

PUBLIC NOTICE is hereby given that there will be a Public Meeting held in Salt Lake City, Utah of the:

**Colorado River Authority of Utah**

July 30, 2021

1:00 p.m.

World Trade Center

60 East South Temple, 3rd Floor

Salt Lake City, Utah

Agenda

1. Call to Order – Gene Shawcroft, Chair
2. Welcome and Introductions
3. Overview of the Colorado River Authority of Utah Act and Authority Structure
4. Election of Vice Chair
5. Selection of 2021 Regular Meeting Schedule (August 30, September 30, October 29 and December 2)
6. Open and Public Meetings Act Training
7. Public Hearing to Consider the Budget for Fiscal Year 2021-22
8. Consideration of Resolution 2021-01 Approving the Budget for Fiscal Year 2021-22
9. Consideration of Resolution 2021-02 Adopting an Electronic Meeting Policy
10. Consideration of Resolution 2021-03 Adopting a Public Comment Policy
11. Consideration of Resolution 2021-04 Delegation of Certain Powers and Responsibilities to the Executive Director
12. Consideration of Resolution 2021-05 Adopting a Draft Procurement Procedure Rule for Submission and Public Comment
13. Public Comment for 15 minutes (limit to 2 minutes per person)
14. River Commissioner's Report
15. Executive Director's Report
16. Other Business
17. The Next Meeting (August 30 at 9:00 a.m. at the same location)
18. Adjournment

## **NOTICES**

The Colorado River Authority of Utah does not discriminate on the basis of race, color, national origin, sex, sexual orientation, gender identity, religion, age or disability in employment or the provision of services. If you are planning to attend this meeting and, due to a disability, need assistance in understanding or participating in the meeting, please notify the Authority eight or more hours in advance of the meeting and we will try to provide assistance. Please contact the Authority at the above address or telephone number (801) 456-1466.

General public attendees will be able to join this meeting in person. In the event of an absence of a majority quorum, agenda items will be continued to the next regularly scheduled meeting.

By motion of a member and affirmative vote of 2/3 of the members of the Authority, the Authority may vote to hold a closed meeting for any of the purposes allowed by law, Utah Code §§ 52-4-204, 52-4-205, 52-4-206.

At least 24 hours before the meeting, this agenda was posted in conspicuous view in the Authority offices where this meeting is being held and on the Utah State Webpage.

# **COLORADO RIVER AUTHORITY OF UTAH**

## **RESOLUTION 2021-01**

### **A RESOLUTION OF THE COLORADO RIVER AUTHORITY OF UTAH APPROVING A BUDGET FOR FISCAL YEAR 2021-22**

**WHEREAS**, pursuant to §63M-14-502 Utah Code Annotated 1953, as amended, the Colorado River Authority of Utah (“Authority”) is required to adopt an annual budget; and

**WHEREAS**, the budget establishes the revenues and expenditures for the Authority “within the legislative appropriations and in-kind goods and services received by the authority”; and

**WHEREAS**, Authority posted a notice regarding the budget on the Utah State Public Meeting Notice website and held a public hearing regarding the budget;

**NOW, THEREFORE, BE IT RESOLVED BY THE AUTHORITY BOARD** that the attached budget for FY 2021-22.

**PASSED AND ADOPTED** by the Authority Board this 30<sup>th</sup> day of July 2021.

Colorado River Authority of Utah

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Gene Shawcroft  
Chair

Attest:

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Authority Staff

**Colorado River Authority of Utah (CRAU)**  
**July 1, 2021 to June 30, 2022 (FY 2022) Budget**

**DRAFT PENDING APPROVAL**

**Sources of Funds**

State Ongoing	\$600,000
Districts - In-kind Benefitting CRAU	<u>\$1,500,000</u>
<i>Sub-Total Ongoing Funds</i>	<i>\$2,100,000</i>
State One-Time	<u>\$9,000,000</u>
<i>Sub-Total One-Time Funds</i>	<i>\$9,000,000</i>
<b>Total Sources of Funds</b>	<b>\$11,100,000</b>

**Uses of Funds**

**Use of State Funds**

Lease and Building Expenses	\$285,000
Operations	\$140,000
Personnel	\$920,000
Technical and Scientific Services	\$1,835,000
Legal Fees	<u>\$240,000</u>
<i>Total Use of State Funds</i>	<i>\$3,420,000</i>

*In-kind Expenditures by Districts Benefitting CRAU* *\$1,500,000*

**Total Uses of Funds** **\$4,920,000**

**Ending Balance**

One-Time and Ongoing State Funds Available	\$9,600,000
Use of One-time and Ongoing State Funds	<u>-\$3,420,000</u>
<b>Ending Balance of State Funds</b>	<b>\$6,180,000</b>

# **COLORADO RIVER AUTHORITY OF UTAH**

## **RESOLUTION 2021-02**

### **A RESOLUTION OF THE COLORADO RIVER AUTHORITY OF UTAH ADOPTING AN ELECTRONIC MEETING POLICY**

**WHEREAS**, pursuant to §63M-14-208 Utah Code Annotated 1953, as amended, the Colorado River Authority of Utah (“Authority”) is required to “comply with Title 52, Open and Public Meetings Act, in holding public meetings” (“OPM Act”); and

**WHEREAS**, §52-4-207(2)(a) of the OPM Act, requires the Authority to adopt a resolution “governing the use of electronic meetings” before holding an electronic meeting; and

**NOW, THEREFORE, BE IT RESOLVED BY THE AUTHORITY BOARD** that the attached Electronic Meetings Policy, July 2021, is adopted.

**PASSED AND ADOPTED** by the Authority Board this 30<sup>th</sup> day of July 2021.

Colorado River Authority of Utah

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Gene Shawcroft  
Chair

Attest:

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Authority Staff

**COLORADO RIVER AUTHORITY OF UTAH**  
**ELECTRONIC MEETINGS POLICY**  
**JULY 2021**

**1-1. Purpose.**

This rule governs electronic meetings held by the Colorado River Authority of Utah ("Authority") for the board and any advisory committees or other bodies created by Authority that are classified as public bodies pursuant to Title 52, Chapter 4, Open and Public Meetings Act ("Public Body").

**1-2. Resolution Adopting Policy.**

This policy is adopted by Resolution 2021-02 and is effective July 30, 2021.

**1-3. Electronic Meeting Procedure.**

- (1) An electronic meeting may be held by telephone conference, videoconference, or both.
- (2) If one or more members of the Public Body desire to participate in a meeting electronically or an electronic meeting is held with an anchor location, staff shall provide the member(s) of the public body with a means to connect to, attend, participate, and monitor the meeting electronically.
  - (a) There is no requirement to provide members of the public with a means to connect to, attend, participate, or monitor the open portions of a meeting electronically if the meeting has an anchor location.
  - (b) A quorum of a Public Body is not required to be present at a single anchor location for an electronic meeting.
- (3) If an electronic meeting is held without an anchor location, as permitted by Section 52-4-207(5) UCA, staff shall:
  - (a) provide members of the public body with a means to connect to, attend, participate, and monitor the meeting electronically; and
  - (b) post information on public notices that provides members of the public with a means to connect to, attend, participate, and monitor the open portions of a meeting electronically.
- (4) If a member of the Public Body or a member of the public cannot visually observe an electronic meeting, the individual chairing the electronic meeting or the presenter shall strive to verbally explain:
  - (a) documents and presentation materials being discussed; and
  - (b) nonverbal methods of agreement or disagreement from the members of the public body, such as a head shake or nod.

**1-4. Closed Meetings.**

Nothing in this rule grants members of the public the ability to connect to, attend, participate, and monitor closed portions of an electronic meeting.

# **COLORADO RIVER AUTHORITY OF UTAH**

## **RESOLUTION 2021-03**

### **A RESOLUTION OF THE COLORADO RIVER AUTHORITY OF UTAH ADOPTING A PUBLIC COMMENT POLICY**

**WHEREAS**, pursuant to §63M-14-208 Utah Code Annotated 1953, as amended, the Colorado River Authority of Utah (“Authority”) is required to “comply with Title 52, Open and Public Meetings Act, in holding public meetings” (“OPM Act”); and

**WHEREAS**, when the Authority Board holds public meetings it may allow public comments and desires to adopt a policy governing the public comments;

**NOW, THEREFORE, BE IT RESOLVED BY THE AUTHORITY BOARD** that the attached Public Comment Policy, July 2021, is adopted.

**PASSED AND ADOPTED** by the Authority Board this 30<sup>th</sup> day of July 2021.

Colorado River Authority of Utah

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Gene Shawcroft  
Chair

Attest:

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Authority Staff



**COLORADO RIVER AUTHORITY OF UTAH**  
**PUBLIC COMMENT POLICY**  
**JULY 2021**

**1-1. Purpose.**

This rule governs public comments during public meetings held by the Colorado River Authority of Utah ("Authority") for the board and any advisory committees or other bodies created by Authority that are classified as public bodies pursuant to Title 52, Chapter 4, Open and Public Meetings Act ("Public Body"). Specific determinations regarding public comments shall be made by the presiding member ("Chair") of the Public Body.

**1-2. Resolution Adopting Policy.**

This policy is adopted by Resolution 2021-03 and is effective July 30, 2021.

**1-3. Public Comments.**

- (1) Public comments may be received during a meeting of a Public Body, depending on the agenda item.
- (2) If an item is listed as a public hearing, public comments for two minutes per person will be allowed on the specific topic listed on the agenda as a public hearing.
- (3) At the discretion of the Chair, public comment may be allowed on agenda items that are not listed as a public hearing. Once allowed, the person will be allowed two minutes to provide their comment and all persons wishing to address the item will be allowed to speak.
- (4) There may be a public comment period provided at the end of an agenda, as provided in Section 1-4.

**1-4. Public Comment Period.**

- (1) A public comment period is not required to be on an agenda of a Public Body. Whether a public comment period is listed on an agenda is at the discretion of the Chair.
- (2) When a public comment period is listed it will generally be at the end of the agenda. The Chair shall determine both the length of the total public comment period and the time allotted to each individual speaker. This determination is based on the number of agenda items and the number of people desiring to speak.
  - (a) Generally, the total time allocated to a public comment period will be 15 minutes.
  - (b) Generally, the total time per speaker during a public comment period is 2 minutes.

### **1-5. Public Comment Conduct**

- (1) The Chair will treat each speaker the same, regardless of the content or viewpoint expressed, so long as the speaker does not disrupt the meeting, as provided in this policy. Listeners' or Public Body members' negative reaction to a public comment is not a reason to conclude that it is disruptive.
- (2) Speakers must be called upon before making public comments.
- (3) Each person called upon for public comment shall stand at the location designated for addressing the Public Body and speak into the microphone, if provided.
- (4) The speaker addresses the Chair when speaking.
- (5) The speaker shall state their name and then provide their comment.
- (6) The speaker must observe the two-minute rule so that everyone may have a chance to speak and it allows for efficient and timely meetings of the Public Body.
- (7) People cannot combine their time so that one person speaks longer than the allotted two minutes.
- (8) If a person spoke during a public hearing or address an agenda item where the Chair allowed public comment, the person may still speak during the public comment period if the issue discussed is on a new topic.
- (9) Public Body members and the public should feel safe and comfortable in participating in government. Therefore, maintaining decorum and civility, and being respectful of others are essential. These policies allow for a meeting to be conducted in an orderly, efficient, effective, and dignified fashion, free from distraction, intimidation, and threats to safety.
  - a. Comments must be relevant to the public hearing topic, the agenda item for which the Chair is allowing public comment, or a topic relevant to the Authority's duties, powers, or responsibilities. Comments should not be unduly repetitious.
  - b. Conduct that intimidates other participants or members of the Public Body or that may cause safety concerns are not allowed. This includes yelling or raising their voice over the Public Body members, trying to interrogate Public Body members, or speaking out of turn and preventing others from speaking.
  - c. Keep comments free of discriminatory language referring to a person or group based on their religion, ethnicity, nationality, race, color, descent, gender, sexual orientation, disability, age or other identity factor.
  - d. Refrain from jeering, cheering, clapping, finger snapping, waving signs, or other distracting behavior as it may intimidate other speakers and cause a disruption.
  - e. Generally, props and equipment are not allowed. If the speaker has a prop or piece of equipment integral to a presentation, its use must be cleared with a staff member ahead of time.

- f. Signs are permitted; however, so that they do not cause disruption or block the view of others, signs should be able to be kept at the person's feet or on their lap. Sticks or dowels are not allowed.
  - g. Disruptive speakers may be excluded from later speaking at the same meeting or at a future meeting but not for a lengthy or indefinite amount of time.
- (10) Written comments may be provided before, during, or after the meeting.

# **COLORADO RIVER AUTHORITY OF UTAH**

## **RESOLUTION 2021-04**

### **A RESOLUTION OF THE COLORADO RIVER AUTHORITY OF UTAH DELEGATING CERTAIN POWERS AND RESPONSIBILITIES TO THE EXECUTIVE DIRECTOR**

**WHEREAS**, Title 63M, Chapter 14, Utah Code Annotated 1953, as amended, created the Colorado River Authority of Utah (“Authority”) and established certain requirements and powers (“CRAU Act”); and

**WHEREAS**, §63M-14-401 of the CRAU Act established the position of executive director (“Executive Director”), delegated the hiring of the Executive Director to the chair of the Authority, and delegated to the Executive Director the responsibility “for administering and carrying out the policies”, directing and supervising “the technical and administrative activities” and “administrative function” of the Authority; and

**WHEREAS**, §§63M-14-401(3), 63M-14-402, and 63M-14-210(2)(c) of the CRAU Act delegates to the Executive Director the power, “within the limits of available funding, employ the employees necessary to carry out the functions and duties of the executive director”, “set salaries of exempted positions . . . after consultation with the executive director of the Department of Human Resource Management, within ranges approved by the [A]uthority” and to “employ one or more consultants or other professionals . . . and employ or retain legal counsel, with the consent of the attorney general” ; and

**WHEREAS**, the Authority Board desired to delegate certain powers and responsibilities to the Executive Director, consistent with the CRAU Act;

**NOW, THEREFORE, BE IT RESOLVED BY THE AUTHORITY BOARD** that the Executive Director shall have the power and authority on behalf of the Authority to:

1. Administer all aspects of the day to day operations of the Authority and adopt and amend Executive Orders establishing administrative policies, including amending board approved policies that require conforming amendments because of legislative changes or court rulings. The Executive Director shall provide the board members with a copy of all updated board approved policies that are amended pursuant to this delegated authority.
2. Make expenditures that are consistent with the board approved budget and to change expenditures in the adopted budget from one line item to another so long as the expenditures do not exceed the total in the adopted budget. Board members shall be informed of any expenditure change of \$50,000 or greater.
3. Coordinate the management and operation of the Authority and perform other normal business functions and otherwise operate and manage the business and affairs of the Authority in accordance with the CRAU Act.
4. Hire the necessary personnel, both exempt and non-exempt, that the Executive Director determines is needed to fulfill the Authority’s responsibilities, after meeting the requirement of the CRAU Act for consultation with the executive director of the Department of Human Resource Management. The Executive Director shall administer all aspects of the human resource administration of the Authority, including hiring, firing, discipline, raises, promotions, travel, expense reimbursement and benefits. The Executive

Director may delegate duties and authority to staff members, as determined necessary or desirable.

