

- (1) sponsor, conduct, or administer a **cooperative agreement** for:
 - (a) the procurement of a procurement item, in accordance with the requirements of Section 63G-6a-2105; or
 - (b) the disposal of a procurement item;
- (2) cooperatively use a procurement item;
- (3) commonly use or share warehousing facilities, capital equipment, and other facilities;
- (4) provide personnel, if the receiving procurement unit pays the procurement unit providing the personnel the direct and indirect cost of providing the personnel, in accordance with the agreement; or
- (5) make available informational, technical, and other services, if:
 - (a) the requirements of the procurement unit tendering the services have precedence over the procurement unit that receives the services; and
 - (b) the receiving procurement unit pays the expenses of the services provided, in accordance with the agreement.

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➤ **63G-6a-2103. Services between procurement units.**

➤ (1) Upon request, a procurement unit may make services available to another procurement unit, including:

- (a) standard forms;
- (b) printed manuals;
- (c) qualified products lists;
- (d) source information;
- (e) common use commodities listings;
- (f) supplier prequalification information;
- (g) supplier performance ratings;
- (h) debarred and suspended bidders lists;
- (i) forms for invitation for bids, requests for proposals, instructions to bidders, general contract provisions, and contract forms; or
- (j) contracts or published summaries of contracts, including price and time of delivery information.

➤ (2) A procurement unit may provide technical services to another procurement unit, including:

- (a) development of specifications;
- (b) development of quality assurance test methods, including receiving, inspection, and acceptance procedures;
- (c) use of testing and inspection facilities; or
- (d) use of personnel training programs.

➤ (3) Procurement units may enter into contractual arrangements and publish a schedule of fees for the services provided under Subsections (1) and (2).

- **63G-6a-2104. Compliance by one procurement unit pursuant to agreement considered compliance by others to agreement.**
- (1) When a procurement unit that administers a cooperative procurement complies with the requirements of this chapter, any procurement unit participating in the purchase is considered to have complied with this chapter.
- (2) A procurement unit may not enter into a cooperative procurement agreement for the purpose of circumventing this chapter.



- **63G-6a-2105. Participation of a public entity or a procurement unit in agreements or contracts of procurement units -- Cooperative purchasing -- State cooperative contracts.**
- (1) The chief procurement officer may, in accordance with the requirements of this chapter, enter into a cooperative procurement, and a contract that is awarded as a result of a cooperative procurement, with:
 - (a) another state;
 - (b) an external procurement unit; or
 - (c) a public entity in Utah or outside of Utah.
- (2) A public entity may obtain a procurement item from a state cooperative contract or a contract awarded by the chief procurement officer under Subsection (1), without signing a participating addendum if the quote, invitation for bids, or request for proposals used to obtain the contract includes a statement indicating that the resulting contract will be issued on behalf of a public entity in Utah.

- (3) Except as provided in Section 63G-6a-408, or as otherwise provided in this chapter, an executive branch procurement unit may not obtain a procurement item from a source other than a state cooperative contract or a contract awarded by the chief procurement officer under Subsection (1), if the procurement item is available under a state cooperative contract or a contract awarded by the chief procurement officer under Subsection (1).

- (4) A Utah procurement unit may:
 - (a) contract with the federal government without going through a standard procurement process or an exception to a standard procurement process, described in Part 8, Exceptions to Procurement Requirements, if the procurement item obtained under the contract is provided:
 - (i) directly by the federal government and not by a person contracting with the federal government; or
 - (ii) by a person under contract with the federal government that obtained the contract in a manner that substantially complies with the provisions of this chapter;

- (b) participate in, sponsor, conduct, or administer a cooperative procurement with another Utah procurement unit or another public entity in Utah, if:
 - (i) each party unit involved in the cooperative procurement enters into an agreement describing the rights and duties of each party;
 - (ii) the procurement is conducted, and the contract awarded, in accordance with the requirements of this chapter;
 - (iii) the request for quotes, the invitation for bids, or the request for proposals:
 - (A) clearly indicates that the procurement is a cooperative procurement; and
 - (B) identifies each party that may purchase under the resulting contract; and
 - (iv) each party involved in the cooperative procurement signs a participating addendum describing its rights and obligations in relation to the resulting contract; or

- (c) purchase under, or otherwise participate in, an agreement or contract of an external procurement unit, if:
 - (i) each party involved in the cooperative procurement enters into an agreement describing the rights and duties of each party;
 - (ii) the procurement was conducted in accordance with the requirements of this chapter;
 - (iii) the request for quotes, the invitation for bids, or the request for proposals:
 - (A) clearly indicates that the procurement is a cooperative procurement; and
 - (B) identifies each party that may purchase under the resulting contract; and
 - (iv) each party involved in the cooperative procurement signs a participating addendum describing its rights and obligations in relation to the resulting contract.

