

## Mayor's Office: Council Agenda Item Request Form

*This form and supporting documents (if applicable) are due the Wednesday before the COW meeting by noon.*

Date Received  
(office use)

24 January 2017

Date of Request	1/24/2017
Requesting Staff Member	Christina Oliver
Requested Council Date	1/31/2017
Topic/Discussion Title	Draper Aquatic Center Resolution
Description	Resolution to adopt the CMGC process for Parks and Recreation bond-funded Draper Aquatic Center
Requested Action <sup>1</sup>	Approve CMGC process for Draper Recreation Center
Presenter(s)	Christina Oliver if requested
Time Needed <sup>2</sup>	n/a
Time Sensitive <sup>3</sup>	n/a
Specific Time(s) <sup>4</sup>	No
Contact Name & Phone	Christina Oliver x81788
Please attach the supporting documentation you plan to provide for the packets to this form. While not ideal, if supporting documents are not yet ready, you can still submit them by 10 am the Friday morning prior to the COW agenda. Items without documentation may be taken off for consideration at that COW meeting.	

Mayor or Designee approval: \_\_\_\_\_

*Eun O'Hara*

<sup>1</sup> What you will ask the Council to do (e.g., discussion only, appropriate money, adopt policy/ordinance) – in specific terms.

<sup>2</sup> Assumed to be 10 minutes unless otherwise specified.

<sup>3</sup> Urgency that the topic to scheduled on the requested date.

<sup>4</sup> If important to schedule at a specific time, list a few preferred times.



**Ralph Chamness**  
Chief Deputy  
Civil Division

**Lisa Ashman**  
Administrative  
Operations


**SIM GILL**  
DISTRICT ATTORNEY

**Jeffrey William Hall**  
Chief Deputy  
Justice Division

**Blake Nakamura**  
Chief Deputy  
Justice Division

## MEMORANDUM

**TO:** Christina Oliver

**FROM:** David Johnson 

**DATE:** January 20, 2017

**RE:** Draper Recreation Center, Resolution

I have approved the above referenced document as to form and legality. I am delivering it to you for further action.

If you have any questions or require additional assistance with this matter, please contact me at 87766.

RESOLUTION NO. \_\_\_\_\_

DATE: \_\_\_\_\_

RESOLUTION ADOPTING CERTAIN PROVISIONS OF THE  
UTAH PROCUREMENT CODE AND UTAH ADMINISTRATIVE CODE  
FOR SOURCE SELECTION, CONTRACT FORMATION, AND CHOICE OF  
CONSTRUCTION CONTRACT MANAGEMENT METHOD, IN REGARDS TO  
CONSTRUCTION OF ANEW RECREATION CENTER IN DRAPER, UTAH.

BE IT KNOWN BY THESE PRESENT, that,

WHEREAS, Salt Lake County has determined that it is appropriate and necessary to construct a new recreation center in Draper to better serve county citizens; and,

WHEREAS, the Salt Lake County Council, being fully advised of the premises, deems it most advantageous to the citizens of Salt Lake County to proceed with the design and construction of said buildings as “construction manager/general contractor” projects; and,

WHEREAS, Salt Lake County is authorized under the provisions of §11-39-107, Utah Code 1953, as amended, to adopt certain provisions of the Utah Procurement Code for the design and construction of its publicly-funded building improvements;

NOW THEREFORE, the Salt Lake County Council hereby resolves and ordains that the construction of the above-referenced recreation center in Draper City go forward by application of provisions of the Utah Procurement Code, to wit: §63G-6a-103, §63G-6a-707, §63G-6a-708, §63G-6a-1205, §63G-6a-1302, and the rules and regulations promulgated by the State of Utah Building Board under the authority of §63G-6a-1302, to wit: R23-1-102, R23-1-717, R23-1-1210, R23-1-1211, R23-1-1212, R23-1-1213, R23-1-1214, R23-1-1302, R23-1-1304, R23-1-1306, and R23-1-1307, Utah Administrative Code, 2015. County ordinances, policies, and procedures shall apply to all other aspects of procurement of construction regarding the above-referenced buildings which are not governed by the provisions of the State Procurement Code and regulations cited above.