5. Make purchases and administer the procurement procedure adopted by rule.
6. Obtain P Cards for small purchases and transact business on behalf of the Authority. The Executive Director shall establish internal control procedures for ensuring that funds and cards are used appropriately.
7. Negotiate leases for and execute and deliver leases for office space for the operation of the Authority's business.
8. Execute contracts, agreements, and all other documents, agreements, or certifications. If it there is a statutory requirement for Board approval, then it shall be approved by the Board prior to execution. However, the Executive Director shall not enter into any contract or transaction relating to the business or operations of the Authority that creates a conflict of interest. Conflict of interest would include contracts or transactions with the Executive Director, CRAU staff members, members of the board, or their immediate family members or any business affiliate of any of the foregoing persons.
9. Adopt and administer a records policy, consistent with §63M-14-205 of the CRAU Act.
10. Notwithstanding the powers delegated by this Resolution, the Executive Director shall not have the right or power to do any of the following without the consent of the Authority Board.
  - a. Do any act that would make it impossible to carry on the ordinary business of the Authority.
  - b. Confess a judgment against the Authority.
  - c. Use the Authority name, credit, or assets for other than Authority purposes.
  - d. Do any act in contravention of the CRAU Act.
  - e. Submit any dispute involving the Authority to binding arbitration.
  - f. Cause the Authority to borrow or incur any indebtedness.

**PASSED AND ADOPTED** by the Authority Board this 30<sup>th</sup> day of July 2021.

Colorado River Authority of Utah

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Gene Shawcroft  
Chair

Attest:

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Authority Staff

# **COLORADO RIVER AUTHORITY OF UTAH**

## **RESOLUTION 2021-05**

### **A RESOLUTION OF THE COLORADO RIVER AUTHORITY OF UTAH ADOPTING A PROCUREMENT PROCEDURE RULE FOR PUBLICATION**

**WHEREAS**, pursuant to §63M-14-210 Utah Code Annotated 1953, as amended, the Colorado River Authority of Utah (“Authority”) is required to have a procurement policy and one option is “to make by rule a procurement procedure substantially similar to Title 63G, Chapter 6a, Utah Procurement Code”; and

**WHEREAS**, the Board has determined that the attached procurement procedure meets the statutory requirement and should be submitted for adoption by rule;

**NOW, THEREFORE, BE IT RESOLVED BY THE AUTHORITY BOARD** that the attached Procurement Procedure, Title 1, shall be submitted by staff for appropriate publication and comment, pursuant to the legal requirements for adopting a rule. If no comments are received, then it shall be effective at the earliest date allowed by law. If comments are received, the Executive Director is delegated the authority to make such changes deemed appropriate and resubmit for publication or schedule a public meeting of the Board for further discussion of the comments by the Board.

**PASSED AND ADOPTED** by the Authority Board this 30<sup>th</sup> day of July 2021.

Colorado River Authority of Utah

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Gene Shawcroft  
Chair

Attest:

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Authority Staff

**Colorado River Authority of Utah  
Procurement Procedure  
Title 1**

**Chapter 1  
General Procurement Provisions**

**1-1-101 Title.**

This policy is adopted by the Colorado River Authority of Utah ("CRAU") and is known as the "CRAU Procurement Procedure" or "Procurement Procedure".

**1-1-102 Purpose of Policy.**

The underlying purposes of this Procurement Procedure are:

(1) to comply with the Section 63M-14-210(1) requirement that the CRAU adopt a "Procurement procedure substantially similar to Title 1, Chapter 6a, Utah Procurement Code" while recognizing that:

(a) it is not "an executive branch Procurement unit" and "is not subject to" to the state Procurement code;

(b) the CRAU will not be involved in construction of facilities or infrastructure projects and consequently, many of the state law provisions are inapplicable; and

(c) the Executive Director has independent power under Section 63M-14-402 to employ consultants, professionals, and legal counsel (with the consent of the attorney general);

(3) to ensure transparency in the Procurement process;

(4) to ensure the fair and equitable treatment of all persons who participate in the Procurement process;

(5) to provide increased economy in Procurement activities; and

(6) to foster effective broad-based competition within the free enterprise system.

**1-1-103 Definitions.**

As used in this title:

(1) "Bidder" means a person who submits a bid or price quote in response to an Invitation for Bids.

(2) "Bidding Process" means the Procurement process described in this Procurement Procedure.

(3) "Board" means the CRAU Board.

(4) "Contract" means an agreement for a Procurement.

(5) "Contract Administration" means all functions, duties, and responsibilities associated with managing, overseeing, and carrying out a Contract between the CRAU and a Contractor, including:

(a) implementing the Contract;

(b) ensuring compliance with the Contract terms and conditions by the CRAU and the Contractor;

(c) processing Contract amendments;

(d) resolving, to the extent practicable, Contract disputes;

(e) curing Contract errors and deficiencies;

(f) terminating a Contract;

(g) measuring or evaluating completed work and contractor

- performance;
  - (h) computing payments under the Contract; and
  - (i) closing out a Contract.
- (6) "Contractor" means a person who is awarded a Contract with the CRAU.
- (7) "Cooperative Procurement" means a Procurement made pursuant to Chapter 14.
- (8) "CRAU" means the Colorado River Authority of Utah created by Section 63M-14-201.
- (9) "Days" means calendar days, unless expressly provided otherwise.
- (10) "Definite Quantity Contract" means a Fixed Price Contract that provides for a specified amount of supplies over a specified period, with deliveries scheduled according to a specified schedule.
- (11) "Executive Director" means the executive director of the CRAU.
- (12) "Fixed Price Contract" means a Contract that provides a price, for each Procurement Item obtained under the Contract, that is not subject to adjustment except to the extent that:
- (a) the Contract provides, under circumstances specified in the Contract, for an adjustment in price that is not based on cost to the Contractor; or
  - (b) an adjustment is required by law.
- (13) "Fixed Price Contract with Price Adjustment" means a Fixed Price Contract that provides for an upward or downward revision of price, precisely described in the Contract, that:
- (a) is based on the consumer price index or another commercially acceptable index, source, or formula; and
  - (b) is not based on a percentage of the cost to the Contractor.
- (14) "Grant" means an expenditure of Public Funds or other assistance, or an agreement to expend Public Funds or other assistance, for a public purpose authorized by law, without acquiring a Procurement Item in exchange.
- (15) "Immaterial Error":
- (a) means an irregularity or abnormality that is:
    - (i) a matter of form that does not affect substance; or
    - (ii) an inconsequential variation from a requirement of a Solicitation that has no, little, or a trivial effect on the Procurement process and that is not prejudicial to other Vendors; and
  - (b) includes:
    - (i) a missing signature, missing acknowledgment of an addendum, or missing copy of a professional license, bond, or insurance certificate;
    - (ii) a typographical error;
    - (iii) an error resulting from an inaccuracy or omission in the Solicitation; and
    - (iv) any other error that the Procurement Official reasonably considers to be immaterial.
- (16) "Indefinite Quantity Contract" means a Fixed Price Contract that:
- (a) is for an indefinite amount of Procurement Items to be supplied as ordered by the CRAU; and
  - (b)



- (i) does not require a minimum purchase amount; or
  - (ii) provides a maximum purchase limit.
- (17) "Invitation for Bids":
  - (a) means a document used to solicit:
    - (i) bids to provide a Procurement Item to the CRAU; or
    - (ii) quotes for a price of a Procurement Item to be provided to the CRAU; and
  - (b) includes all documents attached to or incorporated by reference in a document described in Subsection (16)(a).
- (18) "Multiple Award Contract" means the award of a Contract for an Indefinite Quantity of a Procurement Item to more than one person.
- (19) "Multiyear Contract" means a Contract that extends beyond a one-year period, including a Contract that permits renewal of the Contract, without competition, beyond the first year of the Contract.
- (20) "Offeror" means a person who submits a proposal in response to a Request for Proposals.
- (21) "Procurement" means the acquisition of a Procurement Item through an expenditure of Public Funds, or an agreement to expend Public Funds.
- (22) "Procurement Item" means an item of personal property, a Technology, or a service.
- (23) "Procurement Official" means the Executive Director or the Executive Director's designee.
- (24) "Professional Service" means labor, effort, or work that requires specialized knowledge, expertise, and discretion, including labor, effort, or work in the field of:
  - (a) accounting;
  - (b) financial services;
  - (c) Technology;
  - (d) the law; or
  - (e) underwriting.
- (25) "Public Funds" means money, regardless of its source, including from the federal government, that is owned or held by the CRAU.
- (26) "Request for Proposals" means a document used to solicit proposals to provide a Procurement Item to the CRAU, including all other documents that are attached to that document or incorporated in that document by reference.
- (27) "Request for Proposals Process" means the Procurement process described in Chapter 4, Request for Proposals.
- (28) "Requirements Contract" means a Contract:
  - (a) under which a Contractor agrees to provide the CRAU's entire requirements for certain Procurement Items at prices specified in the Contract during the Contract period; and
  - (b) that:
    - (i) does not require a minimum purchase amount; or
    - (ii) provides a maximum purchase limit.
- (29) "Responsible" means being capable, in all respects, of:
  - (a) meeting all the requirements of a Solicitation; and
  - (b) fully performing all the requirements of the Contract resulting from the Solicitation, including being financially solvent with sufficient financial resources to perform the Contract.

- (30) "Responsive" means conforming in all material respects to the requirements of a Solicitation.
- (31) "Service":
- (a) means labor, effort, or work to produce a result that is beneficial to the CRAU;
  - (b) includes a Professional Service; and
  - (c) does not include labor, effort, or work provided under an employment agreement or a collective bargaining agreement.
- (32) "Small Purchase Process" means the Procurement process described in Chapter 2.
- (33) "Sole Source Contract" means a Contract resulting from a Sole Source Procurement.
- (34) "Sole Source Procurement" means a Procurement without competition pursuant to a determination that there is only one source for the Procurement Item.
- (35) "Solicitation" means an Invitation for Bids or Request for Proposals.
- (36) "Solicitation Response" means:
- (a) a bid submitted in response to an Invitation for Bids; or
  - (b) a proposal submitted in response to a Request for Proposals.
- (37) "Specification" means any description of the physical or functional characteristics or of the nature of a Procurement Item included in an Invitation for Bids or a Request for Proposals, or otherwise specified or agreed to by the CRAU, including a description of:
- (a) a requirement for inspecting or testing a Procurement Item; or
  - (b) preparing a Procurement Item for delivery.
- (38) "Standard Procurement Process" means:
- (a) the Bidding Process;
  - (b) the Request for Proposals Process;
  - (c) the Small Purchase Process; or
  - (d) the Professional Services Procurement process.
- (39) "Subcontractor":
- (a) means a person under Contract to perform part of a contractual obligation under the control of the Contractor, whether the person's Contract is with the Contractor directly or with another person who is under Contract to perform part of a contractual obligation under the control of the Contractor; and
  - (b) includes a supplier, distributor, or other Vendor that furnishes supplies or services to a Contractor.
- (40) "Technology" means the same as "information technology," as defined in Section 63A-16-102.
- (41) "Tie Bid" means that the lowest Responsive bids of Responsible Bidders are identical in price.
- (42) "Time and Materials Contract" means a Contract under which the Contractor is paid:
- (a) the actual cost of direct labor at specified hourly rates;
  - (b) the actual cost of materials and equipment usage; and
  - (c) an additional amount, expressly described in the Contract, to cover overhead and profit, that is not based on a percentage of the cost to the Contractor.

(43) "Transitional Costs":

(a) means the costs of changing:

- (i) from an existing provider of a Procurement Item to another provider of that Procurement Item; or
- (ii) from an existing type of Procurement Item to another type;

(b) includes:

- (i) training costs;
- (ii) conversion costs;
- (iii) compatibility costs;
- (iv) costs associated with system downtime;
- (v) disruption of service costs;
- (vi) staff time necessary to implement the change;
- (vii) installation costs; and
- (viii) ancillary software, hardware, equipment, or construction costs; and

(c) does not include:

- (i) the costs of preparing for or engaging in a Procurement process; or
- (ii) Contract negotiation or drafting costs.

(44) "Vendor":

(a) means a person who is seeking to enter into a Contract with the CRAU to provide a Procurement Item; and

(b) includes:

- (i) a Bidder; and
- (ii) an Offeror.

**1-1-104 Purpose of Specifications.**

(1) All Specifications shall seek to promote the overall economy and best use for the purposes intended and encourage competition in satisfying the needs of the CRAU and may not be unduly restrictive.

(2) The requirements of this Chapter regarding the purposes and nonrestrictiveness of Specifications shall apply to all Specifications, including those prepared by Professional Service providers, and drafters for public Contracts.

**1-1-105 Required public notice.**

(1) When the CRAU issues a Solicitation, it shall post notice of the Solicitation:

(a) at least seven Days before the day of the deadline for submission of a Solicitation Response; and

(b)

- (i) on the main website for the CRAU; or
- (ii) on a state website that is owned, managed by, or provided under Contract with, the State for posting a public Procurement notice.

(2) The Procurement Official may reduce the seven-day period described in Subsection (1), if the Procurement Official signs a written statement that:

- (a) states that a shorter time is needed; and
- (b) determines that competition from multiple sources may be obtained within the shorter period of time.

(3)

(a) It is the responsibility of a person seeking information provided by a notice published under this section to seek out, find, and respond to the notice.

(b) As a courtesy and in order to promote competition, the CRAU may provide, but is not required to provide, individual notice.

**1-1-106 Price based on established terms.**

When the CRAU is acquiring a Procurement Item it may establish the price of the Procurement Item based on a price list, rate schedule, or price catalog:

- (1) submitted by a Vendor and accepted by CRAU; or
- (2) mandated by the CRAU or a federal agency.

**1-1-107 Correcting an Immaterial Error in a Solicitation Response.**

(1) The Procurement Official may allow a Vendor to correct an Immaterial Error in a Responsive Solicitation Response as provided in this section.

(2)

(a) The CRAU that allows a Vendor to correct an Immaterial Error in a Responsive Solicitation Response shall:

- (i) require the Vendor to submit the correction in writing; and
- (ii) establish a deadline by which the Vendor is required to correct the Immaterial Error.

(b) The CRAU may not allow a Vendor to correct an Immaterial Error in a Responsive Solicitation Response after the deadline established under Subsection (2)(a).

**1-1-108 Clarifying information in a Solicitation Response.**

(1) The Procurement Official may at any time make a written request to a Vendor to:

- (a) clarify information contained in a Responsive Solicitation Response; or
- (b) provide additional information that the Procurement Official determines the Procurement Official needs to determine whether the Vendor is Responsible.

(2)

(a) The Procurement Official that requests a Vendor to clarify or provide additional information under this section shall establish a deadline by which the Vendor is required to submit the clarifying or additional information.

