State of Utah
Administrative Rule Analysis
Revised May 2026

NOTICE OF SUBSTANTIVE CHANGE	
TYPE OF FILING: Amendment	**Filing ID: OFFICE USE ONLY**
Rule or section number:	**R23-1**
Date of previous publication (only for CPRs):	Click or tap to enter a date.

1. Agency Information

Title catchline:	Government Operations, Facilities Construction and Management
Building:	Taylorsville State Office Building
Street address:	4315 S. 2700 W., 3rd Floor
City, state:	Taylorsville, UT
Mailing address:	PO Box 141160
City, state and zip:	Salt Lake City, UT 84114-1007

2. Contact Persons

Name:	**Phone:**	**Email:**
Mike Kelley	801-957-7239	mkelley@agutah.gov

Please address questions regarding information on this notice to the persons listed above.

3. General Information

A. Rule or section catchline:
R23-1. Procurement Rules with Numbering Related to the Procurement Code.
B. Purpose of the new rule or reason for the change:
H.B. 508S03, now codified at Utah Code 63G-6a-1103, removed the requirement that DFCM obtain performance and payment bonds but may require a performance bond, payment bond or both if DFCM determines that the bond is necessary to protect DFCM from financial loss or performance risk. The amendment to R23-1 – specifically the addition of new R23-1-1103 - sets forth the factors DFCM will consider in determining if a bond is necessary to protect DFCM from financial loss or performance risk.
C. Summary of the new rule or change:
The amendment to R23-1 – specifically the addition of new - R23-1-1103 - sets forth the factors DFCM will consider in determining if a bond is necessary to protect DFCM from financial loss or performance risk.

4. Legislative Action Information

A. Are any changes in this filing because of state legislative action?	Changes are because of legislative action.
B. If yes, any bill number and session:	H.B. 508S03 2026 General Session

5. Fiscal Information

Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A. State budget:
None. Any cost or savings to the State budget are the result of Utah Code 63G-6a-1103 exempting DFCM from the requirement of obtaining a performance bond and payment bond unless DFCM determines bonds are necessary to protect DFCM from financial loss or performance risk, and not from implementation of that exemption in R23-1-1103.

B. Local governments:
None. Any cost or savings to local governments are the result of Utah Code 63G-6a-1103 exempting DFCM from the requirement of obtaining a performance bond and payment bond unless DFCM determines bonds are necessary to protect DFCM from financial loss or performance risk, and not from implementation of that exemption in R23-1-1103.
C. Small businesses ("small business" means a business employing 1-49 persons)**:**
None. Any cost or savings to small businesses are the result of Utah Code 63G-6a-1103 exempting DFCM from the requirement of obtaining a performance bond and payment bond unless DFCM determines bonds are necessary to protect DFCM from financial loss or performance risk, and not from implementation of that exemption in R23-1-1103.
D. Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**
None. Any cost or savings to non-small businesses are the result of Utah Code 63G-6a-1103 exempting DFCM from the requirement of obtaining a performance bond and payment bond unless DFCM determines bonds are necessary to protect DFCM from financial loss or performance risk, and not from implementation of that exemption in R23-1-1103.
E. Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**
None. Any cost or savings to persons other than small businesses, non-small businesses and state or local government entities are the result of Utah Code 63G-6a-1103 exempting DFCM from the requirement of obtaining a performance bond and payment bond unless DFCM determines bonds are necessary to protect DFCM from financial loss or performance risk, and not from implementation of that exemption in R23-1-1103.
F. Compliance costs for affected persons:
None. Any cost or savings in compliance costs for affected persons are the result of Utah Code 63G-6a-1103 exempting DFCM from the requirement of obtaining a performance bond and payment bond unless DFCM determines bonds are necessary to protect DFCM from financial loss or performance risk, and not from implementation of that exemption in R23-1-1103.

6. Regulatory Impact Summary Table

Enter the cost or savings in the relevant cell. If there is no cost or savings, enter, "$0." If a cost or savings is inestimable, enter, "inestimable."

Fiscal Cost	**FY2027**	**FY2028**	**FY2029**	**FY2030**	**FY2031**
State Budget	$	$	$	$	$
Local Governments	$	$	$	$	$
Small Businesses	$	$	$	$	$
Non-Small Businesses	$	$	$	$	$
Other Persons	$	$	$	$	$
Total Fiscal Cost	**$**	**$**	**$**	**$**	**$**
Fiscal Benefits	**FY2027**	**FY2028**	**FY2029**	**FY2030**	**FY2031**
State Budget	$	$	$	$	$
Local Governments	$	$	$	$	$
Small Businesses	$	$	$	$	$
Non-Small Businesses	$	$	$	$	$
Other Persons	$	$	$	$	$
Total Fiscal Benefits	**$**	**$**	**$**	**$**	**$**
Net Fiscal Benefits	**$**	**$**	**$**	**$**	**$**

7. Regulatory Impact Analysis Approval

The Executive Director of the Department of Government Operations, Marvin Dodge, has reviewed and approved this regulatory impact analysis.

8. Family Impact Information

A. The agency has considered this rule's impact on family health, stability, and formation:	☒

B. Summary of reasonable alternatives or modifications:
No negative impact expected.

9. Citation Information

Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Subsection 63A-5b-305(2)(c)	Subsection 63G-6a-1103(5)	

10. Incorporation by Reference Information

Incorporation by Reference (if this rule incorporates more than two items by reference, please include additional tables)**:**	
A. This rule adds or updates the following title of material incorporated by reference (a copy of the material incorporated by reference must be submitted to the Office of Administrative Rules. *If none, leave blank*)**:**	
Official Title of Materials Incorporated (from title page)	
Publisher	
Issue Date	
Issue or Version	

B. This rule adds or updates the following title of material incorporated by reference (a copy of the material incorporated by reference must be submitted to the Office of Administrative Rules. *If none, leave blank*)**:**	
Official Title of Materials Incorporated (from title page)	
Publisher	
Issue Date	
Issue or Version	

11. Public Notice Information

The public may submit written or oral comments to the agency identified in box 1.	
A. Comments will be accepted until:	11/02/2026

B. A public hearing (optional) will be held (The public may request a hearing by submitting a written request to the agency, as outlined in Section 63G-3-302 and Rule R15-1.)**:**		
Date:	**Time** (hh:mm AM/PM)**:**	**Place** (physical address or URL)**:**
Click or tap to enter a date.		

To the agency: If more than one hearing is planned to take place, continue to add rows.

12. Effective Date Information

This rule change MAY become effective on: (NOTE: This is the date the agency anticipates making the filing effective. It is NOT the effective date)	11/09/2026

13. Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 63G-3-302, 63G-3-303, and 63G-3-402. The office may return incomplete forms to the agency, possibly delaying publication in the *Utah State Bulletin* and delaying the first possible effective date.			
Agency head or designee and title:	Andy Marr, Director	**Date:**	09/14/2026

R23. Government Operations, Facilities Construction and Management.
R23-1. Procurement Rules with Numbering Related to the Procurement Code.

R23-1-101. Scope of the Rules and Compliance by Using Agencies.
(1) Rule R23-1 applies to procurements by the Division of Facilities Construction and Management. This includes the procurement of construction, architects, engineers, design services and any other professional services and procurements related to design or construction by the Division of Facilities Construction and Management as well as other procurement items within the rule authorization of the Division of Facilities Construction and Management. Using Agencies are required to comply with this rule to the extent required by the Utah Code.
(2) The statutory provisions governing the procurement referred to in Subsection R23-1-101(1) are provided in the Utah Procurement Code, Title 63G, Chapter 6a as well as Title 63A, Chapter 5b, Administration of State Facilities.
R23-1-102. Definitions.
Terms used in this rule are defined in Section 63G-6a-103 of the Utah Procurement Code. In addition:
(1) "Adequate Price" Competition means when a minimum of two competitive bids, proposals, or quotes are received from responsive bidders or offerors.
(2) "Acquiring Agency" is a conducting procurement unit subject to Section 63A-16-204 acquiring new technology or technology as therein defined.
(3) "Bid Bond" is an agreement, accompanied by a monetary commitment, by which a third party, the surety, accepts liability and guarantees that the bidder will not withdraw the bid. The bidder will furnish bonds in the required amount and if the contract is awarded to the bonded bidder, the bidder will accept the contract as bid, or else the surety will pay a specific amount.
(4) "Bid Security" means the deposit of cash, certified check, cashier's check, bank draft, money order, or bid bond submitted with a bid and serving to guarantee to the division that the bidder, if awarded the contract, will execute such contract in accordance with the bidding requirements and the contract documents.
(5) "Brand Name or Equal Specification" means a specification which uses a brand name specification to describe the standard of quality, performance, and other characteristics being solicited, and which invites the submission of equivalent products.
(6) "Brand Name Specification" means a specification identifying one or more products by manufacturer name, product name, unique product identification number, product description, SKU or catalog number.
(7) "Cost Analysis" means the evaluation of cost data to arrive at estimates of costs to be incurred, prices to be paid, costs to be reimbursed, or costs actually incurred.
(8) "Cost Data" means factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.
(9) "Director" means the director of the division, including, unless otherwise stated, the director's authorized designee.
(10) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5b-301.
(11) "New Technology" means a technology innovation as defined in Section 63A-16-901.
(12) "Payment Bond" is a bond that guarantees payment for labor and materials expended on the contract.
(13) "Performance Bond" means a promise to pay the obligee, the division, a certain amount if the principal, contractor, fails to meet some obligation, such as fulfilling the terms of a contract. The performance bond protects the obligee, the division, against losses resulting from the principal's failure to meet the obligation. If the obligations are not met, the obligee, the division, will recover its losses via the performance bond.
(14) "Pricing Data" means factual information concerning prices for procurement items.
(15) "Record" shall have the meaning defined in Section 63G-2-103 of the Government Records Access and Management Act (GRAMA).
(16) "Solicitation," in addition to the definition in Subsection 63G-6a-103(8~~2~~4) also includes all documents, whether attached or incorporated by reference to the solicitation.
(17) "Technology" means any type of information technology defined in Subsection 63A-16-102(8).
(18) "Using Agency" means any state agency or any political subdivision of the state which utilizes the services procured under this Rule R23-1.
R23-1-103. Division is Issuing and Conducting Procurement Unit.
The division is both the issuing and conducting procurement unit for procurements under this rule.
R23-1-104. Specifications.
(1) Solicitation documents shall include specifications for the procurement items.
(2) Specifications shall be drafted with the objective of clearly describing the division's requirements and encouraging competition.
Specifications shall emphasize the functional or performance criteria necessary to meet the needs of the division.
(3) Persons with a conflict of interest, or who anticipate responding to the proposal for which the specifications are written, may not participate in writing specifications. The division may retain the services of an entity to assist in writing specifications, scopes of work, requirements, qualifications, or other components of a solicitation. However, the entity assisting in writing specifications shall not, at any time during the procurement process, be employed in any capacity by, nor have an ownership interest in, an individual, public or private corporation, governmental entity, partnership, or unincorporated association bidding on or submitting a proposal in response to the solicitation.
(a) Subsection R23-1-104(3) does not apply to the following:
(i) a design-build construction project;
(ii) provisions in a specification provided by the designer when the source of the specification is identified and it is not designed to be an impermissible sole source, a sole source that does not comply with the Utah Procurement Code and the applicable administrative rules; and
(iii) other procurements determined in writing by the director.
(b) Violations of Subsection R23-1-104(3) may result in:
(i) the bidder or offeror being declared ineligible for award of the contract;
(ii) the solicitation being cancelled;
(iii) termination of an awarded contract; or
(iv) any other action determined to be appropriate by the director.
(4) Brand Name or Equal Specifications.
(a) Brand name or equal specifications may be used when:
(i) "or equivalent" reference is included in the specification; and.
(ii) as many other brand names as practicable are also included in the specification.
(b) Brand name or equal specifications shall include a description of the particular design and functional or performance characteristics which are required. Specifications unique to the brands shall be described in sufficient detail that another person can respond with an equivalent brand.
(c) When a manufacturer's specification is used in a solicitation, the solicitation shall state the minimum acceptable requirements of an equivalent. When practicable, the division shall name at least three manufacturer's specifications.
(5) Sole Source Requirements for Brand Name Specifications:

(a) If only one brand can meet the requirement, the division shall conduct the procurement in accordance with Section 63G-6a-802 and shall solicit from as many providers of the brand as practicable; and
(b) If there is only one provider that can meet the requirement, the division shall conduct the procurement in accordance with Section 63G-6a-802.

R23-1-201. Director Appoint to Policy Board.

The director shall appoint a representative to serve on the Utah State Procurement Policy Board.

R23-1-301. Relationship with the Division of Purchasing and General Services.

(1) The division recognizes Part 3 of the Utah Procurement Code regarding the Chief Procurement Officer. The division may participate as needed or required with trainings provided by the Division of Purchasing and General Services.
(2) The director's responsibilities are provided in Title 63a, Chapter 5b, Administration of State Facilities.

R23-1-401. Request for Information.

In addition to the requirements of Part 4 of the Utah Procurement Code, a Request for Information may state the procedure for business confidentiality claims and other protections provided by the Utah Government Records and Access Management Act.

R23-1-501. Prequalification of Potential Vendors.

General procurement provisions, including prequalification of potential vendors, approved vendor lists, and small purchases shall be conducted in accordance with the requirements set forth in Sections 63G-6a-506 and 63G-6a-507. All definitions in the Utah Procurement Code shall apply to Sections R23-1-501 through R23-1-502 unless otherwise specified in Rule R23-1. Sections R23-1-501 and R23-1-502 provide additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.

R23-1-502. Thresholds for Approved Vendor Lists.

The division may establish approved vendor lists in accordance with the requirements of Section 63G-6a-507.
(1) Contracts or purchases from an approved vendor list may not exceed the following thresholds:
(a) Construction Projects: $3,500,000 per contract, for direct construction costs, including design and allowable furniture or equipment costs, awarded using an invitation for bids or a request for proposals; and
(b) Professional and General Services, including architectural and engineering services: $150,000.
(2) Thresholds for other approved vendor lists may be established by the director.

R23-1-503. Small Purchases or Commodities.

Small purchases shall be conducted in accordance with the requirements set forth in Section 63G-6a-506. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.
(1) "Small Purchase" means a procurement conducted by the division that does not require the use of a standard procurement process.
(2) Small Purchase thresholds for commodities:
(a) The "Individual Procurement" threshold is a maximum amount of $2,000 for a procurement item and
for individual procurement items costing up to $2,000, the division may select the best source by direct award and without seeking competitive bids or quotes;
(b) The single procurement aggregate threshold is a maximum amount of $10,000 for multiple procurement items purchased from one source at one time; and
(c) The annual cumulative threshold from the same source is a maximum amount of $100,000.
(3) When practicable, the division shall use a rotation system or other system designed to allow for competition when using the small purchases process for commodities.

R23-1-504. Small Purchases Threshold for Architectural and Engineering Services.

(1) The small purchase threshold for architectural or engineering services is a maximum amount of $150,000.
(2) Architectural or engineering services may be procured, up to a maximum of $150,000, by direct negotiation.
(3) The division shall follow the process described in Section 63G-6a-507 to prequalify potential vendors and if the division develops an approved vendor list, or Part 15 of the Utah Procurement Code for the selection of architectural and engineering services.
(4) The division shall include minimum specifications when using the small purchase threshold for architectural and engineering services.

R23-1-505. Small Purchases Threshold for Construction Projects.

(1) The small construction project threshold is a maximum of $3,500,000 for direct construction costs, including design and allowable furniture or equipment costs,
(2) The division shall follow the process described in Section 63G-6a-507 to prequalify potential vendors and to develop an approved vendor list or other applicable selection methods described in the Utah Procurement Code for construction services.
(3) The division shall include minimum specifications when using the small purchases threshold for construction projects.
(4) The director may procure small construction projects up to a maximum of $50,000 by direct award without seeking competitive bids or quotes after documenting that all building code approvals, licensing requirements, permitting, and other construction related requirements are met. The awarded contractor must certify that they are capable of meeting the minimum specifications of the project.
(5) The director may procure small construction projects costing more than $50,000 up to a maximum of $150,000 by obtaining a minimum of two competitive quotes that include minimum specifications and shall award to the contractor with the lowest quote that meets the specifications after documenting that all applicable building code approvals, licensing requirements, permitting and other construction related requirements are met.
(6) The division shall procure construction projects over $150,000 using an invitation to bid, request for proposals, approved vendor list, or other approved source selection method provided in the Utah Procurement Code.

R23-1-506. Quotes for Small Purchases of Commodities from $1,000 to $50,000.

The following applies to commodities:
(1) For procurement items where the cost is greater than $1,000 but up to a maximum of $10,000, the division shall get a minimum of two competitive quotes, which may be by email, phone, or verbal, that include minimum specifications and shall purchase the procurement item from the responsible vendor offering the lowest quote that meets the specifications.
(2) For procurement items where the cost is greater than $10,000 up to a maximum of $100,000, the division shall get a minimum of two competitive quotes, that include minimum specifications, which must be communicated to the proposed vendors in writing and shall purchase the procurement item from the responsible vendor offering the lowest quote that meets the specifications.
(3) For procurement items costing over $100,000, the division shall conduct an invitation for bids or other procurement process outlined in the Utah Procurement Code.
(4) The names of the vendors offering quotations and bids and the date and amount of each quotation or bid shall be recorded and maintained as a governmental record.

R23-1-507. Small Purchases of Services of Professionals, Providers, and Consultants.
(1) The small purchase threshold for professional service providers and consultants is a maximum amount of $150,000.
(2) After reviewing the qualifications, the director may get professional services or consulting services up to a maximum of $150,000 by direct negotiation.
R23-1-601. Competitive Sealed Bidding.
Competitive Sealed Bidding shall be conducted in accordance with the requirements set forth in Sections 63G-6a-601 through 63G-6a-608. All definitions in the Utah Procurement Code shall apply to this rule unless otherwise specified in this rule.
This administrative rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.
R23-1-602. Bidder Submissions.
(1) The invitation for bids shall include the information required by Section 63G-6a-603 and shall also include a "Bid Form" or forms, which shall provide lines for each of the following:
(a) the bidder's bid price;
(b) the bidder's acknowledged receipt of addenda issued by the division;
(c) the bidder to identify other applicable submissions; and
(d) the bidder's signature.
(2) Bidders may be required to submit descriptive literature and product samples to assist the director in evaluating whether a procurement item meets the specifications and other requirements set forth in the invitation to bid.
(a) Product samples must be furnished free of charge unless otherwise stated in the invitation for bids, and if not destroyed by testing, will upon written request within any deadline stated in the invitation for bids, be returned at the bidder's expense. Samples must be labeled or otherwise identified as specified in the invitation for bids by the division.
(3) Section R23-1-703 shall apply to protected records.
(4) Bid, payment, and performance bonds or other security may be required for procurement items as set forth in the invitation for bids. Bid, payment, and performance bond amounts shall be as prescribed by applicable law, rule or must be based upon the estimated level of risk associated with the procurement item and may not be increased above the estimated level of risk with the intent to reduce the number of qualified bidders.
R23-1-603. Pre-Bid Conferences and Site Visits.
(1) Pre-bid conferences and site visits are mandatory unless this requirement is waived in writing by the director. Except as authorized in writing by the director, pre-bid conferences and site visits must require mandatory attendance by all bidders.
(a) A pre-bid conference may be attended via the following:
(i) attendance in person;
(ii) teleconference participation;
(iii) webinar participation; or
(iv) participation through other electronic media approved by the director.
(b) Mandatory site visits must be attended in person.
(c) All pre-bid conferences and site visits must be attended by an authorized representative of the person or vendor submitting a bid and as may be further specified in the procurement documents.
(d) The solicitation must state that failure to attend a mandatory pre-bid conference shall result in the disqualification of any bidder that does not have an authorized representative attend the entire duration of the mandatory pre-bid conference.
(e) The solicitation must state that failure to attend a mandatory site visit shall result in the disqualification of any bidder that does not have an authorized representative attend the entire duration of the mandatory site visit.
(f) At the discretion of the conducting procurement unit, audio or video recordings of pre-bid conferences and site visits may be used.
(g) Listening to or viewing audio or video recordings of a mandatory pre-bid conference or site visit may not be substituted for attendance.
(2) If a pre-bid conference or site visit is held, the division shall maintain:
(a) an attendance log including the name of each attendee, the entity the attendee is representing, and the attendee's contact information;
(b) minutes, if there are any, of the pre-bid conference or site visit;
(c) copies of any documents distributed by the division to the attendees at the pre-bid conference or site visit; and
(d) any verbal modifications made to any of the solicitation documents. All verbal modifications to the solicitation documents shall be reduced to writing.
(3) The division shall publish as an addendum to the solicitation, the information in Subsection R23-1-603(2)(a).
R23-1-604. Addenda to Invitation for Bids.
Before the submission of bids, the division may issue addenda which may change any aspect of the invitation for bids.
(1) Addenda shall be distributed within a reasonable time to allow prospective bidders to consider the addenda in preparing bids.
(2) After the due date and time for submitting bids, at the discretion of the director, addenda to the invitation for bids may be limited to bidders that have submitted bids, provided the addenda does not make a substantial change to the invitation for bids that, in the opinion of the director, likely would have impacted the number of bidders responding to the invitation for bids.
R23-1-605. Bids and Modifications to a Bid Received After the Due Date and Time.
(1) Bids and modifications to a bid submitted electronically or by physical delivery, after the established due date and time, will not be accepted for any reason, except as determined in Subsection R23-1-605(5).
(2) When submitting a bid or modification electronically, bidders must allow sufficient time to complete the online forms and upload documents. The solicitation will end at the closing time posted in the electronic system. If a bidder is in the middle of uploading a bid when the closing time arrives, the system will stop the process and the bid or modification to the bid will not be accepted.
(3) When submitting a bid or modification to a bid by physical delivery, U.S. Mail, courier service, hand-delivery, or other physical means, bidders are solely responsible for meeting the deadline. Delays caused by a delivery service or other physical means will not be considered as an acceptable reason for a bid or modification to a bid being late.
(4) All bids or modifications to bids received by physical delivery will be date and time stamped by the division.
(5) To the extent that an error by the division results in a bid or modification to a bid not being received by the established due date and time, the bid or modification to a bid shall be accepted as being on time.
R23-1-606. Errors in Bids.