SALT LAKE COUNTY COUNCIL


By: \_\_\_\_\_  
Steve DeBry, Chair

ATTEST:

\_\_\_\_\_  
Sherrie Swensen  
Salt Lake County Clerk

Council Member Bradley voting	_____
Council Member Bradshaw voting	_____
Council Member Burdick voting	_____
Council Member DeBry voting	_____
Council Member Granato voting	_____
Council Member Jensen voting	_____
Council Member Newton voting	_____
Council Member Snelgrove voting	_____
Council Member Wilson voting	_____

APPROVED AS TO FORM:

  
\_\_\_\_\_  
David A. Johnson  
Deputy District Attorney  
Date: 7-20-2017



*Effective 3/28/2016*

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

As used in this chapter:

- (1) "Administrative law judge" means the same as that term is defined in Section 67-19e-102.
- (2) "Administrative law judge service" means service provided by an administrative law judge.
- (3) "Applicable rulemaking authority" means:
  - (a) for a legislative procurement unit, the Legislative Management Committee;
  - (b) for a judicial procurement unit, the Judicial Council;
  - (c) (i) only to the extent of the procurement authority expressly granted to the procurement unit by statute:
    - (A) for the building board or the Division of Facilities Construction and Management, created in Section 63A-5-201, the building board;
    - (B) for the Office of the Attorney General, the attorney general; and
    - (C) for the Department of Transportation created in Section 72-1-201, the executive director of the Department of Transportation; and
  - (ii) for each other executive branch procurement unit, the board;
  - (d) for a local government procurement unit:
    - (i) the legislative body of the local government procurement unit; or
    - (ii) an individual or body designated by the legislative body of the local government procurement unit;
  - (e) for a school district or a public school, the board, except to the extent of a school district's own nonadministrative rules that do not conflict with the provisions of this chapter;
  - (f) for a state institution of higher education, the State Board of Regents;
  - (g) for a public transit district, the chief executive of the public transit district;
  - (h) for a local district other than a public transit district or for a special service district:
    - (i) before January 1, 2015, the board of trustees of the local district or the governing body of the special service district; or
    - (ii) on or after January 1, 2015, the board, except to the extent that the board of trustees of the local district or the governing body of the special service district makes its own rules:
      - (A) with respect to a subject addressed by board rules; or
      - (B) that are in addition to board rules; or
  - (i) for any other procurement unit, the board.
- (4) "Approved vendor" means a vendor who has been approved through the approved vendor list process.
- (5) "Approved vendor list" means a list of approved vendors established under Section 63G-6a-507.

- (6) "Approved vendor list process" means the procurement process described in Section 63G-6a-507.
- (7) "Bidder" means a person who submits a bid or price quote in response to an invitation for bids.
- (8) "Bidding process" means the procurement process described in Part 6, Bidding.
- (9) "Board" means the Utah State Procurement Policy Board, created in Section 63G-6a-202.
- (10) "Building board" means the State Building Board, created in Section 63A-5-101.
- (11) "Change directive" means a written order signed by the procurement officer that directs the contractor to suspend work or make changes, as authorized by contract, without the consent of the contractor.
- (12) "Change order" means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract, upon mutual agreement of the parties to the contract.
- (13) "Chief procurement officer" means the chief procurement officer appointed under Subsection 63G-6a-302(1).
- (14) "Conducting procurement unit" means a procurement unit that conducts all aspects of a procurement:
  - (a) except:
    - (i) reviewing a solicitation to verify that it is in proper form; and
    - (ii) causing the publication of a notice of a solicitation; and
  - (b) including:
    - (i) preparing any solicitation document;
    - (ii) appointing an evaluation committee;
    - (iii) conducting the evaluation process, except as provided in Subsection 63G-6a-707(6)(b) relating to scores calculated for costs of proposals;
    - (iv) selecting and recommending the person to be awarded a contract;
    - (v) negotiating the terms and conditions of a contract, subject to the issuing procurement unit's approval; and
    - (vi) contract administration.
- (15) "Conservation district" means the same as that term is defined in Section 17D-3-102.
- (16) "Construction":
  - (a) means services, including work, and supplies for a project for the construction, renovation, alteration, improvement, or repair of a public facility on real property; and
  - (b) does not include services and supplies for the routine, day-to-day operation, repair, or maintenance of an existing public facility.
- (17) "Construction manager/general contractor":
  - (a) means a contractor who enters into a contract:
    - (i) for the management of a construction project; and

- (ii) that allows the contractor to subcontract for additional labor and materials that are not included in the contractor's cost proposal submitted at the time of the procurement of the contractor's services; and
  - (b) does not include a contractor whose only subcontract work not included in the contractor's cost proposal submitted as part of the procurement of the contractor's services is to meet subcontracted portions of change orders approved within the scope of the project.
- (18) "Contract" means an agreement for a procurement.
- (19) "Contract administration" means all functions, duties, and responsibilities associated with managing, overseeing, and carrying out a contract between a procurement unit and a contractor, including:
- (a) implementing the contract;
  - (b) ensuring compliance with the contract terms and conditions by the conducting procurement unit and the contractor;
  - (c) executing change orders;
  - (d) processing contract amendments;
  - (e) resolving, to the extent practicable, contract disputes;
  - (f) curing contract errors and deficiencies;
  - (g) terminating a contract;
  - (h) measuring or evaluating completed work and contractor performance;
  - (i) computing payments under the contract; and
  - (j) closing out a contract.
- (20) "Contractor" means a person who is awarded a contract with a procurement unit.
- (21) "Cooperative procurement" means procurement conducted by, or on behalf of:
- (a) more than one procurement unit; or
  - (b) a procurement unit and a cooperative purchasing organization.
- (22) "Cooperative purchasing organization" means an organization, association, or alliance of purchasers established to combine purchasing power in order to obtain the best value for the purchasers by engaging in procurements in accordance with Section 63G-6a-2105.
- (23) "Cost-plus-a-percentage-of-cost contract" means a contract under which the contractor is paid a percentage of the total actual expenses or costs in addition to the contractor's actual expenses or costs.
- (24) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowed and allocated in accordance with the contract terms and the provisions of this chapter, and a fee, if any.
- (25) "Days" means calendar days, unless expressly provided otherwise.