(b) The CRAU may not allow a Vendor to submit clarifying or additional information after the deadline established under Subsection (2)(a).

**1-1-109 Sale of previously purchased Procurement Item -- Limitations.**

(1) As used in this section:

- (a) "Buyback purchaser" means a person who buys a Procurement Item from the CRAU to which the person previously sold the Procurement Item.
- (b) "Excess repurchase amount" means the difference between:

- (i) the amount a buyback purchaser pays to the CRAU to purchase a Procurement Item that the buyback purchaser previously sold to the CRAU; and
  - (ii) the amount the CRAU paid to the buyback purchaser to purchase the Procurement Item.
- (2) The CRAU that sells a Procurement Item to a buyback purchaser for an amount that exceeds the amount the CRAU paid for the Procurement Item:
  - (a) shall require the buyback purchaser to pay cash for the Procurement Item;
  - (b) may not accept the excess repurchase amount in the form of a credit, discount, or other incentive on a future purchase that the CRAU makes from the buyback purchaser; and
  - (c) may not use the excess repurchase amount to acquire an additional Procurement Item from the person who paid the excess repurchase amount.

**1-1-110 Cancelling a Solicitation.**

- (1) The CRAU may cancel a Solicitation if the Procurement Official determines that cancellation is in the best interests of the CRAU.
- (2) If the CRAU cancels a Solicitation:
  - (a) the Procurement Official shall explain in writing the reasons for the cancellation; and
  - (b) the CRAU shall make the written explanation described in Subsection (2)(a) available to the public for a period of one year after the cancellation.

**1-1-111 Rejecting a Solicitation Response.**

- (1) The CRAU may reject a Solicitation Response if:
  - (a) the Solicitation Response:
    - (i) is not Responsive;
    - (ii) violates a requirement of the Solicitation; or
    - (iii) is not submitted before the deadline specified in the Solicitation;
  - (b) the Vendor who submitted the Solicitation Response:
    - (i) is not Responsible;
    - (ii) is in violation of a provision of this Procurement Procedure;
    - (iii) has had a previous Contract with the CRAU canceled;
    - (iv) has engaged in unethical conduct;
    - (v) is subject to an outstanding tax lien; or
    - (vi) fails to sign a Contract awarded as a result of the Solicitation Response within:
      - (A) 90 Days after the Contract award, if the Solicitation does not specify a deadline for the signing of the Contract; or
      - (B) the time specified in the Solicitation, if the Solicitation specifies a deadline for the signing of the Contract; or
  - (c) after the Vendor submits a Solicitation Response there is a change in the Vendor's circumstances that, if known at the time the Solicitation Response was submitted, would have caused the CRAU to reject the Solicitation Response.
- (2) When the Procurement Official rejects a Solicitation Response

under Subsection (1) shall provide the Vendor who submitted the rejected Solicitation Response a written statement of the reasons for the rejection.

## **Chapter 2**

### **Small and Professional Services Provisions**

#### **1-2-101 Title.**

This Chapter is known as "Small and Professional Services".

#### **1-2-102 Small and Professional Service Definitions.**

(1) As used in this Chapter:

(a) "Annual cumulative threshold" means the maximum total annual amount, established under Subsection (2), that the CRAU may expend to obtain Procurement Items from the same source under this Chapter.

(b) "Individual Procurement threshold" means the maximum amount, established under Subsection (2), for which the CRAU may purchase a Procurement Item under this Chapter.

(c) "Single Procurement aggregate threshold" means the maximum total amount, established under Subsection (2), that the CRAU may expend to obtain multiple Procurement Items from one source at one time under this Chapter.

(d) "Small Purchase" means a purchase of any Procurement Item under this Chapter other than a Professional Services purchase.

(2)

(a) The Small Purchase Annual Cumulative Threshold is \$200,000, the Individual Procurement Threshold is \$50,000, and the Single Procurement Aggregate Threshold is \$100,000.

(b) Small Purchases made under this Chapter may not exceed a threshold, unless the Procurement Official gives written authorization to exceed the threshold that includes the reasons for exceeding the threshold.

#### **1-2-103 Small and Professional Service Procurement.**

(1) The Procurement Official may procure a Small Purchase or a Professional Purchase without a formal Solicitation but nothing herein prohibits the Procurement Official from choosing to go through a formal Solicitation.

(2) For a Professional Purchase, the Procurement Official shall negotiate Contracts:

(a) on the basis of demonstrated competence and qualification for the Professional Service required; and

(b) at fair and reasonable prices.

#### **1-2-104 Division Prohibited.**

(1) Except as otherwise expressly provided in this Chapter, the Procurement Official:

(a) may not use the Small Purchase Procurement Process, described in this Chapter, for ongoing, continuous, and regularly scheduled Procurements that exceed the Annual Cumulative Threshold; and

(b) shall make its ongoing, continuous, and regularly scheduled Procurements that exceed the Annual Cumulative Threshold through a Contract awarded through another Standard Procurement Process or an applicable exception to another Standard Procurement Process, described in this Procurement Procedure.

(2) This Chapter does not prohibit regularly scheduled payments for a Procurement Item obtained under another provision of this Procurement Procedure.

(3)

(a) It is prohibited for the Procurement Official to divide a single Procurement into multiple smaller Procurements, including by dividing an invoice or purchase order into multiple invoices or purchase orders, if:

(i) the single Procurement would not have qualified as a Small Purchase under this Chapter;

(ii) one or more of the multiple smaller Procurements qualify as a Small Purchase under this Chapter; and

(iii) the division is done with the intent to:

(A) avoid having to use a Standard Procurement Process, other than the Small Purchase Process, that the person would otherwise be required to use for the single Procurement; or

(B) make one or more of the multiple smaller Procurements fall below a Small Purchase expenditure threshold under this Chapter that the single Procurement would not have fallen below without the division.

(b) A violation of Subsection (3)(a) is subject to penalties as provided in Subsection 1-15-104(4).

### **Chapter 3 Bidding**

#### **1-3-101 Title.**

This Chapter is known as "Bidding".

#### **1-3-102 Contracts awarded by bidding.**

The Procurement Official may award a Contract for a Procurement Item through this Bidding Process.

#### **1-3-103 Invitation for bids -- Requirements -- Publication.**

(1) If the CRAU intends to award a Contract for a Procurement Item using the Bidding Process shall issue an Invitation for Bids.

(2) The CRAU shall include in an Invitation for Bids:

(a) a description of the Procurement Item that the CRAU seeks;

(b) instructions for submitting a bid, including the deadline for submitting a bid;

(c) the objective criteria that the CRAU will use to evaluate bids;

(d) information about the time and manner of opening bids; and

(e) terms and conditions that the CRAU intends to include in a Contract resulting from the Bidding Process.

(3) The CRAU shall publish an Invitation for Bids as determined by the Procurement Officer.

#### **1-3-104 Processing of bids -- Changes to bids not allowed.**

- (1) The CRAU:
  - (a) shall accept bids as provided in the Invitation for Bids; and
  - (b) may not open a bid until after the deadline for submitting bids.
- (2) A person who submits a bid may not, after the deadline for submitting bids, make a change to the bid if the change is prejudicial to:
  - (a) the interest of the CRAU; or
  - (b) fair competition.

#### **1-3-105 Evaluation of bids -- Award -- Cancellation.**

- (1) The CRAU that conducts a Procurement using a Bidding Process shall evaluate bids:
  - (a) using the objective criteria described in the Invitation for Bids; and
  - (b) to achieve the greatest long-term value to the the CRAU.
- (2) Criteria not described in the Invitation for Bids may not be used to evaluate a bid.
- (3) After evaluating bids, the CRAU shall:
  - (a)
    - (i) award a Contract as soon as practicable to the Responsible Bidder who submits the lowest Responsive bid; and
    - (ii) publish the name and bid amount of the Bidder to whom the Contract is awarded; or
  - (b)
    - (i) cancel the Invitation for Bids without awarding a Contract; and
    - (ii) publish a notice of the cancellation that includes an explanation of the reasons for cancelling the Invitation for Bids.

#### **1-3-106 Tie Bids.**

The CRAU shall resolve a Tie Bid in a fair manner, as determined in writing by the Procurement Official.

### **Chapter 4 Request for Proposals**

#### **1-4-101 Title.**

This Chapter is known as "Request for Proposals".

#### **1-4-102 Contracts awarded by Request for Proposals.**

The CRAU may award a Contract for a Procurement Item through this Request for Proposals Process.

#### **1-4-103 Request for proposals -- Requirements -- Publication of request.**

- (1) The CRAU that intends to award a Contract for a Procurement Item using the Request for Proposals Process shall issue an Request for Proposals.
- (2) The CRAU shall include in an Request for Proposals:
  - (a) a description of the Procurement Item that the CRAU seeks;



- (b) instructions for submitting a proposal, including the deadline for submitting a proposal;
  - (c) the objective criteria, including, if applicable, cost, and subjective criteria that the CRAU will use to evaluate proposals;
  - (d) information about the time and manner of opening proposals; and
  - (e) terms and conditions that the CRAU intends to include in a Contract resulting from the Request for Proposals Process.
- (3) The CRAU shall publish a Request for Proposals as determined by the Procurement Official.

**1-4-104 Processing of proposals -- Changes to proposals not allowed.**

- (1) The CRAU:
- (a) shall accept proposals as provided in the Request for Proposals;
  - (b) may not open a proposal until after the deadline for submitting proposals; and
  - (c) may not disclose the contents of a proposal to the public or to another Offeror.
- (2) A person who submits a proposal may not, after the deadline for submitting proposals, make a change to the proposal if the change is prejudicial to:
- (a) the interest of the CRAU; or
  - (b) fair competition.

**1-4-105 Limited addenda to requests for proposals.**

After the deadline for submitting proposals, the CRAU may, at the discretion of the Procurement Official, issue a Request for Proposals addendum that has limited application 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 Procurement Official, 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.

**1-4-106 Discussions with a person who submits a proposal.**

- (1) The CRAU may have discussions with an Offeror to obtain a more complete understanding of whether the Offeror is Responsible, or the Offeror's proposal is Responsive.
- (2) The CRAU may reject a proposal following discussions under Subsection (1) if the CRAU determines that the Offeror is not Responsible, or the proposal is not Responsive.

**1-4-107 Evaluation committee -- Evaluation of proposals.**

- (1) The Procurement Official shall appoint an evaluation committee of at least three members to evaluate proposals received in response to a Request for Proposals issued by the CRAU.
- (2) The evaluation committee shall evaluate proposals in accordance with the process described in the Request for Proposals.
- (3) To determine which proposal provides the best value to the CRAU, the evaluation committee shall evaluate each Responsible Offeror's Responsive proposal that has not been disqualified from consideration under the provisions of this chapter, using the evaluation criteria

described in the Request for Proposals.

(4) Criteria not described in the Request for Proposals may not be used to evaluate a proposal.

(5) The Procurement Official shall:

(a) appoint evaluation committee members who have at least a general familiarity with or basic understanding of:

(i) the technical requirements relating to the type of Procurement Item that is the subject of the Procurement; or

(ii) the need that the Procurement Item is intended to address; and

(b) ensure that the evaluation committee and each individual participating in the evaluation committee process:

(i) does not have a conflict of interest with any of the Offerors;

(ii) can fairly evaluate each proposal;

(iii) does not contact or communicate with an Offeror concerning the Procurement outside the official evaluation committee process; and

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

(6) The CRAU may authorize an evaluation committee to receive assistance from an expert or consultant to better understand a technical issue involved in the Procurement.

(7)

(a) Except as provided in Subsection (7)(b), an evaluation committee member is prohibited from knowing or having access to information relating to the cost of a proposal until after the evaluation committee submits its recommendation to the CRAU based on the scores of all criteria other than cost.

(b) A Procurement Official may waive the prohibition of Subsection (7)(a) by signing a written statement indicating why waiving the prohibition is in the best interests of the CRAU.

(8) An evaluation committee may not change its final recommended scores after the evaluation committee has submitted those scores to the CRAU.

(9)

(a) The deliberations and other proceedings of an evaluation committee may be held in private.

(b) If the evaluation committee is a public body, as defined in Section 52-4-103, the evaluation committee shall comply with Section 52-4-205 in closing a meeting for its deliberations and other proceedings.

(10)

(a) At the conclusion of the evaluation process, an evaluation committee shall prepare and submit to the CRAU a written statement that:

(i) recommends a proposal for an award of a Contract, if the evaluation committee decides to recommend a proposal;

(ii) contains the score awarded to the recommended proposal based on the criteria stated in the Request for Proposals; and

(iii) explains how the recommended proposal provides the best value to the CRAU.

(b) The CRAU is not required to comply with Subsection (10)(a) for a Contract with a construction manager/general contractor if the Contract is awarded based solely on:

(i) the qualifications of the construction manager/general contractor; and

(ii) the management fee to be paid to the construction manager/general contractor.

**1-4-108 Best and final offers.**

(1) The best and final offer process described in this section:

(a) may be used only in a Request for Proposals Process, whether the Request for Proposals Process is used independently or after the establishment of an approved Vendor list through the approved Vendor list process; and

(b) may not be used in any other Standard Procurement Process, whether the other Standard Procurement Process is used independently or after the establishment of an approved Vendor list through the approved Vendor list process.

(2) Subject to Subsection (3), a conducting Procurement unit may request best and final offers from Responsible Offerors:

(a) only with the approval of the Procurement Official; and

(b) if:

(i) no single proposal adequately addresses all the Specifications stated in the Request for Proposals;

(ii) all proposals are unclear or deficient in one or more respects;

(iii) all cost proposals exceed the identified budget or the CRAU's available funding; or

(iv) two or more proposals receive an identical evaluation score that is the highest score.

(3) A conducting Procurement unit may request a best and final offer from, and a best and final offer may be submitted to the conducting Procurement unit by, only a Responsible Offeror that has submitted a Responsive proposal that meets the minimum mandatory criteria stated in the Request for Proposals required to be considered in the stage of the Procurement process at which best and final offers are being requested.

(4) The best and final offer process may not be used to change:

(a) a determination that an Offeror is not Responsible to a determination that the Offeror is Responsible; or

(b) a determination that a proposal is not Responsive to a determination that the proposal is Responsive.

(5)

(a) This Subsection (5) applies if a request for best and final offers is issued because all cost proposals exceed the identified budget or the CRAU's available funding.