The following shall apply to the correction or withdrawal of an inadvertently erroneous bid, or the cancellation of an award or contract that is based on an unintentionally erroneous bid. A decision to permit the correction or withdrawal of a bid or the cancellation of any award or a contract under this rule shall be supported in a written document, signed by the director.
(1) Errors attributed to a bidder's error in judgment may not be corrected.
(2) Provided that there is no change in bid pricing or the cost evaluation formula, errors not attributed to a bidder's error in judgment may be corrected if it is in the best interest of the division and correcting the mistake maintains the fair treatment of other bidders.
(a) Examples include:
(i) missing signatures;
(ii) missing acknowledging receipt of an addendum;
(iii) missing copies of professional licenses, bonds, insurance certificates, provided that copies are submitted by the deadline established by the director to correct this mistake;
(iv) typographical errors;
(v) mathematical errors not affecting the total bid price; or
(vi) other errors deemed by the director to be immaterial or inconsequential in nature.
(3) The director shall approve or deny, in writing, a bidder's request to correct or withdraw a bid.
(4) Corrections or withdrawal of bids shall be conducted in accordance with Section 63G-6a-604.
(5) If there is any deficiency or failure to submit a required subcontractor list or bid ~~bond~~ security, the division may request that the bidder who is not in compliance, submit the required subcontractor list or bid ~~bond~~ security by 5 p.m. of the next business day after notice is provided by the division. Failure to cure the deficiency or failure to submit any required subcontractor list or bid ~~bond~~ security by 5 p.m. of the next business day after notice is provided by the division shall make the bidder ineligible for consideration of award of the contract.

R23-1-607. Errors Discovered After the Award of Contract.
(1) Errors discovered after the award of a contract may only be corrected if, after consultation with the director and the Attorney General's Office, it is determined that the correction of the mistake does not violate the requirements of the Utah Procurement Code or this rule.
(2) Any correction made under this subsection must be supported by a written determination signed by the director.

R23-1-608. Re-solicitation of a Bid.
(1) Re-solicitation of a bid may occur only if the director determines that:
(a) a material change in the scope of work or specifications has occurred;
(b) procedures outlined in the Utah Procurement Code were not followed;
(c) additional public notice is desired;
(d) there was a lack of adequate competition; or
(e) other reasons exist that are in the best interests of the division.
(2) Re-solicitation may not be used to avoid awarding a contract to a qualified vendor in an attempt to steer the award of a contract to a favored vendor.

R23-1-609. Only One Bid Received.
(1) If only one responsive and responsible bid is received in response to an invitation for bids, an award may be made to the single bidder if the director determines that the price submitted is fair and reasonable, and that other prospective bidders had a reasonable opportunity to respond, or there is not adequate time for re-solicitation. Otherwise, the bid may be rejected and:
(a) a new invitation for bids solicited;
(b) the procurement cancelled; or
(c) the procurement may be conducted as a sole source under Section 63G-6a-802.

R23-1-610. Multiple or Alternate Bids.
(1) Multiple or alternate bids will not be accepted, unless otherwise specifically required or allowed in the invitation for bids.
(2) If a bidder submits multiple or alternate bids that are not requested in the invitation for bids, the director may only accept the bidder's primary bid and shall not accept any other bids constituting multiple or alternate bids.

R23-1-611. Methods to Resolve Tie Bids.
(1) In accordance with Section 63G-6a-608, in the event of tie bids, the contract shall be awarded to the procurement item offered by a Utah resident bidder, provided the bidder indicated on the invitation to bid form that it is a Utah resident bidder.
(2) If a Utah resident bidder is not identified, an acceptable method when there are two tie bids shall be for the director to toss a coin in the presence of a minimum of three witnesses with the firm first in alphabetical order being "heads."
(3) Other methods to resolve a tie bid described in Section 63G-6a-608 may be used as deemed appropriate by the director.

R23-1-612. Publication of Award.
(1) The division shall, on the day on which the award of a contract is announced, make available to each bidder and to the public a notice that includes:
(a) the name of the bidder to which the contract is awarded and the prices of the procurement items; and
(b) the names and the prices of each bidder to which the contract is not awarded.

R23-1-613. Technology Acquisitions.
(1) The division in an invitation for bids may state that at any time during the term of a contract, that the division may undertake a review in consultation with the Utah Technology Advisory Board and the Department of Technology Services to determine whether a new technology exists that is in the best interest of the using agency, taking into consideration cost, life-cycle, references, current customers, and other factors and that the using agency reserves the right to:
(a) negotiate with the contractor for the new technology, provided the new technology is substantially within the original scope of work;
(b) terminate the contract in accordance with the existing contract terms and conditions; or
(c) conduct a new procurement for an additional or supplemental contract as needed to take into account new technology.
(2) Subject to Section 63G-6a-802.3, the trial use or testing of new technology may be permitted for a duration not to exceed the maximum time necessary to evaluate the technology.

R23-1-614. Subcontractor Lists.
The division may not consider, or award to, any bid submitted by a bidder if the bidder fails to submit a subcontractor list meeting the requirements of Section 63A-5b-605 and this rule. For purposes of Section R23-1-614, the definitions of Section 63A-5b-605 shall be applicable. Within 24 hours after the bid opening time, not including Saturdays, Sundays, and state holidays, the apparent lowest three bidders, as well as other bidders that desire

to be considered, shall submit to the division a list of their first-tier subcontractors that are over the dollar amounts stated in Subsection 63A-5b-605(3)(a)(ii).
(1) The subcontractor list shall include the following:
(a) the type of work the subcontractor is to perform;
(b) the subcontractor's name;
(c) the subcontractor's bid amount;
(d) the license number of the subcontractor issued by the Utah Division of Professional Licensing, if such license is required under Utah law; and
(e) the impact that the selection of any alternate included in the solicitation would have on the information required by Section R23-1-614.
(2) The contract documents for a specific project may require that additional information be provided regarding any contractor, subcontractor, or supplier.
(3) If pursuant to Subsection 63A-5b-605(7), a bidder intends to perform the work of a subcontractor or get at a later date, a bid from a qualified subcontractor, the bidder shall:
(a) comply with the requirements of Section 63A-5b-605 and
(b) clearly list the bidder on the subcontractor list form.
(4) Errors on the subcontractor list will not disqualify the bidder if the bidder can demonstrate that the error is a result of the bidder's reasonable reliance on information that was provided by the subcontractor and was used to meet the requirements of this rule, and, provided that this does not result in an adjustment to the bidder's contract amount.
(5) Pursuant to Sections 63A-5b-605 and 63G-2-305, information contained in the subcontractor list submitted to the division shall be classified public except for the amount of subcontractor bids which shall be classified as protected until a contract has been awarded to the bidder at which time the subcontractor bid amounts shall be classified as public. During the time that the subcontractor bids are classified protected, they may only be made available to procurement and other officials involved with the review and approval of bids.
(6) Change of Listed Subcontractors. 24 hours after the bid opening, the contractor may change the contractor's listed subcontractors only after receiving written permission from the director based on complying with all the following:
(a) The contractor has established in writing that the change is in the best interest of the state and that the contractor establishes an appropriate reason for the change, which may include the following reasons:
(i) the original subcontractor has failed to perform, or is not qualified or capable of performing; or
(ii) the subcontractor has requested in writing to be released.
(b) The circumstances related to the request for the change do not show any bad faith in the original listing of the subcontractors.
(c) The contractor shall comply with any requirement set forth by the director to ensure that the process used to select a new subcontractor does not give rise to bid shopping.
(d) Any increase in the cost of the subject subcontractor's work shall be borne by the contractor.
(e) Any decrease in the cost of the subject subcontractor's work shall result in a deductive change order being issued for the contract for such decreased amount.

R23-1-615. Bids Over Budget.

(1) In the event all bids for a construction project exceed available funds as certified by the appropriate fiscal officer, and the low responsive and responsible bid does not exceed those funds by more than 5%, the director may, where time or economic considerations preclude re-solicitation of work of a reduced scope, negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder to bring the bid within the amount of available funds.
(2) As an alternative to the procedure authorized in Subsection (1), when all bids for a construction project exceed available funds as certified by the director, and the director finds that due to time or economic considerations the re-solicitation of a reduced scope of work would not be in the interest of the state, the director may negotiate an adjustment in the bid price using one of the following methods:
(a) reducing the scope of work in specific subcontract areas and supervising the re-bid of those subcontracts by the low responsive and responsible bidder;
(b) negotiating with the low responsive and responsible bidder for a reduction in scope and cost; or
(c) revising the contract documents and soliciting new bids only from bidders who submitted a responsive bid on the original solicitation. This re-solicitation may have a shorter bid response time than otherwise required.
(3) The use of one of the alternative procedures provided for in Subsection (2) must provide for the fair and equitable treatment of bidders.
(4) The director's written determination, including a brief explanation of the basis for the decision shall be included in the contract file.
(5) This rule does not restrict in any way, the right of the director to use any emergency or sole source procurement provisions, or any other applicable state law or rule which may be used to award the construction project.