- (26) "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.
- (27) "Design-build" means the procurement of design professional services and construction by the use of a single contract.
- (28) "Design professional" means:
- (a) an individual licensed as an architect under Title 58, Chapter 3a, Architects Licensing Act; or
  - (b) an individual licensed as a professional engineer or professional land surveyor under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.
- (29) "Design professional procurement process" means the procurement process described in Part 15, Design Professional Services.
- (30) "Design professional services" means:
- (a) professional services within the scope of the practice of architecture as defined in Section 58-3a-102;
  - (b) professional engineering as defined in Section 58-22-102; or
  - (c) master planning and programming services.
- (31) "Director" means the director of the division.
- (32) "Division" means the Division of Purchasing and General Services, created in Section 63A-2-101.
- (33) "Educational procurement unit" means:
- (a) a school district;
  - (b) a public school, including a local school board and a charter school;
  - (c) the Utah Schools for the Deaf and Blind;
  - (d) the Utah Education and Telehealth Network; or
  - (e) an institution of higher education of the state.
- (34) "Established catalogue price" means the price included in a catalogue, price list, schedule, or other form that:
- (a) is regularly maintained by a manufacturer or contractor;
  - (b) is published or otherwise available for inspection by customers; and
  - (c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.
- (35) "Executive branch procurement unit" means a department, division, office, bureau, agency, or other organization within the state executive branch.
- (36) "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.
- (37) "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.
- (38) "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.
- (39) "Head of a procurement unit" means:
- (a) for a legislative procurement unit, any person designated by rule made by the applicable rulemaking authority;
  - (b) for an executive branch procurement unit:
    - (i) the director of the division; or
    - (ii) any other person designated by the board, by rule;
  - (c) for a judicial procurement unit:
    - (i) the Judicial Council; or
    - (ii) any other person designated by the Judicial Council, by rule;
  - (d) for a local government procurement unit:
    - (i) the legislative body of the local government procurement unit; or
    - (ii) any other person designated by the local government procurement unit;
  - (e) for a local district other than a public transit district, the board of trustees of the local district or a designee of the board of trustees;
  - (f) for a special service district, the governing body of the special service district or a designee of the governing body;
  - (g) for a local building authority, the board of directors of the local building authority or a designee of the board of directors;
  - (h) for a conservation district, the board of supervisors of the conservation district or a designee of the board of supervisors;
  - (i) for a public corporation, the board of directors of the public corporation or a designee of the board of directors;
  - (j) for a school district or any school or entity within a school district, the board of the school district, or the board's designee;
  - (k) for a charter school, the individual or body with executive authority over the charter school, or the individual's or body's designee;



- (l) for an institution of higher education of the state, the president of the institution of higher education, or the president's designee; or
  - (m) for a public transit district, the board of trustees or a designee of the board of trustees.
- (40) "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 chief procurement officer or the head of a procurement unit with independent procurement authority reasonably considers to be immaterial.
- (41) "Indefinite quantity contract" means a fixed price contract that:
- (a) is for an indefinite amount of procurement items to be supplied as ordered by a procurement unit; and
  - (b) (i) does not require a minimum purchase amount; or
  - (ii) provides a maximum purchase limit.
- (42) "Independent procurement authority" means authority granted to a procurement unit under Subsection 63G-6a-106(4)(a).
- (43) "Invitation for bids":
- (a) means a document used to solicit:
    - (i) bids to provide a procurement item to a procurement unit; or
    - (ii) quotes for a price of a procurement item to be provided to a procurement unit; and
  - (b) includes all documents attached to or incorporated by reference in a document described in Subsection (43)(a).
- (44) "Issuing procurement unit" means a procurement unit that:
- (a) reviews a solicitation to verify that it is in proper form;
  - (b) causes the notice of a solicitation to be published; and
  - (c) negotiates and approves the terms and conditions of a contract.
- (45) "Judicial procurement unit" means:
- (a) the Utah Supreme Court;
  - (b) the Utah Court of Appeals;