(b)

(i) The conducting Procurement unit may, in the request for best and final offers:

(A) specify the scope of work reductions the CRAU is making in order to generate proposals that are within the identified budget

- or the CRAU's available funding; or
- (B) invite Offerors submitting best and final offers to specify the scope of work reductions being made so that the reduced cost proposal is within the identified budget or the CRAU's available funding.
- (ii) The conducting Procurement unit is not required to accept a scope of work reduction that an Offeror has specified in the Offeror's best and final offer.
- (c) A best and final offer submitted with a reduced cost proposal shall include an itemized list identifying specific reductions in the Offeror's proposed scope of work that correspond to the Offeror's reduced cost proposal.
- (d) A reduction in the scope of work may not:
  - (i) eliminate a component identified in the Request for Proposals as a minimum mandatory requirement; or
  - (ii) alter the nature of the original Request for Proposals to the extent that a Request for Proposals for the reduced scope of work would have likely attracted a significantly different set of Offerors submitting proposals in response to the Request for Proposals.
- (6) If a request for best and final offers is issued because two or more proposals received an identical evaluation score that is the highest score:
  - (a) the request may be issued only to Offerors who submitted a proposal receiving the highest score; and
  - (b) an Offeror submitting a best and final offer may revise:
    - (i) the technical aspects of the Offeror's proposal;
    - (ii) the Offeror's cost proposal, as provided in Subsection (5); or
    - (iii) both the technical aspects of the Offeror's proposal and, as provided in Subsection (5), the Offeror's cost proposal.
- (7) In a request for best and final offers, the conducting Procurement unit shall:
  - (a) clearly specify:
    - (i) the issues that the CRAU requests the Offerors to address in their best and final offers; and
    - (ii) how best and final offers will be evaluated and scored in accordance with Section 1-4-108;
  - (b) establish a deadline for an Offeror to submit a best and final offer; and
  - (c) if applicable, establish a schedule and procedure for conducting discussions with Offerors concerning the best and final offers.
- (8) In conducting a best and final offer process under this section, a conducting Procurement unit shall:
  - (a) maintain confidential the information the CRAU receives from an Offeror, including any cost information, until a Contract has been awarded or the Request for Proposals canceled;
  - (b) ensure that each Offeror receives fair and equal treatment; and
  - (c) safeguard the integrity of the scope of the original Request for Proposals, except as specifically provided otherwise in this section.
- (9) In a best and final offer, an Offeror:
  - (a) may address only the issues described in the request for best and

final offers; and

(b) may not correct a material error or deficiency in the Offeror's proposal or address any issue not described in the request for best and final offers.

(10) If an Offeror fails to submit a best and final offer, the conducting Procurement unit shall treat the Offeror's original proposal as the Offeror's best and final offer.

(11) After the deadline for submitting best and final offers has passed, the evaluation committee shall evaluate the best and final offers submitted using the criteria described in the Request for Proposals.

(12) An Offeror may not make and a conducting Procurement unit may not consider a best and final offer that the conducting Procurement unit has not requested under this section.

(13) To implement the best and final offer process described in this section, a rulemaking authority may make rules consistent with this section and the other provisions of this chapter.

## **Chapter 5**

### **Exceptions to Procurement Requirements**

#### **1-5-101 Title.**

This Chapter is known as "Exceptions to Procurement Requirements".

#### **1-5-102 Award of Contract without engaging in a Standard Procurement Process -- Notice -- Duty to negotiate Contract terms in best interest of Procurement unit.**

(1) The CRAU may award a Contract for a Procurement Item without engaging in a Standard Procurement Process if the Procurement Official determines in writing that:

(a) there is only one source for the Procurement Item;

(b)

(i) Transitional Costs are a significant consideration in selecting a Procurement Item; and

(ii) the results of a cost-benefit analysis demonstrate that Transitional Costs are unreasonable or cost-prohibitive, and that the award of a Contract without engaging in a Standard Procurement Process is in the best interest of the CRAU;

(2)

(a) Subject to Subsection (2) (b), the Procurement Officer shall cause a publication of notice of the Procurement if the cost of the Procurement exceeds \$50,000.

(b) Publication of the notice described in Subsection (2) (b) is not required for:

(i) the Procurement of public utility services pursuant to a Sole Source Contract; or

(ii) other Procurements under this section for which an applicable rule provides that notice is not required.

(3) A Procurement Official who awards a Contract under this section shall negotiate with the Contractor to ensure that the terms of the

Contract, including price and delivery, are in the best interest of the CRAU.

**1-5-103 Extension of a Contract without engaging in a Standard Procurement Process.**

The Procurement Official may extend an existing Contract without engaging in a Standard Procurement Process:

- (1) for a period of time not to exceed 120 days, if:
  - (a) an extension of the Contract is necessary to:
    - (i) avoid a lapse in a critical government service; or
    - (ii) to mitigate a circumstance that is likely to have a negative impact on public health, safety, welfare, or property; and
  - (b)
    - (i)
      - (A) the CRAU is engaged in a Standard Procurement Process for a Procurement Item that is the subject of the Contract being extended; and
      - (B) the Standard Procurement Process is delayed due to an unintentional error;
    - (ii) a change in an industry standard requires one or more significant changes to Specifications for the Procurement Item; or
    - (iii) an extension is necessary:
      - (A) to prevent the loss of federal funds;
      - (B) to mitigate the effects of a delay of a state or federal appropriation;
      - (C) to enable the CRAU to continue to receive a Procurement Item during a delay in the implementation of a Contract awarded pursuant to a Procurement that has already been conducted; or
      - (D) to enable the CRAU to continue to receive a Procurement Item during a period of time during which negotiations with a Vendor under a new Contract for the Procurement Item are being conducted;
- (2) for the period of a protest, appeal, or court action, if the protest, appeal, or court action is the reason for delaying the award of a new Contract; or
- (3) for a period of time exceeding 120 days, if, after consulting with the attorney general or the CRAU's attorney, the Procurement Official determines in writing that the Contract extension does not violate state or federal antitrust laws and is consistent with the purpose of ensuring the fair and equitable treatment of all persons who deal with the Procurement system.

**1-5-104 Emergency Procurement.**

- (1) As used in this section, "natural disaster" means an event where:
  - (a) one or more of the following has caused widespread damage:
    - (i) an explosion;
    - (ii) fire;
    - (iii) a flood;
    - (iv) a storm;
    - (v) a tornado;
    - (vi) winds;

- (vii) an earthquake;
    - (viii) lightning; or
    - (ix) other adverse weather event; and
  - (b) the president of the United States has declared an emergency or major disaster in the state, or the governor has declared a state of emergency under Title 53, Chapter 2a, Part 2, Disaster Response and Recovery Act.
- (2) Notwithstanding any other provision of this chapter and subject to Subsection (4), a Procurement Official may authorize the CRAU to engage in an emergency Procurement without using a Standard Procurement Process if the Procurement is necessary to:
- (a) avoid a lapse in a critical government service;
  - (b) mitigate a circumstance that is likely to have a negative impact on public health, safety, welfare, or property, including a natural disaster; or
  - (c) protect the legal interests of a public entity.
- (3) The CRAU conducting an emergency Procurement under Subsection (2) shall:
- (a) ensure that the Procurement is made with as much competition as reasonably practicable while:
    - (i) avoiding a lapse in a critical government service;
    - (ii) avoiding harm, or a risk of harm, to the public health, safety, welfare, or property; or
    - (iii) protecting the legal interests of a public entity; and
  - (b) make the following publicly available on the CRAU's website within 14 days of the emergency Procurement:
    - (i) a written document describing the specific emergency that necessitated the emergency Procurement;
    - (ii) the name of the highest ranking government official that approved the emergency Procurement; and
    - (iii) each written Contract related to the emergency Procurement.
- (4)
- (a) Except as provided in Subsections (4)(b), (5), and (6), the term of a Contract entered into for an emergency Procurement under this section may be no longer than 30 days.
  - (b) The term of a Contract entered into for an emergency Procurement under this section related to a natural disaster may be no longer than 60 days.
- (5)
- (a) Subject to Subsection (5)(b), the requirements described in Subsection (4) do not apply to an emergency Procurement for legal services.
  - (b) A person hired through an emergency Procurement to provide legal services may not, under the Contract entered into through the emergency Procurement, hire or otherwise provide remuneration to a consultant for services related to any topic that is not directly related to the legal services for which the person was hired.
- (6) The requirements described in Subsection (4) do not apply to an emergency Procurement by the Department of Human Services related to the:
- (a) placement of a client with a residential service provider; or

(b) provision of medical services for a client.

## **Chapter 6**

### **Cancellations, Rejections, and Debarment**

#### **1-6-101 Title.**

This Chapter is known as "Cancellations, Rejections, and Debarment".

#### **1-6-102 Cancellation and rejection of bids and proposals.**

(1) An issuing Procurement unit may cancel an Invitation for Bids, a Request for Proposals, or other Solicitation or reject any or all bids or proposal responses, in whole or in part, as may be specified in the Solicitation, when it is in the best interests of the CRAU in accordance with the rules of the rulemaking authority.

(2) The reasons for a cancellation or rejection described in Subsection (1) shall be made part of the Contract file.

#### **1-6-103 Determination of nonresponsibility.**

(1) A determination of nonresponsibility of a person made by an issuing Procurement unit shall be made in writing, in accordance with the rules of the rulemaking authority.

(2) A person's unreasonable failure to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to the person.

(3) Subject to Title 1, Chapter 2, Government Records Access and Management Act, information furnished by a person pursuant to this section may not be disclosed outside of the CRAU without the person's prior written consent.

#### **1-6-104 Debarment or suspension from consideration for award of contracts -- Process -- Causes for debarment -- Judicial review.**

(1)

(a) Subject to Subsection (1)(b), a Procurement Official may:

(i) debar a person for cause from consideration for award of contracts for a period not to exceed three years; or

(ii) suspend a person from consideration for award of contracts if there is cause to believe that the person has engaged in any activity that might lead to debarment.

(b) Before debarring or suspending a person under Subsection (1)(a), a Procurement Official shall:

(i) consult with:

(A) the CRAU's Board Chair and Executive Director; and

(B) the attorney general or approved outside counsel;

(ii) give the person at least 10 days' prior written notice of:

(A) the reasons for which debarment or suspension is being considered; and

(B) the hearing under Subsection (1)(b)(iii); and

(iii) hold an informal hearing in accordance with Subsection (1)(c).



- (c)
- (i) At an informal hearing under Subsection (1)(b)(iii), a Procurement Official may:
    - (A) subpoena witnesses and compel their attendance at the hearing;
    - (B) subpoena documents for production at the hearing;
    - (C) obtain additional factual information; and
    - (D) obtain testimony from experts, the person who is the subject of the proposed debarment or suspension, representatives of the CRAU, or others to assist the Procurement Official to make a decision on the proposed debarment or suspension.
  - (ii) The Rules of Evidence do not apply to an informal hearing under Subsection (1)(b)(iii).
  - (iii) A Procurement Official shall:
    - (A) record a hearing under Subsection (1)(b)(iii); and
    - (B) preserve all records and other evidence relied upon in reaching a decision until the decision becomes final.
  - (iv) The holding of an informal hearing under Subsection (1)(b)(iii) or the issuing of a decision under Subsection (1)(c)(v) does not affect a person's right to later question or challenge the jurisdiction of the Procurement Official to hold a hearing or issue a decision.
  - (v) The Procurement Official shall:
    - (A) promptly issue a written decision regarding a proposed debarment or suspension, unless the matter is settled by mutual agreement; and
    - (B) mail, email, or otherwise immediately furnish a copy of the decision to the person who is the subject of the decision.
  - (vi) A written decision under Subsection (1)(c)(v) shall:
    - (A) state the reasons for the debarment or suspension, if debarment or suspension is ordered; and
    - (B) inform the person who is debarred or suspended of the right to judicial review as provided in this chapter.
  - (vii) A decision of debarment or suspension is final and conclusive unless the decision is overturned by a court under Subsection (4).
- (2) A suspension under this section may not be for a period exceeding three months, unless an indictment has been issued for an offense which would be a cause for debarment under Subsection (3), in which case the suspension shall, at the request of the attorney general or approved outside counsel, remain in effect until after the trial of the suspended person.
- (3) The causes for debarment include the following:
- (a) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private Contract or subcontract or in the performance of a public or private Contract or subcontract;
  - (b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a Contractor for the CRAU;
  - (c) conviction under state or federal antitrust statutes;

- (d) failure without good cause to perform in accordance with the terms of the Contract;
- (e) a violation of this chapter; or
- (f) any other cause that the Procurement Official determines to be so serious and compelling as to affect responsibility as a Contractor for the CRAU, including debarment by another governmental entity.

(4)

(a) A person who is debarred or suspended under this section may seek judicial review of the debarment or suspension by filing a petition for judicial review in district court.

(b) A petition under Subsection (4)(a):

(i) is a complaint governed by the Utah Rules of Civil Procedure;

(ii) shall name the CRAU as respondent;

(iii) shall be accompanied by a copy of the written decision as to which judicial review is sought; and

(iv) is barred unless filed in district court within 30 days after the date of the issuance of the written decision of suspension or debarment under Subsection (1)(c)(v).

(c) A district court's review of a petition under Subsection (4)(a) shall be de novo.

(d) A district court shall, without a jury, determine all questions of fact and law, including any constitutional issue, presented in the pleadings.

(5) The CRAU may consider a cause for debarment under Subsection (3) as the basis for determining that a person responding to a Solicitation is not Responsible:

(a) independent of any effort or proceeding under this section to debar or suspend the person; and

(b) even if the CRAU does not choose to seek debarment or suspension.

#### **1-6-105 Quote, bid, offer, or Contract prohibited by person with outstanding tax lien -- Exceptions -- Rejection of quote, bid, or offer.**

(1) Except as provided in Subsection (2), a person with an outstanding tax lien in the state may not:

(a) submit a quote, bid, or offer to the CRAU; or

(b) Contract to provide a Procurement Item to the CRAU.

(2) Subsection (1) does not apply to the extent that the Procurement Official determines it is in the public interest to grant an exception to the requirements of Subsection (1) for a particular quote, bid, offer, or Contract specified by the Procurement Official.

(3) The CRAU may reject a quote, bid, or offer submitted in violation of Subsection (1).

### **Chapter 7 Preferences**

#### **1-7-101 Title.**

This Chapter is known as "Preferences".

#### **1-7-102 Reciprocal preference for providers of state products.**

(1)

(a) The CRAU shall, for all Procurements, give a reciprocal preference to those Bidders offering Procurement Items that are produced, manufactured, mined, grown, or performed in Utah over those Bidders offering Procurement Items that are produced, manufactured, mined, grown, or performed in any state that gives or requires a preference to Procurement Items that are produced, manufactured, mined, grown, or performed in that state.

(b) The amount of reciprocal preference shall be equal to the amount of the preference applied by the other state for that particular Procurement Item.

(c) In order to receive a reciprocal preference under this section, the Bidder shall certify on the bid that the Procurement Items offered are produced, manufactured, mined, grown, or performed in Utah.

(d) The reciprocal preference is waived if the certification described in Subsection (1)(c) does not appear on the bid.

(2)

(a) If the Responsible Bidder submitting the lowest Responsive bid offers Procurement Items that are produced, manufactured, mined, grown, or performed in a state that gives or requires a preference, and if another Responsible Bidder has submitted a Responsive bid offering Procurement Items that are produced, manufactured, mined, grown, or performed in Utah, and with the benefit of the reciprocal preference, the bid of the other Bidder is equal to or less than the original lowest bid, the issuing Procurement unit shall:

(i) give notice to the Bidder offering Procurement Items that are produced, manufactured, mined, grown, or performed in Utah that the Bidder qualifies as a preferred Bidder; and

(ii) make the purchase from the preferred Bidder if the Bidder agrees, in writing, to meet the low bid within 72 hours after notification that the Bidder is a preferred Bidder.