R23-1-701. Conducting the Request for Proposals Standard Procurement Process.

Request for proposals shall be conducted in accordance with the requirements set forth in Sections 63G-6a-701 through 63G-6a-712. All definitions in the Utah Procurement Code shall apply to this rule unless otherwise specified in this rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.

R23-1-702. Content of the Request for Proposals.

(1) In addition to the requirements set forth under Section 63G-6a-703, the request for proposals solicitation shall include:
(a) a description of the format that offerors are to use when submitting a proposal including any required forms; and
(b) instructions for submitting price.
(2) The division is responsible for all content contained in the request for proposals solicitation documents.

R23-1-703. Protected Records.

(1) An offeror wishing to claim that information in a proposal is a "trade secret" as that term is defined in Section 63G-2-305 and a protected record under Section 63G-2-305 or commercial information or nonindividual financial information and a protected record under Section 63G-2-305 shall, when submitting the offeror's proposal, submit to the division:
(a) a written claim of business confidentiality and a concise statement of the reasons supporting the claim for business confidentiality on the business confidentiality claim form provided on the division's website; and
(b) in addition to the offeror's unredacted proposal, a copy of the offeror's proposal with the confidential business information redacted.
(~~i~~2) Pricing may not be classified as business confidential and will be considered public information.
(3) An entire proposal may not be designated as "PROTECTED," "CONFIDENTIAL," or "PROPRIETARY."

(4) Failure to provide a claim of business confidentiality pursuant to Subsection (a) or redacted proposal pursuant to Subsection (b) shall result in the offeror's proposal being classified as an unprotected public record.
(5) Provided that an offeror complies with the requirements of Section 63G-2-309 and this rule for protecting confidential business information, in the event of a request for the offeror's proposal under Section 63G-2-204, the division will provide the requestor with a copy of the offeror's redacted proposal.
(6) Provided that an offeror complies with the requirements of Section 63G-2-309 and this rule for protecting confidential business information, in the event of a request for the offeror's proposal under Section 63G-2-204, the division will not provide the requestor with a copy of the offeror's unredacted proposal without notification to the offeror as provided in Section 63G-6a-309 and then only as provided in Section 63G-2-309.

R23-1-704. Pre-Proposal Conferences and Site Visits.

(1) Pre-proposal conferences and site visits are mandatory unless this requirement is waived in writing by the director. Except as authorized in writing by the director, pre-proposal conferences and site visits must require mandatory attendance by all offerors.
(a) A pre-proposal conference may be attended via the following:
(i) attendance in person;
(ii) teleconference participation;
(iii) webinar participation; or
(iv) participation through other electronic media approved by the director.
(b) Mandatory site visits must be attended in person.
(c) All pre-proposal conferences and site visits must be attended by an authorized representative of the person or vendor submitting a proposal and as may be further specified in the procurement documents.
(d) The solicitation must state that failure to attend a mandatory pre-proposal conference shall result in the disqualification of any offeror that does not have an authorized representative attend the entire duration of the mandatory pre-proposal conference.
(e) The solicitation must state that failure to attend a mandatory site visit shall result in the disqualification of any offeror that does not have an authorized representative attend the entire duration of the mandatory site visit.
(f) At the discretion of the division, audio or video recordings of pre-proposal conferences and site visits may be used.
(g) Listening to or viewing audio or video recordings of a mandatory pre-proposal conference or site visit may not be substituted for attendance.
(2) If a pre-proposal conference or site visit is held, the division shall maintain:
(a) an attendance log including the name of each attendee, the entity the attendee is representing, and the attendee's contact information;
(b) minutes, if there are any, of the pre-proposal conference or site visit;
(c) copies of any documents distributed by the division to the attendees at the pre-proposal conference or site visit; and
(d) any verbal modification made to any of the solicitation documents. All verbal modifications to the solicitation documents shall be reduced to writing.
(3) The division shall publish as an addendum to the solicitation, the information in Subsection R23-1-708(2)(a).

R23-1-705. Addenda to Request for Proposals.

(1) Addenda to the request for proposals may be made for:
(a) making changes to:
(i) the scope of work;
(ii) the schedule;
(iii) the qualification requirements;
(iv) the criteria;
(v) the weighting; or
(vi) other requirements of the Request for Proposal.
(b) Addenda shall be published within a reasonable time before the deadline that proposals are due, to allow prospective offerors to consider the addenda in preparing proposals. Publication at least five calendar days before the deadline that proposals are due shall be deemed a reasonable time. Minor addenda and urgent circumstances may require a shorter period.
(2) After the deadline for submitting proposals, the division may, at the discretion of the director, issue a request for proposals addendum only to offerors that have submitted proposals, if the addendum does not change the request for proposals in a way that, in the opinion of the director, would likely have affected the number of proposals submitted in response to the request for proposals had the addendum been included in the original request for proposals.

R23-1-706. Modification or Withdrawal of Proposal Before Deadline.

Proposals may be modified or withdrawn before the established due date and time for responding.

R23-1-707. Proposals and Modifications, Delivery and Time Requirements.

(1) Except as provided in Subsection R23-1-707(5), proposals and modifications to a proposal submitted electronically or by physical delivery, after the established due date and time, will not be accepted for any reason.
(2) When submitting a proposal or modification to a proposal electronically, offerors must allow sufficient time to complete the online forms and upload documents. The solicitation will end at the closing time posted in the electronic system. If an offeror is in the middle of uploading a proposal when the closing time arrives, the system should stop the process and the proposal or modification to a proposal will not be accepted.
(3) When submitting a proposal or modification to a proposal by physical delivery, U.S. Mail, courier service, hand-delivery, or other physical means, offerors are solely responsible for meeting the deadline. Delays caused by a delivery service or other physical means will not be considered as an acceptable reason for a proposal or modification to a proposal being late.
(4) All proposals or modifications to proposals received by physical delivery will be date and time stamped by the division.
(5) To the extent that an error by the division results in a proposal or modification to a proposal not being received by the established due date and time, the proposal or modification to a proposal shall be accepted as being on time.

R23-1-708. Errors in Proposals.

The following shall apply to the correction or withdrawal of an unintentionally erroneous proposal, or the cancellation of an award or contract that is based on an unintentionally erroneous proposal. A decision to permit the correction or withdrawal of a proposal or the cancellation of an award or a contract shall be supported in a written document, signed by the director.
(1) Mistakes attributed to an offeror's error in judgment may not be corrected.
(2) Unintentional errors not attributed to an offeror's error in judgment may be corrected if it is in the best interest of the division and correcting the error maintains the fair treatment of other offerors.

(a) Examples include:
(i) missing signatures;
(ii) missing acknowledgement of an addendum;
(iii) missing copies of professional licenses, bonds, insurance certificates, provided that copies are submitted by the deadline established by the director to correct this mistake;
(iv) typographical errors;
(v) mathematical errors not affecting the total proposed price; or
(vi) other errors deemed by the director to be immaterial or inconsequential in nature.
(3) Unintentional errors discovered after the award of a contract may only be corrected if, after consultation with the director and the Attorney General's Office, it is determined that the correction of the error does not violate the requirements of the Utah Procurement Code or this rule.

R23-1-709. Evaluation of Proposals.

The evaluation of proposals shall be conducted in accordance with Part 7 of the Utah Procurement Code.

R23-1-710. Correction or Withdrawal of Proposal, Subcontractor List, and Bid~~ond~~ Security errors.

(1) In the event an offeror submits a proposal that on its face appears to be impractical, unrealistic, or otherwise in error, the director may contact the offeror to either confirm the proposal, permit a correction of the proposal, or permit the withdrawal of the proposal, in accordance with Section 63G-6a-704.6.
(2) Offerors may not correct errors, deficiencies, or incomplete responses in a proposal that has been determined to be not responsible, not responsive, or that does not meet the mandatory requirements stated in the request for proposals in accordance with Section 63G-6a-703.
(3) If there is any deficiency or failure to submit a required subcontractor list or bid ~~bond~~ security, the division may request that the offeror who is not in compliance submit the required subcontractor list or bid ~~bond~~ security by 5 p.m. of the next business day after notice is provided by the division. Failure to cure the deficiency or failure to submit any required subcontractor list or bid ~~bond~~ security by 5 p.m. of the next business day after notice is provided by the division shall make the offeror ineligible for consideration of award of the contract.

R23-1-711. Interviews and Presentations.

(1) Interviews and presentations may be held as outlined in the request for proposals.
(2) Offerors invited to interviews or presentations shall be limited to those offerors meeting requirements specified in the request for proposals.
(3) Representations made by the offeror during interviews or presentations shall become an addendum to the offeror's proposal and shall be documented. Representations must be consistent with the offeror's original proposal and may only be used for purposes of clarifying or filling in gaps in the offeror's proposal.
(4) The director shall establish a date and time for the interviews or presentations and shall notify eligible offerors of the procedures. Interviews and presentations will be at the offeror's expense.

R23-1-712. Best and Final Offers.

Best and Final Offers shall be conducted in accordance with Section 63G-6a-707.5. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.
(1) The best and final offers process is an optional step in the evaluation phase of the request for proposals process in which offerors are requested to change their proposals.
(a) An evaluation committee may request best and final offers when:
(i) no single proposal addresses all the specifications;
(ii) all or a significant number of the proposals received are unclear and the evaluation committee requires further clarification;
(iii) additional information is needed for the evaluation committee to make a decision;
(iv) the differences between proposals in one or more categories are too slight to distinguish;
(v) all cost proposals are too high or over the budget; or
(vi) multiple contract awards are necessary to achieve regional or statewide coverage for a procurement item under a request for proposals and there are insufficient cost proposals within the budget to award the number of contracts needed to provide regional or statewide coverage.
(2) Only offerors meeting the qualifications, or scores described in the request for proposals are eligible to respond to best and final offers.
(3) Proposal modifications submitted in response to a request for best and final offers may only address the specific issues or sections of the request for proposals described in the request for best and final offers.
(4) Offerors may not use the best and final offers process to correct deficiencies in their proposals not addressed in the request for best and final offers issued by the division.
(5) When a request for best and final offers is issued to reduce cost proposals, offerors shall submit itemized cost proposals clearly indicating the tasks or scope reductions that can be accomplished to bring costs within the available budget.
(a) The cost information of one offeror may not be disclosed to competing offerors during the best and final offers process and further, such cost information shall not be shared with other offerors until the contract is awarded.
(b) The division shall ensure that auction tactics are not used in the discussion process, including discussing and comparing the costs and features of other proposals.
(6) The best and final offers process may not be conducted as part of the contract negotiation process. It may only be conducted during the evaluation phase of the request for proposals process.
(7) The division may not use the best and final offers process to allow offerors a second opportunity to respond to the entire request for proposals.
(8) If a proposal modification is made orally during the interview or presentation process, the modification must be confirmed in writing.
(9) A request for best and final offers issued by the division shall:
(a) comply with all public notice requirements provided in Section 63G-6a-112;
(b) include a deadline for submission that allows offerors a reasonable opportunity for the preparation and submission of their responses; and
(c) show how proposal modifications in response to a request for best and final offers will be evaluated.
(10) If an offeror does not submit a best and final offer, its immediately previous proposal will be considered its best and final offer.
(11) Unsolicited best and final offers will not be accepted from offerors.