- (c) the Judicial Council;
  - (d) a state judicial district; or
  - (e) an office, committee, subcommittee, or other organization within the state judicial branch.
- (46) "Labor hour contract" is a contract under which:
- (a) the supplies and materials are not provided by, or through, the contractor; and
  - (b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and profit for a specified number of labor hours or days.
- (47) "Legislative procurement unit" means:
- (a) the Legislature;
  - (b) the Senate;
  - (c) the House of Representatives;
  - (d) a staff office of the Legislature, the Senate, or the House of Representatives; or
  - (e) an office, committee, subcommittee, commission, or other organization within the state legislative branch.
- (48) "Local building authority" means the same as that term is defined in Section 17D-2-102.
- (49) "Local district" means the same as that term is defined in Section 17B-1-102.
- (50) "Local government procurement unit" means:
- (a) a county or municipality, and each office or agency of the county or municipality, unless the county or municipality adopts its own procurement code by ordinance;
  - (b) a county or municipality that has adopted this entire chapter by ordinance, and each office or agency of that county or municipality; or
  - (c) a county or municipality that has adopted a portion of this chapter by ordinance, to the extent that a term in the ordinance is used in the adopted portion of this chapter, and each office or agency of that county or municipality.
- (51) "Multiple award contracts" means the award of a contract for an indefinite quantity of a procurement item to more than one bidder or offeror.
- (52) "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.
- (53) "Municipality" means a city, town, or metro township.
- (54) "Nonadopting local government procurement unit" means:
- (a) a county or municipality that has not adopted Part 16, Protests, Part 17, Procurement Appeals Board, Part 18, Appeals to Court and Court Proceedings, and Part 19, General Provisions Related to Protest or Appeal; and
  - (b) each office or agency of a county or municipality described in Subsection (54)(a).
- (55) "Offeror" means a person who submits a proposal in response to a request for proposals.

- (56) "Person" means the same as that term is defined in Section 68-3-12.5, excluding a political subdivision and a government office, department, division, bureau, or other body of government.
- (57) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference under the requirements of this chapter.
- (58) "Procure" means to acquire a procurement item through a procurement.
- (59) "Procurement":
- (a) means a procurement unit's acquisition of a procurement item through an expenditure of public funds, or an agreement to expend public funds;
  - (b) includes all functions that pertain to the acquisition of a procurement item, including:
    - (i) preparing and issuing a solicitation; and
    - (ii) (A) conducting a standard procurement process; or  
(B) conducting a procurement process that is an exception to a standard procurement process under Part 8, Exceptions to Procurement Requirements; and
  - (c) does not include a grant.
- (60) "Procurement item" means a supply, a service, or construction.
- (61) "Procurement officer" means:
- (a) for a procurement unit with independent procurement authority:
    - (i) the head of the procurement unit;
    - (ii) a designee of the head of the procurement unit; or
    - (iii) a person designated by rule made by the applicable rulemaking authority; or
  - (b) for the division or a procurement unit without independent procurement authority, the chief procurement officer.
- (62) "Procurement unit":
- (a) means:
    - (i) a legislative procurement unit;
    - (ii) an executive branch procurement unit;
    - (iii) a judicial procurement unit;
    - (iv) an educational procurement unit;
    - (v) a local government procurement unit;
    - (vi) a local district;
    - (vii) a special service district;
    - (viii) a local building authority;
    - (ix) a conservation district;
    - (x) a public corporation; or

- (xi) a public transit district; and
  - (b) does not include a political subdivision created under Title 11, Chapter 13, Interlocal Cooperation Act.
- (63) "Professional service" means labor, effort, or work that requires an elevated degree of specialized knowledge and discretion, including labor, effort, or work in the field of:
- (a) accounting;
  - (b) architecture;
  - (c) construction design and management;
  - (d) engineering;
  - (e) financial services;
  - (f) information technology;
  - (g) the law;
  - (h) medicine;
  - (i) psychiatry; or
  - (j) underwriting.
- (64) "Protest officer" means:
- (a) for the division or a procurement unit with independent procurement authority:
    - (i) the head of the procurement unit;
    - (ii) a designee of the head of the procurement unit; or
    - (iii) a person designated by rule made by the applicable rulemaking authority; or
  - (b) for a procurement unit without independent procurement authority, the chief procurement officer or the chief procurement officer's designee.
- (65) "Public corporation" means the same as that term is defined in Section 63E-1-102.
- (66) "Public entity" means any government entity of the state or political subdivision of the state, including:
- (a) a procurement unit;
  - (b) a municipality or county, regardless of whether the municipality or county has adopted this chapter or any part of this chapter; and
  - (c) any other government entity located in the state that expends public funds.
- (67) "Public facility" means a building, structure, infrastructure, improvement, or other facility of a public entity.
- (68) "Public funds" means money, regardless of its source, including from the federal government, that is owned or held by a procurement unit.
- (69) "Public transit district" means a public transit district organized under Title 17B, Chapter 2a, Part 8, Public Transit District Act.
- (70) "Qualified vendor" means a vendor who:

- (a) is responsible; and
  - (b) submits a responsive statement of qualifications under Section 63G-6a-410 that meets the minimum mandatory requirements, evaluation criteria, and any applicable score thresholds set forth in the request for statement of qualifications.
- (71) "Real property" means land and any building, fixture, improvement, appurtenance, structure, or other development that is permanently affixed to land.
- (72) "Request for information" means a nonbinding process through which a procurement unit requests information relating to a procurement item.
- (73) "Request for proposals" means a document used to solicit proposals to provide a procurement item to a procurement unit, including all other documents that are attached to that document or incorporated in that document by reference.
- (74) "Request for proposals process" means the procurement process described in Part 7, Request for Proposals.
- (75) "Request for statement of qualifications" means a document used to solicit information about the qualifications of a person interested in responding to a potential procurement, including all other documents attached to that document or incorporated in that document by reference.
- (76) "Requirements contract" means a contract:
- (a) under which a contractor agrees to provide a procurement unit'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.
- (77) "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.
- (78) "Responsive" means conforming in all material respects to the requirements of a solicitation.
- (79) "Sealed" means manually or electronically secured to prevent disclosure.
- (80) "Service":
- (a) means labor, effort, or work to produce a result that is beneficial to a procurement unit;
  - (b) includes a professional service; and
  - (c) does not include labor, effort, or work provided under an employment agreement or a collective bargaining agreement.
- (81) "Small purchase process" means the procurement process described in Section 63G-6a-506.



- (82) "Sole source contract" means a contract resulting from a sole source procurement.
- (83) "Sole source procurement" means a procurement without competition pursuant to a determination under Subsection 63G-6a-802(1)(a) that there is only one source for the procurement item.
- (84) "Solicitation" means an invitation for bids, request for proposals, request for statement of qualifications, or request for information.
- (85) "Solicitation response" means:
- (a) a bid submitted in response to an invitation for bids;
  - (b) a proposal submitted in response to a request for proposals; or
  - (c) a statement of qualifications submitted in response to a request for statement of qualifications.
- (86) "Special service district" means the same as that term is defined in Section 17D-1-102.
- (87) "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 a procurement unit, including a description of:
- (a) a requirement for inspecting or testing a procurement item; or
  - (b) preparing a procurement item for delivery.
- (88) "Standard procurement process" means:
- (a) the bidding process;
  - (b) the request for proposals process;
  - (c) the approved vendor list process;
  - (d) the small purchase process; or
  - (e) the design professional procurement process.
- (89) "State cooperative contract" means a contract awarded by the division for and in behalf of all public entities.
- (90) "Statement of qualifications" means a written statement submitted to a procurement unit in response to a request for statement of qualifications.
- (91) "Subcontractor":
- (a) means a person under contract with a contractor or another subcontractor to provide services or labor for design or construction;
  - (b) includes a trade contractor or specialty contractor; and
  - (c) does not include a supplier who provides only materials, equipment, or supplies to a contractor or subcontractor.
- (92) "Supply" means a good, material, technology, piece of equipment, or any other item of personal property.
- (93) "Tie bid" means that the lowest responsive bids of responsible bidders are identical in price.
- (94) "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.

(95) "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.

(96) "Trial use contract" means a contract for a procurement item that the procurement unit acquires for a trial use or testing to determine whether the procurement item will benefit the procurement unit.

(97) "Vendor":

- (a) means a person who is seeking to enter into a contract with a procurement unit to provide a procurement item; and
- (b) includes:
  - (i) a bidder;
  - (ii) an offeror;
  - (iii) an approved vendor; and
  - (iv) a design professional.

*Effective 3/28/2016*

**63G-6a-707. Evaluation of proposals -- Evaluation committee.**

- (1) To determine which proposal provides the best value to the procurement unit, the evaluation committee shall evaluate each responsive and responsible proposal that has not been disqualified from consideration under the provisions of this chapter, using the criteria described in the request for proposals, which may include:
  - (a) experience;
  - (b) performance ratings;
  - (c) inspection;
  - (d) testing;
  - (e) quality;
  - (f) workmanship;
  - (g) time, manner, or schedule of delivery;
  - (h) references;
  - (i) financial solvency;
  - (j) suitability for a particular purpose;
  - (k) management plans;
  - (l) the presence and quality of a work site safety program, including any requirement that the offeror imposes on subcontractors for a work site safety program;
  - (m) cost; or
  - (n) other subjective or objective criteria specified in the request for proposals.
- (2) Criteria not described in the request for proposals may not be used to evaluate a proposal.
- (3)
  - (a) For a procurement of administrative law judge service, an evaluation committee shall consist of:
    - (i) the head of the conducting procurement unit, or the head's designee;
    - (ii) the head of an executive branch procurement unit other than the conducting procurement unit, appointed by the executive director of the Department of Human Resource Management, or the head's designee; and
    - (iii) the executive director of the Department of Human Resource Management, or the executive director's designee.
  - (b) For every other procurement requiring an evaluation by an evaluation committee, the conducting procurement unit shall:
    - (i) appoint an evaluation committee consisting of at least three individuals with at least a general familiarity with or basic understanding of:
      - (A) the technical requirements relating to the type of procurement item that is the subject of the procurement; or