(b) The issuing Procurement unit shall include the exact price submitted by the lowest Bidder in the notice the issuing Procurement unit submits to the preferred Bidder.

(c) The issuing Procurement unit may not enter into a Contract with any other Bidder for the purchase until 72 hours have elapsed after notification to the preferred Bidder.

(3)

(a) If there is more than one preferred Bidder, the issuing Procurement unit shall award the Contract to the willing preferred Bidder who was the lowest preferred Bidder originally.

(b) If there were two or more equally low preferred Bidders, the issuing Procurement unit shall comply with the rules of the rulemaking authority to determine which Bidder should be awarded the Contract.

(4) The provisions of this section do not apply if application of this section might jeopardize the receipt of federal funds.

**1-7-103 Exception for federally funded contracts.**

This Chapter 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.

## **Chapter 8**

### **Contracts and Change Orders**

#### **1-8-101 Title.**

This Chapter is known as "Contracts and Change Orders."

#### **1-8-102 Standard Contract clauses encouraged.**

The Procurement Official is encouraged to establish standard Contract clauses to assist the CRAU and to help Contractors and potential Contractors to understand applicable requirements.

#### **1-8-103 Multiyear contracts.**

(1) Except as provided in Subsection (7), the CRAU may enter into a Multiyear Contract resulting from a Standard Procurement Process, if:

(a) the Procurement Official determines, in the discretion of the Procurement Official, that entering into a Multiyear Contract is in the best interest of the CRAU; and

(b) the Invitation for Bids or Request for Proposals:

(i) states the term of the Contract, including all possible renewals of the Contract;

(ii) states the conditions for renewal of the Contract; and

(iii) includes the provisions of Subsections (3) through (5) that are applicable to the Contract.

(2) In making the determination described in Subsection (1)(a), the Procurement Official shall consider whether entering into a Multiyear Contract will:

(a) result in significant savings to the CRAU, including:

(i) reduction of the administrative burden in procuring, negotiating, or administering contracts;

(ii) continuity in operations of the CRAU; or

(iii) the ability to obtain a volume or term discount;

(b) encourage participation by a person who might not otherwise be willing or able to compete for a shorter term Contract; or

(c) provide an incentive for a Bidder or Offeror to improve productivity through capital investment or better Technology.

(3)

(a) The determination described in Subsection (1)(a) is discretionary and is not required to be in writing or otherwise recorded.

(b) Except as provided in Subsections (4) and (5), notwithstanding any provision of an Invitation for Bids, a Request for Proposals, or a Contract to the contrary, a Multiyear Contract, including a Contract that was awarded outside of an Invitation for Bids or Request for Proposals Process, may not continue or be renewed for any year after the first year of the Multiyear Contract if adequate funds are not appropriated or otherwise available to continue or renew the Contract.

(4) A Multiyear Contract that is funded solely by federal funds may be

continued or renewed for any year after the first year of the Multiyear Contract if:

- (a) adequate funds to continue or renew the Contract have not been, but are expected to be appropriated by, and received from, the federal government;

- (b) continuation or renewal of the Contract before the money is appropriated or received is permitted by the federal government; and

- (c) the Contract states that it may be cancelled or suspended, without penalty, if the anticipated federal funds are not appropriated or received.

(5) A Multiyear Contract that is funded in part by federal funds may be continued or renewed for any year after the first year of the Multiyear Contract if:

- (a) the portion of the Contract that is to be funded by funds of a public entity are appropriated;

- (b) adequate federal funds to continue or renew the Contract have not been, but are expected to be, appropriated by, and received from, the federal government;

- (c) continuation or renewal of the Contract before the federal money is appropriated or received is permitted by the federal government; and

- (d) the Contract states that it may be cancelled or suspended, without penalty, if the anticipated federal funds are not appropriated or received.

(6) The CRAU may not continue or renew a Multiyear Contract after the end of the Multiyear Contract term or the renewal periods described in the Contract, unless the CRAU engages in a new Standard Procurement Process or complies with an exception, described in this chapter, to using a Standard Procurement Process.

(7) A Multiyear Contract, including any renewal periods, may not exceed a period of five years, unless:

- (a) the Procurement Official determines, in writing, that:

- (i) a longer period is necessary in order to obtain the Procurement Item;

- (ii) a longer period is customary for industry standards; or

- (iii) a longer period is in the best interest of the CRAU; and

- (b) the written determination described in Subsection (7)(a) is included in the file relating to the Procurement.

#### **1-8-104 Multiple award contracts.**

(1)

- (a) Through a Standard Procurement Process, the CRAU may enter into Multiple Award Contracts with multiple persons.

- (b) The Procurement Officer may adopt policies, consistent with this section, regulating the use of Multiple Award Contracts.

(2) Multiple award contracts may be in the CRAU's best interest if award to two or more Bidders or Offerors for similar Procurement Items is needed or desired for adequate delivery, service, availability, or product compatibility.

(3) The CRAU that enters into Multiple Award Contracts under this section shall:

- (a) exercise care to protect and promote competition among Bidders or Offerors when seeking to enter into Multiple Award Contracts;
  - (b) name all eligible users of the Multiple Award Contracts in the Invitation for Bids or Request for Proposals; and
  - (c) if the CRAU anticipates entering into Multiple Award Contracts before issuing the Invitation for Bids or Request for Proposals, state in the Invitation for Bids or Request for Proposals that the CRAU may enter into Multiple Award Contracts at the end of the Procurement process.
- (4) If the CRAU enters into Multiple Award Contracts under this section it shall:
- (a) obtain, under the Multiple Award Contracts, all of its normal, recurring requirements for the Procurement Items that are the subject of the contracts until the contracts terminate; and
  - (b) reserve the right to obtain the Procurement Items described in Subsection (4)(a) separately from the contracts if:
    - (i) there is a need to obtain a quantity of the Procurement Items that exceeds the amount specified in the contracts; or
    - (ii) the Procurement Official makes a written finding that the Procurement Items available under the Contract will not effectively or efficiently meet a nonrecurring special need of the CRAU.

**1-8-105 Regulation of Contract types -- Permitted and prohibited Contract types.**

- (1) Except as otherwise provided in this section, the CRAU may use any type of Contract that will promote the best interests of the CRAU.
- (2) A Procurement Official may not use a type of Contract, other than a firm Fixed Price Contract, unless the Procurement Official makes a written determination that:
- (a) the proposed Contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific Contract type contemplated;
  - (b) the proposed Contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles; and
  - (c) the use of a specified type of Contract, other than a firm Fixed Price Contract, is in the best interest of the CRAU, taking into consideration the following criteria:
    - (i) the type and complexity of the Procurement Item;
    - (ii) the difficulty of estimating performance costs at the time the Contract is entered into, due to factors that may include:
      - (A) the difficulty of determining definitive Specifications;
      - (B) the difficulty of determining the risks, to the Contractor, that are inherent in the nature of the work to be performed; or
      - (C) the difficulty to clearly determine other factors necessary to enter into an accurate firm Fixed Price Contract;
    - (iii) the administrative costs to the CRAU and the Contractor;
    - (iv) the degree to which the CRAU is required to provide technical coordination during performance of the Contract;
    - (v) the impact that the choice of Contract type may have upon the level of competition for award of the Contract;

- (vi) the stability of material prices, commodity prices, and wage rates in the applicable market;
  - (vii) the impact of the Contract type on the level of urgency related to obtaining the Procurement Item;
  - (viii) the impact of any applicable governmental regulation relating to the Contract; and
  - (ix) other criteria that the Procurement Official determines may relate to determining the Contract type that is in the best interest of the CRAU.
- (4) Contract types that, subject to the provisions of this section and policies made under this section, may be used by the CRAU include the following:
- (a) a Fixed Price Contract;
  - (b) a Fixed Price Contract with Price Adjustment;
  - (c) a Time and Materials Contract;
  - (d) a labor hour Contract;
  - (e) a Definite Quantity Contract;
  - (f) an Indefinite Quantity Contract;
  - (g) a Requirements Contract; or
  - (h) a Contract based on a rate table in accordance with industry standards.
- (5) The CRAU may not enter into a cost-plus-percentage-of-cost Contract, unless:
- (a) use of a cost-plus-percentage-of-cost Contract is approved by the Procurement Official;
  - (b) it is standard practice in the industry to obtain the Procurement Item through a cost-plus-percentage-of-cost Contract; and
  - (c) the percentage and the method of calculating costs in the Contract are in accordance with industry standards.
- (6) The CRAU may not enter into a cost-reimbursement Contract, unless the Procurement Official makes a written determination that:
- (a)
    - (i) a cost-reimbursement Contract is likely to cost less than any other type of permitted Contract; or
    - (ii) it is impracticable to obtain the Procurement Item under any other type of permitted Contract; and
  - (b) the proposed Contractor's accounting system:
    - (i) will timely develop the cost data in the form necessary for the CRAU to timely and accurately make payments under the Contract; and
    - (ii) will allocate costs in accordance with generally accepted accounting principles.

**1-8-106 Rules to determine allowable incurred costs -- Required information.**

- (1)
- (a) The Procurement Officer may, by policy, establish the cost principles to be included in a cost-reimbursement Contract to determine incurred costs for the purpose of calculating a reimbursement.
  - (b) The cost principles established by rule under Subsection (1)(a) may be modified, by Contract, if the Procurement Official approves

the modification.

(2) Except as provided in Subsection (5), a person who seeks to be, or is, a party in a cost-based Contract with the CRAU shall:

(a) submit cost or pricing data relating to determining the cost or pricing amount; and

(b) certify that, to the best of the Contractor's knowledge and belief, the cost or pricing data submitted is accurate and complete as of the date specified by the CRAU.

(3) The Procurement Official shall ensure that the date specified under Subsection (2) (b) is before:

(a) the pricing of any Contract awarded by a Standard Procurement Process or pursuant to a Sole Source Procurement, if the total Contract price is expected to exceed \$100,000; or

(b) the pricing of any change order that is expected to exceed 20% of the original Contract amount.

(4) A Contract or change order that requires a certification described in Subsection (2) shall include a provision that the price to the CRAU, including profit or fee, shall be adjusted to exclude any significant sums by which the CRAU finds that the price was increased because the Contractor provided cost or pricing data that was inaccurate, incomplete, or not current as of the date specified by the Procurement Official.

(5) The CRAU is not required to comply with Subsection (2) if:

(a) the Contract price is based on adequate price competition;

(b) the Contract price is based on established catalogue prices or market prices;

(c) the Contract price is set by law or rule; or

(d) the Procurement states, in writing:

(i) that, in accordance with a policy established by the Procurement Officer, the requirements of Subsection (2) may be waived; and

(ii) the reasons for the waiver.

#### **1-8-107 Auditing of books of Contractor or Subcontractor.**

(1) A Procurement Official or an audit entity under Contract with the CRAU may audit the books and records of a Contractor or Subcontractor.

(2) An audit under Subsection (1):

(a) is limited to the books and records that relate to the applicable Contract or subcontract; and

(b) may occur only at a reasonable time and place.

(3) A Contractor shall maintain all books and records relating to a Contract for six years after the day on which the Contractor receives the final payment under the Contract, or until all audits initiated under this section within the six-year period have been completed, whichever is later.

(4) A Subcontractor shall maintain all books and records relating to a subcontract for six years after the day on which the Subcontractor receives the final payment under the subcontract, or until all audits initiated under this section within the six-year period have been completed, whichever is later.



**1-8-108 Change in Contract price.**

- (1) As used in this section, "Contract Price":
  - (a) means the price under an existing Contract between the CRAU and a Contractor; and
  - (b) does not include a proposed price or cost contained in a Solicitation Response or any other bid, proposal, or offer submitted by a person other than the Contractor under the existing Contract.
- (2) A Contractor may:
  - (a) increase the Contract Price only in accordance with the terms of the Contract; and
  - (b) subject to Subsection (3), lower the Contract Price at any time during the time a Contract is in effect.
- (3) A Contractor under a Multiple Award Contract resulting from a Bidding Process may not lower the Contract Price unless the Contractor's Solicitation Response that led to the Contract award was the lowest price Solicitation Response.

**1-8-109 Installment payments -- Contract prepayments.**

- (1) A Contract entered into by the CRAU may provide for installment payments, including interest charges, over a period of time, if the Procurement Official makes a written finding that:
  - (a) the use of installment payments are in the interest of the CRAU;
  - (b) installment payments are not used as a method of avoiding budgetary constraints;
  - (c) the CRAU has obtained all budgetary approvals and other approvals required for making the installment payments;
  - (d) all aspects of the installment payments required in the Contract are in accordance with the requirements of law; and
  - (e) for a Contract awarded through an Invitation for Bids or a Request for Proposals, the Invitation for Bids or Request for Proposals indicates that installment payments are required or permitted.
- (2)
  - (a) The CRAU may not pay for a Procurement Item before the CRAU receives the Procurement Item, unless the Procurement Official determines that it is necessary or beneficial for the CRAU to pay for the Procurement Item before the CRAU receives the Procurement Item.
  - (b) A Procurement Official's determination under Subsection (2)(a) shall be in writing, unless:
    - (i) the rulemaking authority has adopted a rule describing one or more circumstances under which a written determination is not necessary; and
    - (ii) the Procurement Official's determination is under one of those circumstances.
- (3) Circumstances where prepayment may be necessary for, or beneficial to, the CRAU include:
  - (a) when it is customary in the industry to prepay for the Procurement Item;
  - (b) if the CRAU will receive an identifiable benefit by prepaying, including reduced costs, additional Procurement Items, early delivery, better service, or better Contract terms; or

- (c) other circumstances permitted by rule made by the rulemaking authority.
- (4) The Procurement Officer may adopt policies governing prepayments.
- (5) A prepaid expenditure shall be supported by documentation indicating:
  - (a) the amount of the prepayment;
  - (b) the prepayment schedule;
  - (c) the Procurement Items to which each prepayment relates;
  - (d) the remedies for a Contractor's noncompliance with requirements relating to the provision of the Procurement Items; and
  - (e) all other terms and conditions relating to the payments and the Procurement Items.
- (6) The Procurement Official or the Procurement Official's designee may require a performance bond, of up to 100% of the prepayment amount, from the person to whom the prepayments are made.