R23-1-713. Best Value Analysis Exception: Construction Manager/General Contractor.

(1) An evaluation committee is not required to explain how a recommended proposal provides the best value to the division under Section 63G-6a-707 if the contract is awarded solely on the qualifications of the construction manager/general contractor and the management fee described in Section 63G-6a-707 provided:
(a) a competitive process is maintained by the issuance of a request for proposals that requires the offeror to provide, at a minimum:

(i) a management plan;
(ii) references;
(iii) statements of qualifications; and
(iv) a management fee if requested by the division; and
(b) the management fee contains only the following:
(i) preconstruction phase services;
(ii) monthly supervision fees for the construction phase; and
(iii) overhead and profit for the construction phase.
(2) The evaluation committee may, as described in the solicitation, weight and score the management fee as a fixed rate or a fixed percentage of the estimated contract value.
(3) The management fee may not be requested by the division if the management fee is not part of the criteria for the evaluation committee. The division may use a fee table for this management fee.
(4) The contract awarded must be in the best interest of the division.

R23-1-714. Only One Proposal Received.

(1) If only one proposal is received in response to a request for proposals, the evaluation committee may:
(a) conduct a review to determine if:
(i) the proposal meets the requirements;
(ii) pricing and terms are reasonable; and
(iii) the proposal is in the best interest of the division.
(b) if the evaluation committee determines the proposal meets the requirements, pricing and terms are reasonable, and the proposal is in the best interest of the division, the division may make an award.
(2) If an award is not made, the division may either cancel the procurement or re-solicit to obtain additional proposals.

R23-1-715. Publicizing Awards.

(1) In addition to the requirements of Section 63G-6a-112, the following shall be disclosed after receipt of a GRAMA request and payment of any lawfully enacted and applicable fees:
(a) the contracts entered as a result of the selection and the successful proposals, except for those portions that are to be non-disclosed under Section R23-1-703;
(b) the unsuccessful proposals, except for those portions that are to be non-disclosed under Section R23-1-703;
(c) the rankings of the proposals;
(d) the names of the members of any selection committee, reviewing authority;
(e) the final scores used by the selection committee to make the selection, except that the names of the individual scorers shall not be associated with their individual scores or rankings; and
(f) the written justification statement supporting the selection, except for those portions that are to be non-disclosed under Section R23-1-703.
(2) After due consideration and public input, the following has been determined by the division to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, and will not be disclosed by the governmental entity at any time to the public including under any GRAMA request:
(a) the names of individual scorers or evaluators in relation to their individual scores or rankings;
(b) any individual scorer's or evaluator's notes, drafts, and working documents;
(c) non-public financial statements; and
(d) past performance and reference information, which is not provided by the offeror, and which is obtained as a result of the efforts of the governmental entity. To the extent such past performance or reference information is included in the written justification statement; it is subject to public disclosure.

R23-1-801. Sole Source - Award of Contract Without Competition.

(1) Sole source procurements shall be conducted in accordance with the requirements set forth in Section 63G-6a-802. All definitions in the Utah Procurement Code shall apply to this rule unless otherwise specified in this rule. This administrative rule provides additional requirements and procedures and should be used in conjunction with the Utah Procurement Code.
(2) A sole source procurement may be conducted if:
(a) there is only one source for the procurement item;
(b) the award to a specific supplier, service provider, or contractor is in accordance with the requirements imposed by the source of the funds used to procure the procurement item; or
(c) the procurement item is needed for trial use or testing to determine whether the procurement item will benefit the procurement unit.
(3) An urgent or unexpected circumstance or requirement for a procurement item does not justify the award of a sole source procurement.
(4) Requests for a procurement to be conducted as a sole source shall be submitted in writing to the director for approval.
(5) The sole source request shall be submitted to the director and shall include:
(a) a description of the procurement item;
(b) the total dollar value of the procurement item, including, when applicable, the actual or estimated full life-cycle cost of maintenance and service agreements;
(c) the duration of the proposed sole source contract;
(d) an authorized signature of the requester;
(e) unless the sole source procurement is conducted under Subsection R23-1-801(2)(b) or (c), research completed by the requester documenting that there are no other competing sources for the procurement item; and
(f) any other information requested by the director.
(6) a sole source request form containing all the requirements of Subsection R23-1-801(5) may be available on the division's website or may be described in specifications or other contract documents.
(7) Except as provided in Subsection (b), sole source procurements over $50,000 shall be published in accordance with Section 63G-6a-112.
(a) Sole source procurements under $50,000 are not required to be published but may be published at the discretion of the director.
(b) The requirement for publication of notice for a sole source procurement is waived:
(i) for public utility services;

(ii) if the award to a specific supplier, service provider, or contractor is in accordance with the requirements imposed by the source of the funds used to procure the procurement item;
(iii) when the circumstances of the request are clear that there can only be one source;
(iv) as provided in Section R23-1-806; or
(v) for other circumstances as determined in writing by the director.
(8) A person may contest a sole source procurement before the closing of the public notice period set forth in Section 63G-6a-112, when public notice is required under Section R23-1-801 by submitting the following information in writing to the director:
(a) the name of the contesting person; and
(b) a detailed explanation of the challenge, including documentation showing that there are other competing sources for the procurement item.
(9) Upon receipt of information contesting a sole source procurement, the director shall investigate to determine the validity of the challenge and make a written determination either supporting or denying the challenge.
R23-1-802. Trial Use or Testing of a Procurement Item, Including New Technology.
The trial use or testing of a procurement item, including new technology, shall be conducted as set forth in Section 63G-6a-802.
R23-1-803. Alternative Procurement Methods.
(1) The director may utilize alternative procurement methods to acquire procurement items such as those listed in this section when it is determined in writing by the director, to be more practicable or advantageous to the division:
(a) used vehicles;
(b) livestock;
(c) hotel conference facilities and services;
(d) speaker honorariums;
(e) hosting out-of-state and international dignitaries;
(f) international promotion of the state; and
(g) any other procurement item for which a standard procurement method is not reasonably practicable.
(2) When making this determination, the director may take into consideration whether:
(a) the potential cost of preparing, soliciting, and evaluating bids or proposals is expected to exceed the benefits normally associated with such solicitations;
(b) the procurement item cannot be acquired through a standard procurement process; and
(c) the price of the procurement item is fair and reasonable.
(3) If it is so determined, the director may elect to utilize an alternative procurement method which may include any of the following:
(a) informal price quotations;
(b) direct negotiations; and
(c) direct award.
R23-1-804. Emergency Procurement.
(1) Emergency procurements shall be conducted in accordance with the requirements set forth in Section 63G-6a-803, and this rule.
(2) An emergency procurement is a procurement procedure where the division may obtain a procurement item without using a standard competitive procurement process.
(3) Emergency procurements are limited to those procurement items necessary to mitigate the emergency.
(4) While a standard procurement process is not required under an emergency procurement, when practicable, the division should seek to get as much competition as possible through use of phone quotes, internet quotes, limited invitations to bid, or other selection methods while avoiding harm, or risk of harm, to the public health, safety, welfare, property, or impairing the ability of a public entity to function or perform required services.
R23-1-805. Declaration of "Official State of Emergency."
Upon a declaration of a state of emergency by the governor under the Utah Emergency Management Act, the director shall implement the division's Continuity of Operations Plan, or COOP. When activated, the division shall follow the procedures outlined in the plan and take appropriate actions as directed by the governor.
R23-1-806. Procurement Items Used for or in Connection with the Establishment of a State Store.
Notwithstanding anything in Rule R23-1 to the contrary, the director may award a contract for a procurement item without engaging in a standard procurement process if the director determines in writing that the procurement item is intended to be used for, or in connection with the establishment of, a state store, as defined in Section 32B-1-102.
(1) Except as provided in Subsection (b), notice of a procurement under this Section R23-1-806 shall be published in accordance with Section 63G-6a-112.
(2) Notice of a procurement under Subsection 63G-6a-802(1)(d) or this rule is not required if:
(a) the cost of the procurement does not exceed $50,000; or
(b) the procurement item is procured from an entity that is developing the state store or developing real property on which the state store will be located or developing real property adjacent to the real property where the state store will be located.
R23-1-901. General Provisions.
An invitation for bids, a request for proposals, or other solicitation may be cancelled before the deadline for receipt of bids, proposals, or other submissions, when it is in the best interests of the division as determined by the director. In the event a solicitation is cancelled, the reasons for cancellation shall be made part of the contract file and shall be available for public inspection and the division may:
(1) re-solicit new bids or proposals using the same or revised specifications; or
(2) withdraw the solicitation for the procurement items.
R23-1-902. Re-solicitation.
(1) In the event there is no initial response to an initial solicitation, the director may:
(a) contact the known supplier community to determine why there were no responses to the solicitation;
(b) research the potential vendor community; and
(c) based upon the information in Subsections (a) and (b) require the division to change the solicitation documents.
(2) If the division has modified the solicitation documents and after the re-issuance of a solicitation, there is still no competition or there is insufficient competition, the director, may:
(a) require the division to further change the procurement documents; or

