

SB 179 – Procurement Revisions (Sen. Scott Jenkins)

- Line 294 Design-build can again be used for any project (was previously limited to projects over \$1 million in cost using only qualified engineers and architects with design-build experience).
- Line 309 Cities and Counties may opt in to these rules (this is not new).
- Line 364 You may close a meeting to deliberate during proposal evaluation, to hear protests about the RFP process, for discussions during a procurement appeals process, or to discuss proprietary information or trade secrets found in proposals.
- Line 1180 Master planning and programming services were added to the definition of architect-engineering services.
- Line 1369 A “Request for Statement of Qualifications” is added as a procurement option.
- Line 1378 “Responsible” and “responsive” are further defined for procurement purposes.
- Line 1395 A “sole-source contract” and “sole-source procurement” are defined.
- Line 1460 Schools can only write non-administrative local procurement rules that don’t conflict with these rules.
- Line 1480 A “cooperative purchasing organization” is defined.
- Line 1551 Higher education, DFCM, Atty Gen., Transportation, and District Courts have their own procurement rules.
- Line 1581 You can handle your own procurement without oversight from the state procurement officer, if you follow these rules.
- Line 1795 “Closed-ended” and “Open-ended” pre-qualification processes are defined.
- Line 1932 Changes language regarding “Noticing a solicitation”.
- Line 2076 Dividing a larger procurement into smaller pieces in order to qualify for the small purchase exemption may be a felony or misdemeanor, depending on total dollar value.

- Line 2108 The procurement process begins when the invitation for bids is issued.
- Line 2276 Procurement for architect-engineer services is governed by Part 15 of the Utah Code, Architect-Engineer Services.
- Line 2279 Evaluation process for proposals is outlined. List of what must be in the RFP.
- Line 2312 At any point in the process, you can reject proposals that are “non-responsive” or that come from parties that are not “responsible”.
- Line 2345 Respondents may not contact or communicate with the RFP issuer about the procurement outside of the official process.
- Line 2358 Cost evaluation and scoring must be performed by an individual who is not a member of the evaluation committee for the rest of the proposal, “if applicable”.
- Line 2392 The deliberations of an evaluation committee may be done in a closed meeting. (You must follow the procedures for closed meetings.)
- Line 2413 You can ask for final and best offers at any time during the process.
- Line 2432 The evaluation committee shall prepare a written justification statement for the final selection. The statement must a) explain the score assigned to each category; and b) explain how the highest scored proposal provides the best value compared to the other proposals.
- Line 2443 If the cost of the highest-scored proposal exceeds the cost of the lowest-scored proposal by the greater of \$10,000 or 5% of the lowest cost proposal, a cost/benefit analysis must be done when selecting the proposal which does not contain the low bid.
- Line 2548 You can use codes to conceal which respondent received which score.
- Line 2536 All scoring must be released on the next business day after the award. (However, you don't have to match up the scoring with a specific respondent.)
- Line 2600 A “trial use” procurement can't run longer than 18 months without an exception letter.
- Line 3138 Any protest must be filed within 7 days of when the party feels they were aggrieved.

- Line 3233 The protest officer is a “public body” and has to follow the open meetings laws. He/She can close a meeting for deliberations.
- Line 3307 A protestor cannot raise an issue that wasn’t found in his/her protest letter.
- Line 3347 The procurement appeals panel is a “public body” and has to follow the open meetings laws. It can close a meeting for deliberations.
- Line 3380 The appealing party must post a security deposit.
- Line 3744 A section on “regional solicitation” was added. The state’s Chief Procurement Officer must define the region, specify the types of procurement to be handled regionally, identify the specific solicitations, and require similar vendor warranties.

Part 24 Ethics Section

- Line 3773 A “contract administration professional” is defined. This is a party outside of the local governmental entity hired to develop, conduct, or supervise a procurement or grant. (These might include Financial Advisors, Engineers, bond attorneys, etc.)
- Line 3799 A “gratuity” is defined as anything of value given including gifts, favors, money, loans at favorable terms, etc.
- Line 3816 A gratuity does not include a meal associated with an educational seminar.
- Line 3822 A gratuity does not include a meal provided by a professional organization or an association of vendors, or by an association composed of public agencies that does not, as an organization, respond to solicitations.
- Line 3831 A “hospitality gift” is defined as a token gift with a value less than \$10. It does not include a meal or admission to an event or entertainment that usually carries a charge.
- Line 3842 A “procurement professional” is defined. These are purchasing officers, contract officers and/or people who do procurement full-time.
- Line 3860 Public school superintendents and business administrators are specifically not “procurement professionals”.

- Line 3879 "Procurement professionals" and "contract administration professionals" are subject to the restrictions of these rules.
- Line 3889 These restrictions do not apply to individuals listed beginning on line 3851 through 3873 (63G-6a-2402 (9)(b)).
- Line 3897 It is unlawful for a person seeking a contract to give or offer a gratuity or kickback to: 1) a public entity; 2) a procurement professional; or 3) a contract administration professional.
- Line 3917 It is unlawful for a procurement professional or a contract administration professional to receive or accept a gratuity or kickback from someone seeking a contract.
- Line 3928 It is OK for a procurement professional or a contract administration professional to give or receive a hospitality gift with a value less than \$10 as long as the annual aggregate of these gifts is less than \$50.
- Line 3934 The penalties for violations of these laws may be a felony or a misdemeanor, depending on the dollar volume involved.
- Line 3967 The new procurement procedures go into effect when the Governor signs the bill.
-

- Other 1 These Part 24 changes apply when there is an open procurement, and only to Procurement Professionals and Contract Administration Professionals.
- Other 2 Because Superintendents, Board Members, and Business Administrators are now exempted from these rules, they are governed by the old Municipal Officers and Ethics Act. Gifts are limited to those which a reasonable person would conclude would not affect the award of present or future contracts. Any gift under \$50 is deemed to be a safe harbor.
- Other 3 It is against state law for a public officer or public employee to accept any gift:
- (a) that would tend improperly to influence a reasonable person to depart from the faithful and impartial discharge of the person's public duties;

- (b) that is primarily for the purpose of rewarding the public officer or public employee for official action taken; or
- (c) if the public officer or public employee recently has been, is now, or in the near future may be involved in any governmental action directly affecting the donor or lender.

This prohibition does not apply to:

- (a) an occasional nonpecuniary gift, having a value of not in excess of \$50;
- (b) an award publicly presented in recognition of public services;
- (c) any bona fide loan made in the ordinary course of business; or
- (d) a political campaign contribution.