- (B) the need that the procurement item is intended to address; and
- (ii) ensure that the evaluation committee and each individual participating in the evaluation committee process:
  - (A) does not have a conflict of interest with any of the offerors;
  - (B) can fairly evaluate each proposal;
  - (C) does not contact or communicate with an offeror concerning the procurement outside the official evaluation committee process; and
  - (D) conducts or participates in the evaluation in a manner that ensures a fair and competitive process and avoids the appearance of impropriety.
- (4) A conducting procurement unit may authorize an evaluation committee to receive assistance:
  - (a) from an expert or consultant who:
    - (i) is not a member of the evaluation committee; and
    - (ii) does not participate in the evaluation scoring; and
  - (b) to better understand a technical issue involved in the procurement.
- (5)
  - (a) An evaluation committee may, with the approval of the head of the conducting procurement unit, enter into discussions or conduct interviews with, or attend presentations by, the offerors, for the purpose of clarifying information contained in proposals.
  - (b) In a discussion, interview, or presentation under Subsection (5)(a), an offeror:
    - (i) may only explain, illustrate, or interpret the contents of the offeror's original proposal; and
    - (ii) may not:
      - (A) address criteria or specifications not contained in the offeror's original proposal;
      - (B) correct a deficiency, inaccuracy, or mistake in a proposal that is not an immaterial error;
      - (C) correct an incomplete submission of documents that the solicitation required to be submitted with the proposal;
      - (D) correct a failure to submit a timely proposal;
      - (E) substitute or alter a required form or other document specified in the solicitation;
      - (F) remedy a cause for an offeror being considered to be not responsible or a proposal not responsive; or
      - (G) correct a defect or inadequacy resulting in a determination that an offeror does not meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds established in the solicitation.

- (6) (a) Except as provided in Subsection (7)(b) relating to access to management fee information, and except as provided in Subsection (9), each member of the evaluation committee is prohibited from knowing, or having access to, any information relating to the cost, or the scoring of the cost, of a proposal until after the evaluation committee submits its final recommended scores on all other criteria to the issuing procurement unit.
- (b) The issuing procurement unit shall:
- (i) if applicable, assign an individual who is not a member of the evaluation committee to calculate scores for cost based on the applicable scoring formula, weighting, and other scoring procedures contained in the request for proposals;
  - (ii) review the evaluation committee's scores and correct any errors, scoring inconsistencies, and reported noncompliance with this chapter;
  - (iii) add the scores calculated for cost, if applicable, to the evaluation committee's final recommended scores on criteria other than cost to derive the total combined score for each responsive and responsible proposal; and
  - (iv) provide to the evaluation committee the total combined score calculated for each responsive and responsible proposal, including any applicable cost formula, weighting, and scoring procedures used to calculate the total combined scores.
- (c) The evaluation committee may not:
- (i) change its final recommended scores described in Subsection (6)(a) after the evaluation committee has submitted those scores to the issuing procurement unit; or
  - (ii) change cost scores calculated by the issuing procurement unit.
- (7) (a) As used in this Subsection (7), "management fee" includes only the following fees of the construction manager/general contractor:
- (i) preconstruction phase services;
  - (ii) monthly supervision fees for the construction phase; and
  - (iii) overhead and profit for the construction phase.
- (b) When selecting a construction manager/general contractor for a construction project, the evaluation committee:
- (i) may score a construction manager/general contractor based upon criteria contained in the solicitation, including qualifications, performance ratings, references, management plan, certifications, and other project specific criteria described in the solicitation;
  - (ii) may, as described in the solicitation, weight and score the management fee as a fixed rate or as a fixed percentage of the estimated contract value;
  - (iii) may, at any time after the opening of the responses to the request for proposals, have access to, and consider, the management fee proposed by the offerors; and
  - (iv) except as provided in Subsection (9), may not know or have access to any other information relating to the cost of construction submitted by the offerors, until



after the evaluation committee submits its final recommended scores on all other criteria to the issuing procurement unit.