(b) cancel the solicitation for the procurement items.
R23-1-903. Cancellation Before Award.
(1) Solicitations may be cancelled before award but after opening all bids or offers when the director determines in writing that:
(a) inadequate or ambiguous specifications were cited in the solicitation;
(b) the specifications in the solicitation have been or must be revised;
(c) the procurement items being solicited are no longer required;
(d) the solicitation did not provide for consideration of all factors of cost to the division or using agency, such as cost of transportation, warranties, service, or maintenance;
(e) bids or offers received show that the needs of the division or using agency can be satisfied by a less expensive procurement item differing from that in the solicitation;
(f) except as provided in Section 63G-6a-606, all otherwise acceptable bids or offers received are at unreasonable prices, or only one bid or offer is received, and the director cannot determine the reasonableness of the bid price or cost proposal;
(g) the responses to the solicitation were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or
(h) no responsive bid or offer has been received from a responsible bidder or offeror.
R23-1-904. Alternative to Cancellation.
In the event administrative difficulties are encountered before award but after the deadline for submissions that may delay award beyond the bidders' or offerors' acceptance periods, the bidders or offerors may be requested, before expiration of their bids or offers, to extend in writing the acceptance period, with consent of sureties, if any, to avoid the need for cancellation.
R23-1-905. Continuation of Need.
If the solicitation has been cancelled for the reasons specified in Subsection R23-1-903(1)(f), (g) or (h) and the director has made the written determination in Subsection R23-1-903(1) and the division has an existing contract, the division may permit an extension of the existing contract under Section 63G-6a-802.
R23-1-906. Rejections and Suspension or Debarment.
(1) The division may reject any bids, offers or other submissions, in whole or in part, as may be specified in the solicitation, when it is in the best interest of the division. In the event of a rejection of any bids, offers or other submissions, in whole or in part, the reasons for rejection shall be made part of the contract file and shall be available for public inspection.
(2) Bids, offers, or other submissions, received from any person that is suspended, debarred, or otherwise ineligible as of the due date for receipt of bids, proposals, or other submissions shall be rejected.
R23-1-907. Rejection for Nonresponsibility or Nonresponsiveness.
(1) Subject to Section 63G-6a-903, the director shall reject a bid or offer from a bidder or offeror determined to be nonresponsible. A responsible bidder or offeror is defined in Subsection 63G-6a-103(7~~4~~6).
(2) In accordance with Subsection 63G-6a-606(3) the director may not accept a bid that is not responsive. Responsive is defined in Subsection 63G-6a-103(7~~5~~7).
(3) If there is any deficiency or failure to submit a required subcontractor list or bid security~~bond~~, the division may request that the bidder or offeror who is not in compliance, submit the required subcontractor list or bid security~~bond~~ by 5 p.m. of the next business day after notice is provided by the division. Failure to cure the deficiency or failure to submit any required subcontractor list or bid security~~bond~~ by 5 p.m. of the next business day after notice is provided by the division, shall make the bidder or offeror nonresponsive and therefore ineligible for consideration of award of the contract.
(4) The originals of all rejected bids, offers, or other submissions, and all written findings with respect to such rejections, shall be made part of the contract file and available for public inspection.
R23-1-908. Debarment or Suspension from Consideration for Award of Contracts -- Process -- Causes for Debarment -- Appeal.
The procedures for a debarment or suspension from consideration for award of contracts, including appellate rights, are provided in Section 63G-6a-904. Upon any suspension or debarment, the person that is suspended or debarred shall be considered nonresponsible and ineligible for the award of contracts by the division in accordance with the determination of suspension or debarment.
R23-1-1001. Providers of State Products.
(1) In addition to the reciprocal preference requirements contained in Section 63G-6a-1002 for the providers of procurement items produced, manufactured, mined, grown, or performed in Utah, Section R23-1-10 outlines the process for award of a contract when there is more than one equally low preferred bidder. All definitions in the Utah Procurement Code shall apply to this rule unless otherwise specified in this rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.
(2) In the event there is more than one equally low preferred bidder, the director shall consider the preferred bidders as tie bidders and shall follow the process specified in Section 63G-6a-608 and Section R23-1-611.
R23-1-1002. Preference for Resident Contractors.
(1) In addition to the reciprocal preference requirements contained in Section 63G-6a-1003 for resident Utah contractors, this rule outlines the process for award of a contract when there is more than one equally low preferred resident contractor.
(2) In the event there is more than one equally low preferred resident contractor, the director shall consider the preferred resident contractors as tie bidders and shall follow the process specified in Sections 63G-6a-608 and R23-1-611.
R23-1-1003. Exception for Federally Funded Contracts.
This section does not apply to the extent it conflicts with federal requirements relating to a procurement that involves the expenditure of federal assistance, federal contract funds, or federal financial participation funds.
R23-1-1101. Definitions.
(1) When used in this rule, the terms "bid," "bidder," and "bid security" apply to all procurements, including non-construction procurements, when the procurement documents, regardless of the procurement type, require securities or bonds.
(2) All definitions in the Utah Procurement Code shall apply to this rule unless otherwise specified in this rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.
R23-1-1102. Bid Security Requirements for Projects.
(1) Application. The requirements for bid security ~~and bonds~~ under this Section R23-1-11 shall apply as follows:
(a) for the division, the award of construction contracts where the face amount of the contract is $100,000 or more.

(b) For other state agencies that are required to use the same or similar documents as the division for their construction contracts, the award of construction contracts where the face amount of the contract is $50,000 or more, unless the director, in writing, approves a $100,000 or more requirement for bid security ~~and bonds~~ similar to the division, based on:
(i) The director's finding that the agency has a selection process for such contracts that are under $100,000, that ensures a responsible, financially solvent contractor is selected; and
(ii) that the agency has the financial capability to absorb the potential responsibility that can occur due to the lack of the bid security ~~and bonding requirements~~ for the contract under $100,000.
(c) At any time, the division or any other state agency can require acceptable bid security ~~as well as performance and payment bonds~~ on contracts that are for amounts below the standard requirements set forth in this rule.
(2) Acceptable Bid Security. The term "bid" as used in this rule shall also be deemed to apply to "offer."
(a) Invitations for bids and requests for proposals shall require the submission of acceptable bid security in an amount equal to at least 5% of the bid, when the bid is submitted and shall, if the bid security is a bid bond, be on the most current version of American Institute of Architects Document A310 Bid Bond, or equivalent. If a contractor fails to accompany its bid with acceptable bid security, the bid shall be deemed nonresponsive, unless this failure is found to be nonsubstantial.
(b) If acceptable bid security is not furnished in accordance with Subsection R23-1-907(3), the bid shall be rejected as nonresponsive, unless the failure to comply is determined by the director to be nonsubstantial. Failure to submit an acceptable bid security may be deemed nonsubstantial if:
(i) if the bid security is a bid bond and is submitted on a form other than the division's required bid bond form and the bid security meets all other requirements including being issued by a surety meeting the requirements of ~~Subsection (5)~~ rule 23-1-1103(5);
(ii) the contractor provides acceptable bid security by 5 p.m. of the next business day after notice is provided by the division of the defective bid security; or
(iii) only one bid is received.
(3) Waiver. The director may waive any bid security ~~bonding~~ requirements set forth in this rule if the director finds circumstances in which the director considers ~~any of~~ the bid security ~~bonds~~ to be unnecessary to protect the division. Any such waiver shall be stated in writing, explaining the circumstances why the ~~bonds are~~ bid security is not necessary to protect the division, and the waiver shall be made part of the project file.

R23-1-1103. Payment and Performance Bond Requirements for Projects.

(1) Under Subsection 1103(5)(b) the division is not required to obtain from a contractor a performance bond or payment bond for a contract administered by the division. Under Subsection 1103(5)(c) the division may require a performance bond, payment bond or both for a construction contract administered by the division if the division determines it necessary to protect the division from financial loss or performance risk.
(2) No project administered by the division shall require a performance bond or a payment bond except as set forth in Subsection (3) of this rule.
(3) The division may require a performance bond, a payment bond or both for a project administered by the division if the division determines a performance bond, payment bond or both is necessary to protect the division from financial loss or performance risk based upon any of the following factors:
(a) complexity of scope – complex projects may expose the division to greater risk of financial loss or performance risk than simple projects;
(b) the division's familiarity with the type of project being constructed – specialized projects which the division does not have previous experience with may expose the division to greater risk of financial loss or performance risk than projects of a type familiar to the division;
(c) regional factors such as regional availability of materials, equipment, supplies, labor and subcontractors – projects located away from the Wasatch Front and St. George metropolitan area and in rural areas of the State may expose the division to greater risk of financial loss or performance risk than projects in urban areas;
(d) unique project site characteristics – projects with unique project site characteristics, such as limited access, geotechnical issues or wetlands designations may expose the division to greater risk of financial loss or performance risk than projects with no site related issues;
(e) procurement method – projects procured under part 8 (exceptions to procurement requirements) of the Utah Procurement Code may expose the division to greater risk of financial loss or performance risk than projects procured under part 6 (bidding) or part 7 (requests for proposals) of the Utah Procurement Code;
(f) construction contract management method – design-build and construction manager/general contractor construction contract management methods may expose the division to greater risk of financial loss or performance risk than design-bid-build projects;
(g) funding source(s) – the source of funds for non-state funded projects administered by the division may require that the division obtain a performance bond, a payment bond or both;
(h) project budget; and
(i) any other factor associated with the project which the division reasonably determines requires a performance bond, a payment bond or both, to protect the division from financial loss or performance risk.
(4) The decision of whether to require a performance bond, a payment bond or both on a construction project administered by the division under Subsection (3) of this rule shall be made by the director in writing prior to the solicitation for the construction project.
(5) Where a performance bond, a payment bond, or both are required for a construction contract administered by the division under Subsection (3) of this rule, the form of the bonds shall be the most current version of American Institute of Architects form A312 Performance and Payment Bond, or equivalent and the surety issuing the bonds must be authorized to do business in Utah and be listed in the U.S. Department of the Treasury Circular 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies for an amount not less than the amount of the bond to be issued, provided that in no event shall a contractor to whom a contract is awarded be required to obtain a performance bond or payment bond from a specific insurance or surety company, producer, agent, or broker.

R23-1-1201. Required Contract Clauses.

(1) The division shall comply with Section 63G-6a-1202 in establishing standard contract clauses. The division will establish standard contract clauses to assist the division and to help contractors and potential contractors to understand applicable requirements. These standard contract clauses may be modified as needed to meet the requirements of the particular project.
(2) All definitions in the Utah Procurement Code shall apply to this rule unless otherwise specified in this rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.

R23-1-1202. Establishment of Terms and Conditions.

The division may use the Standard Terms and Conditions adopted by the Division of Purchasing and General Services for a particular procurement with modifications.

R23-1-1203. Leases of Personal Property.

Leases of personal property are subject to the following:

(1) Leases are subject to Section 63G-6a-1209 and all other laws or rules applicable to the lease.
(2) Executive Branch Procurement Unit Leases with Purchase Option. A purchase option in a lease may be exercised if the lease containing the purchase option was awarded under an authorized procurement process. Before exercising this option, the division shall:
(a) investigate alternative means of procuring comparable procurement items; and
(b) compare estimated costs and benefits associated with the alternative means and the exercise of the option, for example, the benefit of buying new state of the art data processing equipment compared to the estimated, initial savings associated with exercise of a purchase option.