- (5) A procurement unit may not obtain a procurement item under a contract that results from a cooperative procurement described in Subsection (4), if the procurement unit:
 - (a) is not identified under Subsection (4)(b)(iii)(B) or (4)(c)(iii)(B); or
 - (b) does not sign a participating addendum to the contract as required by this section.

- (6) A procurement unit, other than a legislative procurement unit or a judicial procurement unit, **may not obtain a procurement item under a contract held by the United States General Services Administration, unless,** based upon documentation provided by the procurement unit, the Director of the State Division of Purchasing and General Services determines in writing that the United States General Services Administration procured the contract in a manner that substantially complies with the provisions of this chapter.
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- Amended by Chapter 445, 2013 General Session

➤ **63G-6a-201. Title.**

➤ This part is known as "**Utah State Procurement Policy Board.**"



➤ Amended by Chapter 445, 2013 General Session

➤ **63G-6a-202. Creation of Utah State Procurement Policy Board.**

➤ (1) There is created the Utah State Procurement Policy Board.

➤ (2) The board consists of up to 15 members as follows:

➤ (a) two representatives of state institutions of higher education, appointed by the board of regents;

➤ (b) a representative of the Department of Human Services, appointed by the executive director of that department;

➤ (c) a representative of the Department of Transportation, appointed by the executive director of that department;

➤ (d) two representatives of school districts, appointed by the State Office of Education;

➤ (e) a representative of the Division of Facilities Construction and Management, appointed by the director of that division;

➤ (f) one representative of a county, appointed by the Utah Association of Counties;

➤ (g) one representative of a city or town, appointed by the Utah League of Cities and Towns;

➤ (h) two representatives of local districts or special service districts, appointed by the Utah Association of Special Districts;

➤ (i) the executive director of the Department of Technology Services or the executive director's designee;

➤ (j) the chief procurement officer or the chief procurement officer's designee; and

➤ (k) two representatives of state agencies, other than a state agency already represented on the board, appointed by the executive director of the Department of Administrative Services, with the approval of the executive director of the state agency that employs the employee.

- (3) Members of the board shall be knowledgeable and experienced in, and have supervisory responsibility for, procurement in their official positions.
- (4) A board member may serve as long as the member meets the description in Subsection (2) unless removed by the person or entity with the authority to appoint the board member.
- (5) (a) The board shall:
 - (i) adopt rules of procedure for conducting its business; and
 - (ii) elect a chair to serve for one year.
- (b) The chair of the board shall be selected by a majority of the members of the board and may be elected to succeeding terms.
- (c) The chief procurement officer shall designate an employee of the division to serve as the nonvoting secretary to the policy board.
- (6) A member of the board may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

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

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

➤ (2) (a) The board may:

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

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

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

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

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

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

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

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- **63G-6a-204. Applicability of rules and regulations of Utah State Procurement Policy Board and State Building Board -- Report to interim committee.**
- (1) Except as provided in Subsection (2), rules made by the board under this chapter shall govern all procurement units for which the board is the applicable rulemaking authority.
- (2) The building board rules governing procurement of construction, architect-engineer services, and leases apply to the procurement of construction, architect-engineer services, and leases of real property by the Division of Facilities Construction and Management.
- (3) An applicable rulemaking authority may make its own rules, consistent with this chapter, governing procurement by a person over which the applicable rulemaking authority has rulemaking authority.
- (4) The board shall make a report on or before July 1 of each year to a legislative interim committee, designated by the Legislative Management Committee created under Section 36-12-6, on the establishment, implementation, and enforcement of the rules made under Section 63G-6a-203.
- **(5) Notwithstanding Subsection 63G-3-301(13)(b), an applicable rulemaking authority is, on or before May 13, 2014, required to initiate rulemaking proceedings for rules required to be made under this chapter.**

➤ **63G-6a-1701. Title.**

➤ This part is known as "Procurement Appeals Board."



➤ Enacted by Chapter 347, 2012 General Session



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

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

➤ (a) a legislative procurement unit;

➤ (b) a judicial procurement unit;

➤ (c) a county or municipality; or

➤ (d) a public transit district.