- (8) (a) The deliberations 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.
- (9) An issuing procurement unit is not required to comply with Subsection (6) or (7)(b)(iv), as applicable, if the head of the issuing procurement unit or a person designated by rule made by the applicable rulemaking authority:
  - (a) signs a written statement:
    - (i) indicating that, due to the nature of the proposal or other circumstances, it is in the best interest of the procurement unit to waive compliance with Subsection (6) or (7)(b)(iv), as the case may be; and
    - (ii) describing the nature of the proposal and the other circumstances relied upon to waive compliance with Subsection (6) or (7)(b)(iv); and
  - (b) makes the written statement available to the public, upon request.

***Effective 3/28/2016***

**63G-6a-708. Justification statement -- Cost-benefit analysis.**

- (1) (a) In determining which proposal provides the best value to the procurement unit, the evaluation committee and the conducting procurement unit shall prepare a written justification statement that:
  - (i) explains the score assigned to each evaluation category;
  - (ii) explains how the proposal with the highest total combined score provides the best value to the procurement unit in comparison to the other proposals;
  - (iii) if applicable, includes the cost-benefit analysis described in Subsection (2) and how the cost-benefit analysis relates to the best value to the procurement unit; and
  - (iv) if applicable, includes the written determination described in Subsection (5).
- (b) An explanation under Subsection (1)(a)(i) need not address each criterion within each category.
- (2) If, in determining the best value to the procurement unit, the evaluation committee awards the highest score, including the score for cost, to a proposal other than the lowest cost proposal, and the difference between the cost of the highest scored proposal and the lowest cost proposal exceeds the greater of \$10,000 or 5% of the lowest cost proposal, the evaluation committee and the conducting procurement unit shall prepare an informal written cost-benefit analysis that:

- (a) explains, in general terms, the advantage to the procurement unit of awarding the contract to the higher cost offeror; and
  - (b) except as provided in Subsection (5):
    - (i) includes the estimated added financial value to the procurement unit of each criterion that justifies awarding the contract to the higher cost offeror; and
    - (ii) demonstrates that the value of the advantage to the procurement unit of awarding the contract to the higher cost offeror exceeds the value of the difference between the cost of the higher cost proposal and the cost of the lower cost proposals.
- (3) If the informal cost-benefit analysis described in Subsection (2) does not justify awarding the contract to the offeror that received the highest score, the issuing procurement unit:
- (a) may not award the contract to the offeror that received the highest score; and
  - (b) may award the contract to the offeror that received the next highest score, unless:
    - (i) an informal cost-benefit analysis is required, because the difference between the cost proposed by the offeror that received the next highest score and the lowest cost proposal exceeds the greater of \$10,000 or 5% of the lowest cost proposal; and
    - (ii) the informal cost-benefit analysis does not justify award of the contract to the offeror that received the next highest score.
- (4) If the informal cost-benefit analysis described in Subsection (2) does not justify award of the contract to the offeror, described in Subsection (3), that received the next highest score, the issuing procurement unit:
- (a) may not award the contract to the offeror that received the next highest score; and
  - (b) shall continue with the process described in Subsection (3) for each offeror that received the next highest score, until the issuing procurement unit:
    - (i) awards the contract in accordance with the provisions of this section; or
    - (ii) cancels the request for proposals.
- (5) (a) The evaluation committee, with the issuing procurement unit's approval, may waive, in whole or in part, a requirement under Subsection (2)(b) if the evaluation committee determines in writing that assigning a financial value to a particular procurement item or evaluation criterion is not practicable.
- (b) A written determination under Subsection (5)(a):
- (i) shall explain:
    - (A) why it is not practicable to assign a financial value to the procurement item or evaluation criterion; and
    - (B) in nonfinancial terms, why awarding the contract to the higher cost offeror provides the best value to the procurement unit; and
  - (ii) may be included as part of the justification statement.
- (6) (a) An issuing procurement unit is not required to make the cost-benefit analysis described in this section for a contract with a construction manager/general contractor if the contract is awarded based solely on the qualifications of the construction

manager/general contractor and the management fee described in Subsection 63G-6a-707(7).

- (b) The applicable rulemaking authority shall make rules that establish procedures and criteria for awarding a contract described in Subsection (6)(a) to ensure that:
  - (i) a competitive process is maintained; and
  - (ii) the contract awarded is in the best interest of the procurement unit.