#### **1-8-110 Leases.**

- (1) As used in this section, "lease" means for the CRAU to lease or lease-purchase a Procurement Item from a person.
- (2) This section does not apply to the lease of real property.
- (3) The CRAU may not lease a Procurement Item unless the CRAU complies with the requirements of this section.
- (4) The CRAU may lease a Procurement Item if:
  - (a) the Procurement Official determines that it is in the best interest of the CRAU to lease the Procurement Item, after the Procurement Official:
    - (i) investigates alternative means of obtaining the Procurement Item; and
    - (ii) considers the costs and benefits of the alternative means of obtaining the Procurement Item;
  - (b) all conditions for renewal and cost are included in the lease;
  - (c) the lease is awarded through a Standard Procurement Process, or an exception to a Standard Procurement Process described in Chapter 5, Exceptions to Procurement Requirements;
  - (d) for a Standard Procurement Process, the Invitation for Bids, Request for Proposals, or request for quotes states:
    - (i) that the CRAU is seeking, or willing to consider, a lease; and
    - (ii) for a lease purchase, that the CRAU is seeking, or willing to consider, a lease-purchase;
  - (e) the lease is not used to avoid competition; and
  - (f) the lease complies with all other provisions of law or rule applicable to the lease.

#### **1-8-111 Contract provisions for incentives, damages, and penalties.**

The CRAU may include in a Contract terms that provide for:

- (1) incentives, including bonuses;
- (2) payment of damages, including liquidated damages; or
- (3) penalties.

## **Chapter 9 Protests**

### **1-9-101 Title.**

This Chapter is known as "Protests".

### **1-9-102 Definitions.**

As used in this part:

- (1) "Constructive knowledge":
  - (a) means knowledge or information that a Protestor would have if the Protestor had exercised reasonable care or diligence, regardless of whether the Protestor actually has the knowledge or information; and
  - (b) includes knowledge of:
    - (i) applicable provisions of this Procurement Procedure and other law;
    - (ii) instructions, criteria, deadlines, and requirements contained in the Solicitation or in other documents made available to persons interested in the Solicitation or provided in a mandatory pre-Solicitation meeting;
    - (iii) relevant facts and evidence supporting the protest or leading the Protestor to contend that the Protestor has been aggrieved in connection with a Procurement;
    - (iv) communications or actions, pertaining to the Procurement, of all persons within the Protestor's organization or under the supervision of the Protestor; and
    - (v) any other applicable information discoverable by the exercise of reasonable care or diligence.
- (2) "Hearing" means a proceeding in which evidence, which may include oral testimony, or argument relevant to a protest is presented to a Procurement Official in connection with the Procurement Official's determination of an issue of fact or law or both.
- (3) "Protest Appeal Record" means:
  - (a) a copy of the Procurement Official's written decision;
  - (b) all documentation and other evidence the Procurement Official relied upon in reaching the Procurement Official's decision;
  - (c) the recording of the hearing, if the Procurement Official held a hearing;
  - (d) a copy of the Protestor's written protest; and
  - (e) all documentation and other evidence submitted by the Protestor supporting the protest or the Protestor's claim of standing.
- (4) "Protestor" means a person who files a protest under this part.
- (5) "Standing" means to have suffered an injury or harm or to be about to suffer imminent injury or harm, if:
  - (a) the cause of the injury or harm is:
    - (i) an infringement of the Protestor's own right and not the right of another person who is not a party to the Procurement;
    - (ii) reasonably connected to the CRAU's conduct; and
    - (iii) the sole reason the Protestor is not considered, or is no longer considered, for an award of a Contract under the Procurement that is the subject of the protest;
  - (b) a decision on the protest in favor of the Protestor:
    - (i) is likely to redress the injury or harm; and
    - (ii) would give the Protestor a reasonable likelihood of being

awarded a Contract; and

(c) the Protestor has the legal authority to file the protest on behalf of the actual or prospective Bidder or Offeror or prospective contractor involved in the Procurement that is the subject of the protest.

**1-9-103 Protest -- Time for filing -- Basis of protest -- Authority to resolve protest.**

(1) A protest may be filed with the Procurement Officer by a person who:

(a) has standing; and

(b) is aggrieved in connection with a Procurement or an award of a Contract.

(2) A protest may not be filed after:

(a)

(i)

(A) the opening of bids, for a protest relating to a Procurement under a Bidding Process; or

(B) the deadline for submitting responses to the Solicitation, for a protest relating to another Standard Procurement Process; or

(ii) the closing of the Procurement stage that is the subject of the protest:

(A) if the protest relates to a multiple-stage Procurement; and

(B) notwithstanding Subsections (2)(a)(i)(A) and (B); or

(b) the day that is seven days after the day on which the person knows or first has constructive knowledge of the facts giving rise to the protest, if:

(i) the Protestor did not know and did not have constructive knowledge of the facts giving rise to the protest before:

(A) the opening of bids, for a protest relating to a Procurement under a Bidding Process;

(B) the deadline for submitting responses to the Solicitation, for a protest relating to another Standard Procurement Process; or

(C) the closing of the Procurement stage that is the subject of the protest, if the protest relates to a multiple-stage Procurement; or

(ii) the protest relates to a Procurement process not described in Subsection (2)(a).

(3) A deadline under Subsection (2) for filing a protest may not be modified.

(4)

(a) A Protestor shall include in a protest:

(i) the Protestor's mailing address and email address; and

(ii) a concise statement of the facts and evidence:

(A) leading the Protestor to claim that the Protestor has been aggrieved in connection with a Procurement and providing the grounds for the Protestor's protest; and

(B) supporting the Protestor's claim of standing.

(b) A protest may not be considered unless it contains facts and

evidence that, if true, would establish:

- (i) a violation of this Procurement Procedure or other applicable law;
- (ii) the CRAU's failure to follow a provision of a Solicitation;
- (iii) an error made by an evaluation committee or conducting Procurement unit;
- (iv) a bias exercised by an evaluation committee or an individual committee member, excluding a bias that is a preference arising during the evaluation process because of how well a Solicitation Response meets criteria in the Solicitation;
- (v) a failure to correctly apply or calculate a scoring criterion; or
- (vi) that Specifications in a Solicitation are unduly restrictive or unduly anticompetitive.

(5) A protest may not be based on:

- (a) the rejection of a Solicitation Response due to a Protestor's failure to attend or participate in a mandatory conference, meeting, or site visit held before the deadline for submitting a Solicitation Response;
- (b) a vague or unsubstantiated allegation; or
- (c) a person's claim that:
  - (i) the CRAU that complied with Section 1-1-105 did not provide individual notice of a Solicitation to the person; or
  - (ii) the person received late notice of a Solicitation for which notice was provided in accordance with Section 1-1-105.

(6) A protest may not include a request for:

- (a) an explanation of the rationale or scoring of evaluation committee members;
- (b) the disclosure of a protected record or protected information in addition to the information provided under the disclosure provisions of this chapter; or
- (c) other information, documents, or explanations not explicitly provided for in this chapter.

(7) A person who fails to file a protest within the time prescribed in Subsection (2) may not:

- (a) protest to the Procurement Official a Solicitation or award of a Contract; or
- (b) file an action or appeal challenging a Solicitation or award of a Contract before an appeals panel, a court, or any other forum.

(8) Subject to the applicable requirements of Section 1-10-403, the Procurement Officer may enter into a settlement agreement to resolve a protest.

#### **1-9-104 Protest officer responsibilities and authority -- Proceedings on protest -- Effect of decision.**

(1) After a protest is filed, the Procurement Official shall determine whether the protest is timely filed and complies fully with the requirements of Section 1-9-103.

(2) If the Procurement Official determines that the protest is not timely filed or that the protest does not fully comply with Section 1-9-103, the Procurement Official shall dismiss the protest without

holding a hearing.

(3) If the Procurement Official determines that the protest is timely filed and complies fully with Section 1-9-103, the Procurement Official shall:

- (a) dismiss the protest without holding a hearing if the Procurement Official determines that the protest alleges facts that, if true, do not provide an adequate basis for the protest;
- (b) uphold the protest without holding a hearing if the Procurement Official determines that the undisputed facts of the protest indicate that the protest should be upheld; or
- (c) hold a hearing on the protest if there is a genuine issue of material fact or law that needs to be resolved in order to determine whether the protest should be upheld.

(4)

- (a) If a hearing is held on a protest, the Procurement Official may:
  - (i) subpoena witnesses and compel their attendance at the protest hearing;
  - (ii) subpoena documents for production at the protest hearing;
  - (iii) obtain additional factual information; and
  - (iv) obtain testimony from experts, the person filing the protest, representatives of the CRAU, or others to assist the Procurement Official to make a decision on the protest.
- (b) The Rules of Evidence do not apply to a protest hearing.
- (c) A rulemaking authority shall make rules relating to intervention in a protest, including designating:
  - (i) who may intervene; and
  - (ii) the time and manner of intervention.
- (d) A Procurement Official shall:
  - (i) record each hearing held on a protest under this section;
  - (ii) regardless of whether a hearing on a protest is held under this section, preserve all records and other evidence relied upon in reaching the Procurement Official's written decision until the decision, and any appeal of the decision, becomes final; and
  - (iii) if the Protestor appeals the Procurement Official's decision, submit the Protest Appeal Record to the Procurement policy board chair within seven days after receiving:
    - (A) notice that an appeal of the Procurement Official's decision has been filed under Section 1-10-103; or
    - (B) a request for the Protest Appeal Record from the chair of the Procurement policy board.
- (e) A Procurement Official's holding a hearing, considering a protest, or issuing a written decision under this section does not affect a person's right to later question or challenge the Procurement Official's jurisdiction to hold the hearing, consider the protest, or issue the decision.

(5) The deliberations of a Procurement Official may be held in private.

(6)

- (a) A Procurement Official shall promptly issue a written decision regarding any protest, unless the protest is settled by mutual agreement.

- (b) The decision shall:
  - (i) state the reasons for the action taken;
  - (ii) inform the Protestor of the right to judicial or administrative review as provided in this chapter; and
  - (iii) indicate the amount of the security deposit or bond required under Section 1-10-104.
- (c) A person who issues a decision under Subsection (6)(a) shall mail, email, or otherwise immediately furnish a copy of the decision to the Protestor.
- (7) A decision described in this Section is effective until stayed or reversed on appeal, except to the extent provided in Section 1-12-103.
- (8)
  - (a) A decision described in Subsection (6)(a) that is issued in relation to the CRAU is final and conclusive unless the Protestor files an appeal under Section 1-10-103.
  - (b) A decision described in Subsection (6)(a) that is issued in relation to a legislative Procurement unit, a judicial Procurement unit, a nonadopting local government Procurement unit, or a public transit district is final and conclusive unless the Protestor files an appeal under Section 1-11-102.
- (9) If the Procurement Official does not issue the written decision regarding a protest within 30 calendar days after the day on which the protest was filed with the Procurement Official, or within a longer period as may be agreed upon by the parties, the Protester may proceed as if an adverse decision had been received.
- (10) A determination under this section by the Procurement Official regarding an issue of fact may not be overturned on appeal unless the decision is arbitrary and capricious or clearly erroneous.
- (11) An individual is not precluded from acting and may not be disqualified or required to be recused from acting, as a Procurement Official because the individual also acted in another capacity during the Procurement process, as required or allowed in this chapter.

## **Chapter 10**

### **Procurement Appeals Panel**

#### **1-10-101 Title.**

This Chapter is known as "Procurement Appeals Panel".

#### **1-10-102 Definitions.**

As used in this Chapter:

- (1) "Appointing Officer" means:
  - (a) the chair of the Board; or
  - (b) a designee of the chair who is not employed by the CRAU responsible for the Solicitation, Contract award, or other action that is the subject of the Protestor's protest.
- (2) "Procurement Appeals Panel" means the Appointing Officer or the panel appointed by the Appointing Officer.
- (2) "Protest Appeal Record" means the same as that term is defined in Section 1-9-102.

(3) "Protestor" means the same as that term is defined in Section 1-9-102.

#### **1-10-103 Appointment of Procurement Appeals Panel -- Proceedings.**

(1)

(a) Subject to Section 1-10-104, a Protestor may appeal to the chair of the Board a protest decision of the Procurement Official that is subject to this Chapter by filing a written notice of appeal with the chair of the Board within seven days after:

(i) the day on which the written decision described in Section 1-9-104 is:

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

(B) emailed or mailed to the address or email address provided by the party under Subsection 1-9-103(4); or

(ii) the day on which the 30-day period described in Subsection 1-9-104(9) ends, if a written decision is not issued before the end of the 30-day period.

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

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

(ii) be accompanied by a copy of any written protest decision.

(c) The deadline for appealing a protest decision may not be modified.

(3) A person may not base an appeal of a protest under this section on:

(a) a ground not specified in the person's protest under Section 1-9-103; or

(b) new or additional evidence not considered by the Procurement Official.

(4)

(a) A person may not appeal from a protest described in Section 1-9-103, unless:

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

(ii) a decision is not issued, and the 30-day period described in Subsection 1-9-104(9), or a longer period agreed to by the parties, has passed.

(b) The CRAU may not appeal a protest decision or other determination made by the Procurement Official.

(5)

(a) Within seven days after the chair of the Board receives a written notice of an appeal under this Section, the chair shall submit a written request to the Procurement Official for the Protest Appeal Record.

(b) Within seven days after the chair receives the Protest Appeal Record from the Procurement Official, the Appointing Officer shall, in consultation with the attorney general's office or approved outside counsel:

(i) review the appeal to determine whether the appeal complies with the requirements of Subsections (2), (3), and (4) and Section 1-10-104; and



(ii)

(A) dismiss any claim asserted in the appeal, or dismiss the appeal, without holding a hearing if the Appointing Officer determines that the claim or appeal, respectively, fails to comply with any of the requirements listed in Subsection (5)(b)(i); or

(B) conduct an administrative review sitting as the Procurement Appeals Panel or appoint a Procurement Appeals Panel to conduct an administrative review of any claim in the appeal that has not been dismissed under Subsection (5)(b)(ii)(A), if the Appointing Officer determines that one or more claims asserted in the appeal comply with the requirements listed in Subsection (5)(b)(i).

(c) A Procurement Appeals Panel appointed under Subsection (5)(a) shall consist of an odd number of at least three individuals. The Appointing Officer selects the panel members. The members may be:

(i) a member of the Board; or

(ii) a designee of a member appointed under Subsection (5)(c)(i), if the designee is approved by the chair of the Board.

(b) The Appointing Officer shall appoint one of the members of the Procurement Appeals Panel to serve as the coordinator of the panel.

(c) The Appointing Officer may:

(i) appoint the same Procurement Appeals Panel to hear more than one appeal; or

(ii) appoint a separate Procurement Appeals Panel for each appeal.

(d) The Appointing Officer may not appoint a person to a Procurement Appeals Panel if the person is employed by the CRAU responsible for the Solicitation, Contract award, or other action that is the subject of the Protestor's protest.

(e) The Appointing Officer shall, at the time the Procurement Appeals Panel is appointed, provide appeals panel members with a copy of the notice of appeal filed under Subsection (2) and the protest decision record.

(6)

(a) A Procurement Appeals Panel described in Subsection (5):

(i) shall conduct an administrative review of the appeal within 30 days after the day on which the Appointing Officer chose to either hear the appeal himself or herself or, if appoint a panel, 30 days after the Procurement Appeals Panel is appointed, or before a later date that all parties agree upon, unless the appeal is dismissed under Subsection (8)(a); and

(ii)

(A) may, as part of the administrative review and at the sole discretion of the Procurement Appeals Panel, conduct an informal hearing, if the Procurement Appeals Panel considers a hearing to be necessary; and

(B) if the Procurement Appeals Panel conducts an informal hearing, shall, at least seven days before the hearing, mail, email, or hand-deliver a written notice of the hearing to the parties to the appeal.