R23-1-1204. Requirements for Cost or Pricing Data.
(1) For contracts that expressly allow price adjustments, cost or pricing data shall be required in support of a proposal leading to the adjustment of any contract pricing.
(2) Cost or pricing data exceptions:
(a) need not be submitted when the terms of the contract state established market indices, catalog prices or other benchmarks are used as the basis for contract price adjustments or when prices are set by law or rule;
(b) if a contractor submits a price adjustment higher than established market indices, catalog prices or other benchmarks established in the contract, the director may request additional cost or pricing data; or
(c) the director may waive the requirement for cost or pricing data provided a written determination is made supporting the reasons for the waiver. A copy of the determination shall be kept in the contract file.

R23-1-1205. Defective Cost or Pricing Data.
(1) If defective cost or pricing data was used to adjust a contract price, the vendor and the division may enter into discussions to negotiate a settlement.
(2) If a settlement cannot be negotiated, either party may seek relief as provided by applicable laws and rules.

R23-1-1206. Cost Analysis.
Cost analysis includes the verification of cost data. Cost analysis may be used to evaluate:
(1) specific elements of costs;
(2) total cost of ownership and life-cycle cost;
(3) supplemental cost schedules;
(4) market basket cost of similar items;
(5) the necessity for certain costs;
(6) the reasonableness of allowances for contingencies;
(7) the basis used for allocation of indirect costs; and
(8) the reasonableness of the total cost or price.

R23-1-1207. Inspections.
Circumstances under which the division may perform inspections include inspections of the contractor's manufacturing or production facility or place of business, or any location where the work is performed to determine:
(1) whether the definition of "responsible," as defined in Subsection 63G-6a-103(764) and in the solicitation documents, has been met or are capable of being met; and
(2) if the contract is being performed in accordance with its terms.

R23-1-1208. Access to Contractor's Manufacturing or Production Facilities.
The division may enter a contractor's or subcontractor's manufacturing or production facility or place of business to:
(1) inspect procurement items for acceptance by the division pursuant to the terms of a contract;
(2) audit cost or pricing data pursuant to Section 63G-6a-1206 or audit the books and records of any contractor or subcontractor pursuant to Section 63G-6a-1206.3; and
(3) investigate in connection with an action to debar or suspend a person from consideration for award of contracts.

R23-1-1209. Inspection of Supplies and Services.
Contracts may provide that the director or division may inspect procurement items at the contractor's or subcontractor's facility and perform tests to determine whether the procurement items conform to solicitation and contract requirements.

R23-1-1210. Conduct of Inspections.
(1) No inspector may change any provision of the specifications or the contract without written authorization of the director. The presence or absence of an inspector or an inspection shall not relieve the contractor or subcontractor from any requirements of the contract.
(2) When an inspection is made, the contractor or subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.

R23-1-1301. Purpose.
The purpose of this rule is to comply with Section 63G-6a-1302 All definitions in the Utah Procurement Code shall apply to this rule unless otherwise specified in this rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.

R23-1-1302. Construction Management Rule.
As required by Section 63G-6a-1302, this rule contains provisions applicable to:
(1) selecting the appropriate method of management for construction contracts;
(2) documenting the selection of a particular method of construction contract management; and
(3) the selection of a construction manager/general contractor.

R23-1-1303. Application.
Sections R23-1-1302 through R23-1-1307 shall apply to all procurements of construction.

R23-1-1304. Methods of Construction Contract Management.
(1) This rule contains provisions applicable to the selection of the appropriate type of construction contract management.
(2) It is intended that the director have sufficient flexibility in formulating the construction contract management method for a particular project to fulfill the needs of the division. The methods for achieving the purposes set forth in this rule are not to be construed as an exclusive list.
(3) Before choosing the construction contracting method to use, a careful assessment must be made by the director of the requirements the project. The director shall consider, at a minimum, the following factors:
(a) when the project must be ready to be occupied;
(b) the type of project, for example, housing, offices, labs, heavy or specialized construction;

(c) the extent to which the requirements of the division and the way in which they are to be met are known;
(d) the location of the project;
(e) the size, scope, complexity, and economics of the project;
(f) the amount and type of financing available for the project, including whether the budget is fixed or what the source of funding is, for example, general or special appropriation, federal assistance moneys, general obligation bonds or revenue bonds, lapsing or non-lapsing status and legislative intent language;
(g) the availability, qualification, and experience of the division's personnel to be assigned to the project and how much time the division's personnel can devote to the project;
(h) the availability, qualifications and experience of outside consultants and contractors to complete the project under the various methods being considered;
(i) the results achieved on similar projects in the past and the methods used; and
(j) the comparative advantages and disadvantages of the construction contracting method and how they might be adapted or combined to fulfill the needs of the using agencies.
(5) The following descriptions are provided for the more common construction contracting management methods which may be used by the division. The methods described are not all mutually exclusive and may be combined on a project. These descriptions are not intended to be fixed in respect to all construction projects. In each project, these descriptions may be adapted to fit the circumstances of that project.
(a) Single Prime (General) Contractor. The single prime general contractor method is typified by one business, acting as a general contractor, contracting with the division to timely complete an entire construction project in accordance with drawings and specifications provided by the division. Generally, the drawings and specifications are prepared by an architectural or engineering firm under contract with the division. Further, while the general contractor may take responsibility for successful completion of the project, much of the work may be performed by specialty contractors with whom the general contractor has entered into subcontracts.
(b) Design-Build. In a design-build project, an entity, often a team of a general contractor and a designer, contract directly with the division to meet the division's requirements as described in a set of performance specifications or a program. Design responsibility and construction responsibility both rest with the design-build contractor. This method can include instances where the design-build contractor supplies the site as part of the package.
(c) Construction Manager/General Contractor (Construction Manager at Risk). The division may contract with the construction manager early in a project to assist in the development of a cost-effective design. In a Construction Manager/General Contractor (CM/GC) method, the CM/GC becomes the general contractor and is at risk for all the responsibilities of a general contractor for the project, including meeting the specifications, complying with applicable laws, rules, and regulations, that the project will be completed on time and will not exceed a specified maximum price.

R23-1-1305. Selection of Construction Method Documentation.

The director shall include in the contract file a written statement describing the facts that led to the selection of a particular method of construction contract management for each project.

R23-1-1306. Special Provisions Regarding Construction Manager/General Contractor.

(1) In the selection of a construction manager/general contractor, a standard procurement process as defined in Section 63G-6a-103 may be used or an exception allowed under Part 8 of the Utah Procurement Code.
(2) When the construction manager/general contractor enters into any subcontract that was not specifically included in the construction manager/general contractor's cost proposal, the construction manager/general contractor shall procure the subcontractors by using a standard procurement process as defined in Section 63G-6a-103 or an exception to the requirement to use a standard procurement process, described in Part 8 of the Utah Procurement Code.

R23-1-1307. Special Provisions Regarding Design-Build.

(1) For state building construction projects, the division may use a design-build provider as one method of construction contracting management.
(2) A design-build contract may include a provision for obtaining the site for the construction project.
(3) A design-build contract or a construction manager/general contractor contract may include provision by the contractor of operations, maintenance, or financing.

R23-1-1308. Drug and Alcohol Testing Required for State Contracts: Definitions.

The rules applicable to the division for drug and alcohol testing are in Rule 23-7 of the Utah Administrative Code.

R23-1-1401. Procurement of Design-Build Transportation Project Contracts.

The Utah Department of Transportation is the rulemaking authority for rules under Subsection 63G-6a-1402(3)(a)(ii) governing the procurement of design-build transportation projects and under Subsection 63G-6a-1403(2)(c) establishing requirements for the procurement of tollway development agreements.

R23-1-1501. Architect-Engineer Procurement Process, General Process.

(1) Application. Except as otherwise provided in Section 63G-6a-1502, Part 15 of the Utah Procurement Code apply to every procurement of services within the scope of the practice of architecture as defined by Section 58-3a-102, or professional engineering as defined in Section 58-22-102. All definitions in the Utah Procurement Code shall apply to this rule unless otherwise specified in this rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.
(2) Architect-Engineer Evaluation Committee. The director shall designate members of the Architect-Engineer Evaluation Committee. The evaluation committee must consist of at least three members who are qualified under Section 63G-6a-1503.
(3) Request for Statement of Qualifications. The division shall issue a public notice for a request for statement of qualifications to rank architects or engineers. The division shall:
(a) state in the request for statement of qualifications:
(i) the type of procurement item to which the request for statement of qualifications relates;
(ii) the scope of work to be performed;
(iii) the instructions and the deadline for providing information in response to the request for statement of qualifications; and
(iv) criteria used to evaluate statements of qualifications including:
(A) basic information about the person or firm;
(B) experience and work history;
(C) management and staff;
(D) qualifications and certification;
(E) licenses and certifications;

(F) applicable performance ratings;
(G) financial statements; and
(H) other pertinent information.
(b) Key personal identified in the statement of qualifications may not be changed without the advance written approval of the division.
(4) Not include Cost in Response. Architects and engineers shall not include price or a cost component in a response to a request for statement of qualifications.
(5) Evaluation of Statement of Qualifications. The evaluation committee shall evaluate statements of qualifications in accordance with Section 63G-6a-1503.5 to rank or score architects or engineers without considering price or a cost component.
(6) Negotiation and Award of Contract. The director shall negotiate a contract with the most qualified firm for the required services at compensation determined to be fair and reasonable based on the division's rate table or as may be reasonably adjusted by the director for the particular scope of work, location, or other aspects of the services.
(7) Failure to Negotiate Contract with the Highest Ranked Firm.
(a) If fair and reasonable compensation, contract requirements, or contract documents cannot be agreed upon with the highest ranked firm, the director shall advise the firm in writing of the termination of negotiations.
(b) Upon failure to negotiate a contract with the highest ranked firm, the director shall proceed in accordance with Section 63G-6a-1505.
(8) Notice of Award.
(a) The director shall award a contract to the highest ranked firm with which the fee negotiation was successful.
(b) Notice of the award shall be made available to the public.
(9) Written Justification Statements. The division shall issue a statement justifying the ranking of the firm with which fee negotiation was successful.

R23-1-1502. Disclosure of Submittals, Performance Evaluations, and References.