(b) A Procurement Appeals Panel may, during an informal hearing, ask questions and receive responses regarding the appeal and the Protest

Appeal Record to assist the Procurement Appeals Panel to understand the basis of the appeal and information contained in the Protest Appeal Record, but may not otherwise take any additional evidence or consider any additional ground for the appeal.

(7) A Procurement Appeals Panel shall consider and decide the appeal based solely on:

- (a) the notice of appeal and the Protest Appeal Record; and
- (b) responses received during an informal hearing, if an informal hearing is held and to the extent allowed under Subsection (6)(b).

(8) A Procurement Appeals Panel:

- (a) may dismiss an appeal if the appeal does not comply with the requirements of this chapter; and
- (b) shall uphold the protest decision unless the protest decision is arbitrary and capricious or clearly erroneous.

(9) The Procurement Appeals Panel shall, within seven days after the day on which the Procurement Appeals Panel concludes the administrative review:

- (a) issue a written decision on the appeal; and
- (b) mail, email, or hand-deliver the written decision on the appeal to the parties to the appeal and to the Procurement Official.

(10)

(a) The deliberations of a Procurement Appeals Panel may be held in private.

(b) If the Procurement Appeals Panel is a public body, as defined in Section 52-4-103, the Procurement Appeals Panel shall comply with Section 52-4-205 in closing a meeting for its deliberations.

(11) A Procurement Appeals Panel may continue an administrative review under this section beyond the 30-day period described in Subsection (6)(a)(i) if the Procurement Appeals Panel determines that the continuance is in the interests of justice.

(12) If a Procurement Appeals Panel determines that the decision of the Procurement Official is arbitrary and capricious or clearly erroneous, the Procurement Appeals Panel:

- (a) shall remand the matter to the Procurement Official, to cure the problem or render a new decision;
- (b) may recommend action that the Procurement Official should take; and
- (c) may not order that:
  - (i) a Contract be awarded to a certain person;
  - (ii) a Contract or Solicitation be cancelled; or
  - (iii) any other action be taken other than the action described in Subsection (12)(a).

(13) The Procurement Official may adopt policies relating to the conduct of an appeals proceeding, including rules that provide for:

- (a) expedited proceedings; and
- (b) electronic participation in the proceedings by panel members and participants.

(14) The Rules of Evidence do not apply to a hearing held by a Procurement Appeals Panel.

(15) Chapter 13, Records, applies to the records involved in the process described in this section, including the decision issued by a

Procurement Appeals Panel.

**1-10-104 Requirement to pay a security deposit or post a bond -- Exceptions -- Amount -- Forfeiture of security deposit or bond.**

(1) A person who files a notice of appeal under Section 1-10-103 shall, before the expiration of the time provided under Subsection 1-10-103(1) for filing a notice of appeal, pay a security deposit or post a bond with the office of the Procurement Official.

(2) The amount of a security deposit or bond required under Subsection (1) is:

(a) for an appeal relating to an Invitation for Bids or Request for Proposals and except as provided in Subsection (2)(b)(ii):

(i) \$20,000, if the total Contract value is under \$500,000;

(ii) \$25,000, if the total Contract value is \$500,000 or more but less than \$1,000,000;

(iii) \$50,000, if the total Contract value is \$1,000,000 or more but less than \$2,000,000;

(iv) \$95,000, if the total Contract value is \$2,000,000 or more but less than \$4,000,000;

(v) \$180,000, if the total Contract value is \$4,000,000 or more  
; or

(b) \$20,000, for an appeal:

(i) relating to any type of Procurement process other than an Invitation for Bids or Request for Proposals;

(ii) relating to an Invitation for Bids or Request for Proposals, if the estimated total Contract value cannot be determined; or

(iii) of a debarment or suspension.

(3)

(a) For an appeal relating to an Invitation for Bids, the estimated total Contract value shall be based on:

(i) the lowest Responsive bid amount for the entire term of the Contract, excluding any renewal period, if the bid opening has occurred;

(ii) the total budget for the Procurement Item for the entire term of the Contract, excluding any renewal period, if bids are based on unit or rate pricing; or

(iii) if the Contract is being rebid, the historical usage and amount spent on the Contract over the life of the Contract.

(b) For an appeal relating to a Request for Proposals, the estimated total Contract value shall be based on:

(i) the lowest cost proposed in a response to a Request for Proposals, considering the entire term of the Contract, excluding any renewal period, if the opening of proposals has occurred;

(ii) the total budget for the Procurement Item over the entire term of the Contract, excluding any renewal period, if opened cost proposals are based on unit or rate pricing; or

(iii) if the Contract is being reissued, the historical usage and amount spent on the Contract over the life of the Contract that is being reissued.

(4) The Procurement Official shall:

(a) retain the security deposit or bond until the protest and any

appeal of the protest decision is final;

(b) as it relates to a security deposit:

(i) deposit the security deposit into an interest-bearing account; and

(ii) after any appeal of the protest decision becomes final, return the security deposit and the interest it accrues to the person who paid the security deposit, unless the security deposit is forfeited to the general fund of the CRAU under Subsection (5); and

(c) as it relates to a bond:

(i) retain the bond until the protest and any appeal of the protest decision becomes final; and

(ii) after the protest and any appeal of the protest decision becomes final, return the bond to the person who posted the bond, unless the bond is forfeited to the general fund of the CRAU under Subsection (5).

(5) A security deposit that is paid, or a bond that is posted, under this section shall forfeit to the general fund of the CRAU if:

(a) the person who paid the security deposit or posted the bond fails to ultimately prevail on appeal; and

(b) the Procurement Appeals Panel finds that the protest or appeal is frivolous or that its primary purpose is to harass or cause a delay.

#### **1-10-105 Discontinued appeal with prejudice, except as authorized.**

After notice of an appeal to the Board is filed under Section 1-10-103, no party may discontinue the appeal without prejudice, except as authorized by the Procurement Appeals Panel appointed for the appeal.

#### **1-10-106 Factual determination of Procurement Appeals Panel final and conclusive.**

A determination of an issue of fact by a Procurement Appeals Panel may not be overturned on appeal, unless the determination is arbitrary and capricious or clearly erroneous.

### **Chapter 11 Appeals to Court and Court Proceedings**

#### **1-11-101 Title.**

This Chapter is known as "Appeals to Court and Court Proceedings".

#### **1-11-102 Appeal to Utah Court of Appeals.**

(1)

(a) As provided in this Chapter:

(i) a person may appeal a dismissal of an appeal by the Board chair under Subsection 1-10-103(5) (b) (ii) (A);

(ii) a person who receives an adverse decision by a Procurement Appeals Panel may appeal that decision; and

(iii) subject to Subsection (2), the CRAU may appeal an adverse

- decision by a Procurement Appeals Panel;
- (b) A person seeking to appeal a dismissal or decision under Subsection (1)(a) shall file a notice of appeal with the Utah Court of Appeals within seven days after the dismissal or decision.
- (2) The CRAU may not appeal the decision of a Procurement Appeals Panel, unless the appeal is:
- (a) recommended by the Procurement Official involved; and
  - (b) the attorney general's office or outside counsel approved by the attorney general.
- (3) A person appealing a dismissal, decision, or protest under this section may not base the appeal on a ground not specified in the proceeding from which the appeal is taken.
- (4) The Utah Court of Appeals:
- (a) shall consider the appeal as an appellate court;
  - (b) may not hear the matter as a trial de novo; and
  - (c) may not overturn a finding, dismissal, or decision unless the finding, dismissal, or decision, is arbitrary and capricious or clearly erroneous.
- (5) The Utah Court of Appeals is encouraged to:
- (a) give an appeal made under this section priority; and
  - (b) consider the appeal and render a decision in an expeditious manner.

## **Chapter 12**

### **General Provisions Related to Protest or Appeal**

#### **1-12-101 Title.**

This Chapter is known as "General Provisions Related to Protest or Appeal."

#### **1-12-102 Limitation on challenges -- Compliance with federal law.**

- (1) A person may not challenge a Procurement, a Procurement process, the award of a Contract relating to a Procurement, a debarment, or a suspension, in a court, before an administrative officer or body, or in any other forum other than the forum permitted in this Procurement Procedure.
- (2) A person who desires to challenge a Procurement, a Procurement process, the award of a Contract relating to a Procurement, a debarment, or a suspension, shall bring the challenge, in accordance with the requirements of this chapter.
- (3) In hearing a protest or an appeal under this chapter relating to an expenditure of federal assistance, federal Contract funds, or a federal Grant, the person who hears the appeal shall ensure compliance with federal law and regulations relating to the expenditure.

#### **1-12-103 Effect of timely protest or appeal.**

The CRAU may not proceed further with a Solicitation or with the award of a Contract:

- (1) during the pendency of a timely:
  - (a) protest under Section 1-9-103;
  - (b) appeal of a protest under Section 1-10-103; or

(c) appeal of a Procurement Appeals Panel decision under Section 1-11-102; and

(2) until:

(a) all administrative and judicial remedies are exhausted; or

(b) for a protest under Section 1-9-103, an appeal under Section 1-10-103, an appeal under Section 1-11-102, or an appeal to a higher court than district court the Procurement Officer, after consultation with the attorney general's office, or approved outside counsel, and the CRAU Chair, makes a written determination that award of the Contract without delay is in the best interest of the CRAU.

#### **1-12-104 Costs to or against Protestor.**

(1) If a protest is sustained administratively or upon administrative or judicial review and the protesting Bidder or Offeror should have been awarded the Contract under the Solicitation but is not, the Protestor is entitled to the following relief as a claim against the CRAU:

(a) the reasonable costs incurred in connection with the Solicitation, including bid preparation and appeal costs; and

(b) any equitable relief determined to be appropriate by the reviewing administrative or judicial body.

(2) If the final determination of a Procurement Appeals Panel or other appellate body does not sustain the protest, the Protestor shall reimburse the CRAU for all expenses that the CRAU incurred in defending the appeal, including personnel costs, attorney fees, other legal costs, the per diem and expenses paid by the CRAU to witnesses or appeals panel members, and any additional expenses incurred by the staff of the CRAU who have provided materials and administrative services to the Procurement Appeals Panel for that case.

(3) The provisions of Title 1, Chapter 7, Part 4, Notice of Claim Against a Governmental Entity or a Government Employee, and Section 1-7-601 do not apply to actions brought under this Procurement Procedure by an aggrieved party for equitable relief or reasonable costs incurred in preparing or appealing an unsuccessful bid or offer.

#### **1-12-105 Effect of prior determination by agents of Procurement unit.**

In any judicial action under Section 1-11-102, determinations by employees, agents, or other persons appointed by the CRAU shall be final and conclusive only as provided in Sections 1-12-109, 1-9-104, and 1-10-106.

#### **1-12-106 Effect of violation found after award of Contract.**

(1) If after award of a Contract it is determined administratively or upon administrative or judicial review that a Procurement or award of a Contract is in violation of law:

(a)

(i) if the person awarded the Contract did not act fraudulently or in bad faith:

(A) the Contract may be ratified and affirmed if it is in the best interests of the CRAU; or

(B) the Contract may be terminated; and

- (ii) the person awarded the Contract shall be compensated for the actual expenses reasonably incurred under the Contract before the termination, plus a reasonable profit; or
- (b) if the person awarded the Contract acted fraudulently or in bad faith:
  - (i) the Contract may be declared null and void; or
  - (ii) the Contract may be ratified and affirmed if it is in the best interests of the CRAU, without prejudice to the CRAU's rights to any appropriate damages.
- (2) Under no circumstances is a person entitled to consequential damages in relation to a Solicitation or award of a Contract under this Procurement Procedure, including consequential damages for lost profits, loss of business opportunities, or damage to reputation.

**1-12-107 Effect of violation found prior to award of Contract.**

If, before award of a Contract, it is determined administratively or upon administrative or judicial review that a Procurement or proposed award of a Contract is in violation of law, the Procurement or proposed award shall be cancelled or revised to comply with the law.

**1-12-108 Interest rates.**

In controversies between the CRAU and a Contractor under this Procurement Procedure, interest on amounts ultimately determined to be due to a Contractor or the CRAU are payable at the rate applicable to judgments from the date the claim arose through the date of decision or judgment, whichever is later.

**1-12-109 Determinations final except when arbitrary and capricious or clearly erroneous.**

The determinations required under the following provisions are final and conclusive unless they are arbitrary and capricious or clearly erroneous:

- (1) Section 1-1-107;
- (2) Section 1-1-108;
- (3) Section 1-4-102;
- (4) Section 1-4-107;
- (5) Section 1-5-104;
- (6) Section 1-6-103;
- (7) Subsection 1-8-103(1) or (2);
- (8) Subsection 1-8-103(5);
- (9) Section 1-8-105; or
- (10) Subsection 1-8-106(5).

**Chapter 13**  
**Records**

**1-13-101 Title.**

This Chapter is known as "Records".

#### **1-13-102 Records -- Retention.**

(1) All Procurement records shall be retained and disposed of in accordance with Title 1, Chapter 2, Government Records Access and Management Act.

(2) Written determinations required by this chapter shall be retained in the appropriate official Contract file of:

(a) the division;

(b) except as provided in Subsection (2)(c), the independent Procurement unit; or

(c) for a legislative Procurement unit or a judicial Procurement unit, the person designated by rule made by the rulemaking authority.

(3) The CRAU shall keep, and make available to the public, upon request, written records of Procurements for which an expenditure of \$100 or more is made, for the longer of:

(a) six years;

(b) the time otherwise required by law; or

(c) the time period provided by rule made by the rulemaking authority.

(4) The written record described in Subsection (3) shall include:

(a) the name of the provider from whom the Procurement was made;

(b) a description of the Procurement Item;

(c) the date of the Procurement; and

(d) the expenditure made for the Procurement.

#### **1-13-103 Record of Contracts made.**

A Procurement Official shall maintain a record of all Contracts made under Section 1-2-103, 1-5-102, or 1-5-103, in accordance with Title 1, Chapter 2, Government Records Access and Management Act. The record shall contain each Contractor's name, the amount and type of each Contract, and a listing of the Procurement Items to which the Contract relates.

### **Chapter 14**

#### **Interaction Between Public Entities**

#### **1-14-101 Title.**

This Chapter is known as "Interaction with Public Entities".

#### **1-14-102 Agreements between public entities.**

The CRAU may enter into an agreement with one or more other public entities to:

(1) sponsor, conduct, or administer a cooperative agreement for:

(a) the Procurement of a Procurement Item, in accordance with the requirements of Section 1-14-105; or

(b) the disposal of a Procurement Item;

(2) cooperatively use a Procurement Item;

(3) commonly use or share warehousing facilities, capital equipment, and other facilities;

(4) provide personnel, if the receiving public entity pays the public entity providing the personnel the direct and indirect cost of providing the personnel, in accordance with the agreement; or



(5) purchase from, contribute to, or otherwise participate in a pooled governmental funds program for the purpose of acquiring or sharing information, data, reports, or other services in accordance with the terms of the agreement.

#### **1-14-103 Purchases between public entities.**

(1)

(a) The CRAU may purchase a Procurement Item from another public entity.

(b) A purchase under Subsection (1)(a) is not subject to the Procurement requirements of this Procurement Procedure.

(c)

(i) Subsection (1)(a) does not authorize the CRAU to obtain a Procurement Item under a Contract of another public entity.

(ii) Subsection (1)(c)(i) does not affect the authority of the CRAU relating to a Cooperative Procurement under Subsection 1-14-105(1)(b).

(2) The CRAU may publish a schedule of costs or fees for Procurement Items available for purchase by another public entity.

#### **1-14-104 No circumvention.**

The CRAU may not enter into a Cooperative Procurement agreement for the purpose of circumventing this Procurement Procedure.

#### **1-14-105 Cooperative Procurements - Utah State Cooperative Contracts - - Contracts with federal government -- Regional Solicitations.**

(1) The CRAU may purchase a Procurement Item through a Cooperative Procurement by using the State of Utah Cooperative Contracts available for public entities pursuant to Section 63G-6a-2105, without going through a Standard Procurement Process or an exception to a Standard Procurement Process.

(2) The CRAU may:

(a) Contract with the federal government without going through a Standard Procurement Process or an exception to a Standard Procurement Process, described in Chapter 5, Exceptions to Procurement Requirements, if the Procurement Item obtained under the Contract is provided:

(i) directly by the federal government and not by a person contracting with the federal government; or

(ii) by a person under Contract with the federal government that obtained the Contract in a manner that substantially complies with the provisions of this Procurement Procedure;

(b) participate in, sponsor, conduct, or administer a Cooperative Procurement with another public entity in Utah, if:

(i) each party unit involved in the Cooperative Procurement enters into an agreement describing the rights and duties of each party;

(ii) the Procurement is conducted, and the Contract awarded, in accordance with the requirements of this Procurement Procedure;

(iii) the Solicitation:

(A) clearly indicates that the Procurement is a Cooperative Procurement; and

- (B) identifies each party that may purchase under the resulting Contract; and
- (iv) each party involved in the Cooperative Procurement signs a participating addendum describing its rights and obligations in relation to the resulting Contract; or
- (c) purchase under, or otherwise participate in, an agreement or Contract of a cooperative purchasing organization, if:
  - (i) each party involved in the Cooperative Procurement enters into an agreement describing the rights and duties of each party;
  - (ii) the Procurement was conducted in accordance with the requirements of this Procurement Procedure;
  - (iii) the Solicitation:
    - (A) clearly indicates that the Procurement is a Cooperative Procurement; and
    - (B) identifies each party that may purchase under the resulting Contract; and
    - (iv) each party involved in the Cooperative Procurement signs a participating addendum describing its rights and obligations in relation to the resulting Contract.
- (3) The CRAU may not obtain a Procurement Item under a Contract that results from a Cooperative Procurement described in Subsection (1), unless the CRAU:
  - (a) is identified under Subsection (4)(b)(iii)(B) or (4)(c)(iii)(B); and
  - (b) signs a participating addendum to the Contract as required by this section.
- (4) The CRAU may not obtain a Procurement Item under a Contract held by the United States General Services Administration, unless, based upon documentation provided by the CRAU, the Procurement Official determines in writing that the United States General Services Administration procured the Contract in a manner that substantially complies with the provisions of this Procurement Procedure.

## **Chapter 15**

### **Prohibited Conduct and Penalties**

#### **1-15-101 Title.**

This Chapter is known as "Prohibited Conduct and Penalties".

#### **1-15-102 Definitions.**

As used in this Chapter:

- (1) "Contract administration professional":
  - (a) means an individual who:
    - (i) is:
      - (A) directly under Contract with the CRAU; or
      - (B) employed by a person under Contract with the CRAU; and
    - (ii) has responsibility in:
      - (A) developing a Solicitation or Grant, or conducting the Procurement process; or
      - (B) supervising or overseeing the administration or management of

- a Contract or Grant; and
  - (b) does not include an employee of the CRAU.
- (2) "Contribution":
- (a) means a voluntary gift or donation of money, service, or anything else of value, to the CRAU for the CRAU's use and not for the primary use of an individual employed by the CRAU; and
  - (b) includes:
    - (i) a philanthropic donation;
    - (ii) admission to a seminar, Vendor fair, charitable event, fundraising event, or similar event that relates to the function of the CRAU;
    - (iii) the purchase of a booth or other display space at an event sponsored by the CRAU or a group of which the CRAU is a member; and
    - (iv) the sponsorship of an event that is organized by the CRAU.
- (3) "Family member" means a father, mother, husband, wife, son, daughter, sister, brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law.
- (4) "Governing body" means CRAU Board.
- (5) "Gratuity":
- (a) means anything of value given:
    - (i) without anything provided in exchange; or
    - (ii) in excess of the market value of that which is provided in exchange;
  - (b) includes:
    - (i) a gift or favor;
    - (ii) money;
    - (iii) a loan at an interest rate below the market rate or with terms that are more advantageous to the borrower than terms offered generally on the market;
    - (iv) anything of value provided with an award, other than a certificate, plaque, or trophy;
    - (v) employment;
    - (vi) admission to an event;
    - (vii) a meal, lodging, or travel;
    - (viii) entertainment for which a charge is normally made; and
    - (ix) a raffle, drawing for a prize, or lottery; and
  - (c) does not include:
    - (i) an item, including a meal in association with a training seminar, that is:
      - (A) included in a Contract or Grant; or
      - (B) provided in the proper performance of a requirement of a Contract or Grant;
    - (ii) an item requested to evaluate properly the award of a Contract or Grant;
    - (iii) a rebate, coupon, discount, airline travel award, dividend, or other offering included in the price of a Procurement Item;
    - (iv) a meal provided by an organization or association, including a professional or educational association, an association of Vendors, or an association composed of public agencies or public entities, that does not, as an organization or association, respond to

Solicitations;

(v) a product sample submitted to the CRAU to assist the CRAU to evaluate a Solicitation;

(vi) a political campaign contribution;

(vii) an item generally available to the public; or

(viii) anything of value that one public entity provides to another public entity.

(6) "Hospitality gift":

(a) means a token gift of minimal value, including a pen, pencil, stationery, toy, pin, trinket, snack, beverage, or appetizer, given for promotional or hospitality purposes; and

(b) does not include money, a meal, admission to an event for which a charge is normally made, entertainment for which a charge is normally made, travel, or lodging.

(7) "Kickback":

(a) means a negotiated bribe provided in connection with a Procurement or the administration of a Contract or Grant; and

(b) does not include anything listed in Subsection (5)(c).

(8) "Procurement" has the same meaning as defined herein, but also includes the awarding of a Grant.

(9) "Procurement professional":

(a) means an individual who is an employee, and not an independent Contractor, of the CRAU, and who, by title or primary responsibility:

(i) has Procurement decision making authority; and

(ii) is assigned to be engaged in, or is engaged in:

(A) the Procurement process; or

(B) the process of administering a Contract or Grant, including enforcing Contract or Grant compliance, approving Contract or Grant payments, or approving Contract or Grant change orders or amendments; and

(b) excludes:

(i) any individual who, by title or primary responsibility, does not have Procurement decision making authority;

(ii) an individual holding an elective office;

(iii) a member of a governing body;

(iv) a chief assistant or deputy of the chief executive, if the chief executive, chief assistant, or deputy, respectively, has a variety of duties and responsibilities beyond the management of the Procurement process or the Contract or Grant administration process;

### **1-15-103 Applicability.**

(1) This chapter applies to the CRAU.

(2) A Procurement professional is subject to this Chapter at all times during:

(a) the Procurement process; and

(b) the administration of a Contract or Grant.

(3) A Contract Administration professional is subject to this Chapter at all times during the period the Contract Administration professional is:

(a) under Contract with the CRAU; and

- (b) involved in:
  - (i) the Procurement process; or
  - (ii) the administration of a Contract or Grant.
- (4) This Chapter does not apply to:
  - (a) an individual described in Subsection 1-15-102(9) (b); or
  - (b) any individual other than a Procurement professional or Contract Administration professional;
- (5) The other subsections of this Section do not affect the applicability or effect of any other ethics, bribery, or other law.

**1-15-104 Unlawful conduct -- Exceptions -- Classification of offenses.**

- (1)
  - (a) It is prohibited for a person who has or is seeking a Contract with or a Grant from the CRAU knowingly to give, or offer, promise, or pledge to give, a gratuity or kickback to:
    - (i) the CRAU;
    - (ii) a Procurement professional or Contract Administration professional; or
    - (iii) an individual who the person knows is a family member of an individual described in Subsection (1) (a) (ii).
  - (b) It is not unlawful for a public entity to give, offer, promise, or pledge to give a contribution to another public entity.
  - (c) A person is not guilty of prohibited conduct under Subsection (1) (a) for:
    - (i) giving or offering, promising, or pledging to give a contribution to the CRAU, unless done with the intent to induce the CRAU, in exchange, to:
      - (A) award a Contract or Grant;
      - (B) make a Procurement decision; or
      - (C) take an action relating to the administration of a Contract or Grant; or
    - (ii) giving or offering, promising, or pledging to give something of value to an organization to which a Procurement professional or Contract Administration professional belongs, unless done with the intent to induce a public entity, in exchange, to:
      - (A) award a Contract or Grant;
      - (B) make a Procurement decision; or
      - (C) take an action relating to the administration of a Contract or Grant.
- (2)
  - (a) It is prohibited for a Procurement professional or Contract Administration professional, or a family member of either, knowingly to receive or accept, offer or agree to receive or accept, or ask for a promise or pledge of, a gratuity or kickback from a person who has or is seeking a Contract with or a Grant from the CRAU.
  - (b) An individual is not guilty of prohibited conduct under Subsection (2) (a) for receiving or accepting, offering or agreeing to receive or accept, or asking for a promise or pledge of a contribution on behalf of the CRAU, unless done with the intent that the CRAU, in exchange:
    - (i) award a Contract or Grant;

- (ii) make a Procurement decision; or
  - (iii) take an action relating to the administration of a Contract or Grant.
- (3) Notwithstanding Subsections (1) and (2), it is not prohibited for a person to give or receive, offer to give or receive, or promise or pledge to give or ask for a promise or pledge of, a hospitality gift, if:
  - (a) the total value of the hospitality gift is less than \$10; and
  - (b) the aggregate value of all hospitality gifts from the person to the recipient in a calendar year is less than \$50.
- (4) A person who engages in the conduct prohibited under Subsection (1) or (2) may be punished for such conduct, including:
  - (a) dismissal from employment, cancellation of the Contract to provide Procurement services, or other disciplinary action;
  - (b) disbarment;
  - (c) requiring the public officer or employee to return the value of the unlawful gratuity or kickback; and
  - (d) any other civil penalty provided by law.

**1-15-105 Dividing a Procurement to avoid using a Standard Procurement Process.**

- (1) It is prohibited for a person knowingly to divide a single Procurement into multiple smaller Procurements if dividing the single Procurement:
  - (a) is done with the intent to avoid the use of a Standard Procurement Process that would have otherwise been required if the Procurement had not been divided;
  - (b) constitutes prohibited conduct under Subsection 1-2-103(3); or
  - (c) is otherwise prohibited by this Procurement Procedure.
- (2) A violation of Subsection (1) is subject to Subsection 1-15-104(4).

**1-15-106 Improper action against a public officer or employee involved in the Procurement process.**

- (1)
  - (a) It is prohibited for a person knowingly to threaten to make a false allegation against a public officer or employee, or knowingly to threaten to take a menacing or intimidating action against a public officer or employee, with the intent to:
    - (i) prevent the officer or employee from performing a duty or responsibility that the officer or employee has under this Procurement Procedure;
    - (ii) influence the officer or employee to award a Contract under this Procurement Procedure to the person or take other action under Procurement Procedure in favor of the person; or
    - (iii) retaliate against the officer or employee for:
      - (A) not awarding a Contract under this Procurement Procedure to the person;
      - (B) issuing a decision or taking an action under this Procurement Procedure that is adverse to the person; or
      - (C) performing a duty or responsibility the officer or employee

has under this Procurement Procedure.

(b) A violation of Subsection (1)(a) subjects the person to suspension or disbarment.

(2)

(a) It is prohibited for a person knowingly to make a false allegation against a public officer or employee, or knowingly to take a menacing or intimidating action against a public officer or employee, with the intent to:

(i) prevent the officer or employee from performing a duty or responsibility that the officer or employee has under this Procurement Procedure;

(ii) influence the officer or employee to award a Contract under this Procurement Procedure to the person or take other action under Procurement Procedure in favor of the person; or

(iii) retaliate against the officer or employee for:

(A) not awarding a Contract under this Procurement Procedure to the person;

(B) issuing a decision or taking an action under Procurement Procedure that is adverse to the person; or

(C) performing a duty or responsibility the officer or employee has under Procurement Procedure.

(b) A violation of Subsection (2)(a) subjects the person to suspension or disbarment.

#### **1-15-107 Discretion to declare Contract or Grant void -- Limitations.**

(1) Subject to Subsection (2), a Contract or Grant to a person who engages in conduct prohibited under this chapter may, in the sole discretion of the Executive Director, declare the Contract or Grant to be void and unenforceable, unless a third party has substantially changed its position in reliance upon the Contract or Grant.

(2) Declaring a Contract or Grant void under Subsection (1) does not affect the obligation of the CRAU to pay for a Contractor's proper performance completed under the Contract or Grant or the value the Contractor provides to the CRAU under the Contract or Grant before the Contract or Grant is declared void.

#### **1-15-108 Authority of conducting Procurement unit with respect to evaluation committee.**

Nothing in this chapter restricts the CRAU from:

(1) requiring an evaluation committee member to disclose a conflict of interest; or

(2) removing an evaluation committee member for having a conflict of interest.

#### **1-15-109 Duty to report prohibited conduct.**

(1) As used in this section, "prohibited conduct" means:

(a) conduct prohibited under this chapter; or

(b) conduct, including bid rigging, improperly steering a Contract to a favored Vendor, exercising undue influence on an individual involved in the Procurement process, or participating in collusion or other anticompetitive practices, prohibited under other applicable

law.

(2)

(a) A Procurement professional with actual knowledge that a person has engaged in prohibited conduct shall report the person's prohibited conduct to:

(i) the CRAU Chair and Executive Director; and

(ii) the attorney general or approved outside counsel.

(b) An individual not subject to the requirement of Subsection (2)(a) who has actual knowledge that a person has engaged in prohibited conduct may report the person's prohibited conduct to:

(i) the CRAU Chair and Executive Director; or

(ii) the attorney general or approved outside counsel.

(3) A Procurement professional who fails to comply with the requirement of Subsection (2)(a) is subject to any applicable disciplinary action.