(1) Except as provided in this rule, submittals shall be open to public inspection after notice of the selection results.
(2) The classification of records as protected, and the treatment of such records shall be as provided in Section R23-1-703.
(3) The division finds that it is necessary to maintain the confidentiality of performance evaluations and reference information to avoid competitive injury and to encourage those persons providing the information to respond in an open and honest manner without fear of retribution. Accordingly, records containing performance evaluations and reference information are classified as protected records under Subsection 63G-2-305(6) and shall be disclosed only to those persons involved with the performance evaluation, the architect or engineer that the information addresses and persons involved with the review and selection of submittals. The division may, however, provide reference information to other governmental entities for use in their procurement activities and to other parties when requested by the architect or engineer that is the subject of the information. Any other disclosure of such performance evaluations and reference information shall only be as required by applicable law.

R23-1-1503. Publicizing Selections.

(1) Notice. After the selection of the successful firm, notice of the selection shall be available in the principal office of the division in Taylorsville, Utah and may be available on the internet.
(2) Information Disclosed. The following shall be disclosed with the notice of selection:
(a) the ranking of the firms;
(b) the names of the selection committee members;
(c) the final scores used by the selection committee to make the selection, except that the names of the individual scorers shall not be associated with their individual scores; and
(d) the written justification statement supporting the selection.
(3) Information Classified as Protected. After due consideration and public input, the following has been determined by the division to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract with the division and shall be classified as protected records:
(a) the names of individual selection committee scorers in relation to their individual scores or rankings; and
(b) non-public financial statements, subject to Sections 63G-2-309 and R23-1-703.

R23-1-1504. Performance Evaluation.

(1) The division shall evaluate the performance of the architectural or engineering firm and shall provide an opportunity for the using agency to comment on the division's evaluation.
(2) This evaluation shall become a part of the record of that architectural or engineering firm within the division. The architectural or engineering firm shall be provided a copy of its evaluation at the end of the project and may enter its response in the file.
(3) Confidentiality of the evaluation information shall be addressed as provided in Sections R23-1-1502 and R23-1-1503.

R23-1-1601. Conduct.

Protests shall be conducted in accordance with the requirements set forth in Sections 63G-6a-1601 through 13G-6a-603. All definitions in the Utah Procurement Code shall apply to this rule unless otherwise specified in this rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.

R23-1-1602. Verification of Legal Authority.

A person filing a protest may be asked to verify that the person has legal authority to file a protest on behalf of a public or private corporation, limited liability company, sole proprietorship, partnership, or unincorporated association.

R23-1-1603. Intervention in a Protest.

(1) Application. This rule contains provisions applicable to intervention in a protest, including who may intervene and the time and manner of intervention.
(2) Period of Time to File. After a timely protest is filed in accordance with the Utah Procurement Code, the Protest Officer shall notify awardees of the subject procurement and may notify others of the protest. A Motion to Intervene must be filed with the Protest Officer no later than ten days from the date such notice is sent by the Protest Officer. Only those Motions to Intervene made within the time prescribed in this rule will be considered timely. The division and using agency are automatically considered a Party of Record and need not file any Motion to Intervene.
(3) Contents of a Motion to Intervene. A copy of the Motion to Intervene shall also be mailed or emailed to the person protesting the procurement.
(4) Any Motion to Intervene must state, to the extent known, the position taken by the person seeking intervention and the basis in fact and law for that position. A Motion to Intervene must also state the person's interest in sufficient factual detail to demonstrate that:
(a) the person seeking to intervene has a right to participate which is expressly conferred by statute or by rule, order, or other authority; or

(b) the person seeking to intervene has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a:
(i) consumer;
(ii) customer;
(iii) competitor;
(iv) security holder of a party; or
(v) the person's participation is in the public interest.
(5) Granting of Status. If no written objection to the timely Motion to Intervene is filed with the Protest Officer within seven calendar days after the Motion to Intervene is received by the protesting person, the person seeking intervention becomes a party at the end of this seven-day period. If an objection is timely filed, the person seeking intervention becomes a party only when the motion is expressly granted by the Protest Officer based on a determination that a reason for intervention exists as stated in this rule. Notwithstanding this rule, an awardee of the procurement that is the subject of a protest will not be denied their Motion to Intervene, regardless of its content, unless it is not timely filed with the Protest Officer.
(6) Late Motions. If a Motion to Intervene is not timely filed, the motion shall be denied by the Protest Officer.

R23-1-1701. Statutory and Rule Requirements.

Appeals to a protest decision shall be conducted in accordance with the requirements set forth in Sections 63G-6a-1701 through 63G-6a-1705. Sections R33-117-101 through R33-117-105 shall also apply.

R23-1-1801. Process.

(1) A person who receives an adverse decision, or the division may appeal a decision of a procurement appeals panel to the Utah Court of Appeals within seven days after the day on which the decision is issued.
(2) All appeals to the Utah Court of Appeals are subject to the requirements set forth in Section 63G-6a-1802.
(3) The division may only appeal a procurement appeals panel decision in accordance with Subsection 63G-6a-1802(2).

R23-1-1901. Encouraged to Get Legal Advice from Legal Counsel.

(1) All definitions in the Utah Procurement Code shall apply to this rule unless otherwise specified in this rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.
(2) Part 19 of the Utah Procurement Code, Sections 63G-6a-901 through 63G-6a-1911 contain provisions regarding:
(a) limitations on challenges of:
(i) a procurement;
(ii) a procurement process;
(iii) the award of a contract relating to a procurement;
(iv) a debarment; or
(v) a suspension; and
(b) the effect of a timely protest or appeal;
(c) the costs to or against a protester;
(d) the effect of earlier determinations by employees, agents, or other persons appointed by the procurement unit;
(e) the effect of a violation found after award of a contract;
(f) the effect of a violation found before the award of a contract;
(g) interest rates; and
(h) a listing of determinations that are final unless they are arbitrary and capricious or clearly erroneous.
(3) Due to the complex nature of protests and appeals, any person involved in the procurement process, protest, or appeal, is encouraged to seek advice from the person's own legal counsel.

R23-1-2001. General Provisions Related to Records.

General provisions related to records are in Part 20 of the Utah Procurement Code.

R23-1-2101. Cooperative Purchasing.

Cooperative purchasing shall be conducted in accordance with the requirements set forth in Section 63G-6a-2105.

R23-1-2201. Reserved.

Part 22 of Title 63G, Chapter 6a, Utah Procurement Code, did not exist at the point in time that this rule was amended. At such time as Part 22 of the Utah Procurement Code contains statutory language, the division will propose corresponding rules, as appropriate, pursuant to the Utah Administrative Rulemaking Act.

R23-1-2301. Reserved.

Part 23 of Title 63G, Chapter 6a, Utah Procurement Code, did not exist at the point in time that this rule was amended. At such time as Part 23 of the Utah Procurement Code contains statutory language, the division will propose corresponding rules, as appropriate, pursuant to the Utah Administrative Rulemaking Act.

R23-1-2401. Unlawful Conduct.

Unlawful conduct shall be governed in accordance with the requirements set forth in Sections 63G-6a-2401 through 63G-6a-2407. All definitions in the Utah Procurement Code shall apply to this rule unless otherwise specified in this rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.

R23-1-2402. Laws and Executive Orders Pertaining to Gifts, Meals, and Gratuities for Executive Branch Procurement Professionals.

A division employee classified as a "Procurement Professional" shall be governed by:
(1) Part 24 of the Utah Procurement Code, "Unlawful Conduct and Penalties:"
(2) Executive Order EO/002/2014 issued by the Governor (http://www.rules.utah.gov/execdocs/2014/ExecDoc155325.htm);
(3) Title 67, Part 16 "Utah Public Officers' and Employees' Ethics Act;"
(4) Section 76-8-105, "Receiving or soliciting a Bribe or Bribery by a Public Servant;" and
(5) any other applicable law.

R23-1-2403. Laws and Executive Orders Pertaining to Gifts, Meals, and Gratuities for Executive Branch Employees.

A division employee not classified as a "Procurement Professional" shall be governed by:
(1) Executive Order EO/002/2014 issued by the Governor (http://www.rules.utah.gov/execdocs/2014/ExecDoc155325.htm);
(2) Title 67, Part 16 "Utah Public Officers' and Employees' Ethics Act;"
(3) Section 76-8-105, "Receiving or soliciting a Bribe or Bribery by a Public Servant;" and
(4) any other applicable law.

R23-1-2404. Socialization with Vendors and Contractors.
(1) A division procurement professional shall not:
(a) participate in social activities with vendors or contractors that will interfere with the proper performance of the division procurement professional's duties;
(b) participate in social activities with vendors or contractors that will lead to unreasonably frequent disqualification of the division procurement professional from the procurement process; or
(c) participate in social activities with vendors or contractors that would appear to a reasonable person to undermine the division procurement professional's independence, integrity, or impartiality.
(2) If a division procurement professional participates in a social activity prohibited under Subsection R23-1-2404(1) or has a close personal relationship with a vendor or contractor, the division procurement professional shall promptly notify their supervisor and the supervisor shall take the appropriate action, which may include removal of the division procurement professional from the procurement or contract administration process that is affected.
R23-1-2405. Financial Conflict of Interests Prohibited.
(1) A procurement conflict of interest is a situation in which the potential exists for a division employee's personal financial interests, or for the personal financial interests of a division employee's family member, to influence, or have the appearance of influencing, the division employee's judgment in the execution of the division employee's duties and responsibilities when conducting a procurement or administering a contract.
(2) To keep the integrity of the division's procurement process, a division employee may not take part in any procurement process, contracting or contract administration decision:
(a) relating to the division employee or a family member of the division employee; or
(b) relating to any entity in which the division employee or a family member of the division employee is an officer, director or partner, or in which the division employee or a family member of the division employee owns or controls 10% or more of the stock of such entity or holds or directly or indirectly controls an ownership interest of 10% or more in such entity.
(3) If a procurement process, contracting or contract administration matter arises relating to a division employee or a family member of division employee, the division employee must advise the division employee's supervisor of the relationship, and must be recused from any discussions or decisions relating to the procurement, contracting or administration matter. The division employee must also comply with all disclosure requirements in Title 67 Chapter 16, Utah Public Officers and Employees' Ethics Act.
R23-1-2406. Professional Relationships and Social Acquaintances Not Prohibited.
It is not a violation for a division employee who participates in discussions or decisions relating to the procurement, contracting or administration process to have a professional relationship or social acquaintance with a person, contractor or vendor responding to a solicitation, or that is under contract with the state, provided that there is compliance with Section R33-124-107.
KEY: contracts, procurement, public buildings
Date of Last Change: August 8, 2024
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