***Effective 3/29/2014***

**63G-6a-1205. Regulation of contract types -- Permitted and prohibited contract types.**

- (1) Except as otherwise provided in this section, and subject to rules made under this section by the applicable rulemaking authority, a procurement unit may use any type of contract that will promote the best interests of the procurement unit.
- (2) An applicable rulemaking authority:
  - (a) may make rules governing, placing restrictions on, or prohibiting the use of any type of contract; and
  - (b) may not make rules that permit the use of a contract:
    - (i) that is prohibited under this section; or
    - (ii) in a manner that is prohibited under this section.
- (3) A procurement officer, the head of an issuing procurement unit, or a designee of either, may not use a type of contract, other than a firm fixed price contract, unless the procurement officer 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 procurement unit, 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 procurement unit and the contractor;
    - (iv) the degree to which the procurement unit 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 officer determines may relate to determining the contract type that is in the best interest of the procurement unit.
- (4) Contract types that, subject to the provisions of this section and rules made under this section, may be used by a procurement unit 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;
  - (h) a contract based on a rate table in accordance with industry standards; or
  - (i) a contract that includes one of the following construction delivery methods:
    - (i) design-build;
    - (ii) design-bid-build; or
    - (iii) construction manager/general contractor.
- (5) Except as it applies to a change order, a procurement unit 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 officer;
  - (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) A procurement unit may not enter into a cost-reimbursement contract, unless the procurement officer 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 procurement unit to timely and accurately make payments under the contract; and
- (ii) will allocate costs in accordance with generally accepted accounting principles.

**63G-6a-1302. Alternative methods of construction contracting management.**

- (1) The applicable rulemaking authority shall, by rule provide as many alternative methods of construction contracting management as determined to be feasible.
- (2) The rules described in Subsection (1) shall:
  - (a) grant to the procurement officer or the head of the issuing procurement unit responsible for carrying out the construction project the discretion to select the appropriate method of construction contracting management for a particular project; and
  - (b) require the procurement officer to execute and include in the contract file a written statement describing the facts that led to the selection of a particular method of construction contracting management for each project.
- (3) Before choosing a construction contracting management method, the procurement officer or the head of the issuing procurement unit responsible for carrying out the construction project shall consider the following factors:
  - (a) when the project must be ready to be occupied;
  - (b) the type of project;
  - (c) the extent to which the requirements of the procurement unit, and the way they are to be met are known;
  - (d) the location of the project;
  - (e) the size, scope, complexity, and economics of the project;
  - (f) the source of funding and any resulting constraints necessitated by the funding source;
  - (g) the availability, qualification, and experience of public personnel to be assigned to the project and the amount of time that the public personnel can devote to the project; and
  - (h) the availability, qualifications, and experience of outside consultants and contractors to complete the project under the various methods being considered.
- (4) An applicable rulemaking authority may make rules that authorize the use of a construction manager/general contractor as one method of construction contracting management.
- (5) The rules described in Subsection (2) shall require that:
  - (a) the construction manager/general contractor be selected using:
    - (i) a standard procurement process; or
    - (ii) an exception to the requirement to use a standard procurement process, described in Part 8, Exceptions to Procurement Requirements; and
  - (b) when entering into a subcontract that was not specifically included in the construction manager/general contractor's cost proposal, the construction manager/general contractor shall procure the subcontractor by using a standard procurement process, or an exception to the requirement to use a standard procurement process, described in Part 8,



Exceptions to Procurement Requirements, in the same manner as if the subcontract work was procured directly by the procurement unit.

- (6) Procurement rules adopted by the State Building Board under Subsections (1) through (3) for state building construction projects may authorize the use of a design-build provider as one method of construction contracting management.
- (7) A design-build contract may include a provision for obtaining the site for the construction project.
- (8) A design-build contract or a construction manager/general contractor contract may include provision by the contractor of operations, maintenance, or financing.

## **R23-1-102. Definitions.**

Terms used in this R23-1 are defined in Sections 63G-6a-103 and 104 of the Utah Procurement Code. In addition:

(1) "Actual Costs" means direct and indirect costs which have been incurred for services rendered, supplies delivered, or construction built, as distinguished from allowable costs.

(2) "Adequate Price" Competition means:

(a) when a minimum of two competitive bids, proposals, or quotes are received from responsive bidders or offerors.

(3) "Acquiring Agency" is a conducting procurement unit subject to Section 63F-1-205 acquiring new technology or technology as therein defined.

(4) "Bid Bond" is an insurance agreement, accompanied by a monetary commitment, by which a third party (the Surety) accepts liability and guarantees that the bidder will not withdraw the bid. The bidder will furnish bonds in the required amount and if the contract is awarded to the bonded bidder, the bidder will accept the contract as bid, or else the surety will pay a specific amount.

(5) "Bid Rigging" means agreement among potential competitors to manipulate the competitive bidding process, for example, by agreeing not to bid, to bid a specific price, to rotate bidding, or to give kickbacks.

(6) "Bid Security" means the deposit of cash, certified check, cashier's check, bank draft, money order, or bid bond submitted with a bid and serving to guarantee to the owner that the bidder, if awarded the contract, will execute such contract in accordance with the bidding requirements and the contract documents.

(7) "Board" means the State Building Board established pursuant to Section 63A-5-101.

(8) "Brand Name or Equal Specification" means a specification which uses a brand name specification to describe the standard of quality, performance, and other characteristics being solicited, and which invites the submission of equivalent products.

(9) "Brand Name Specification" means a specification identifying one or more products by manufacturer name, product name, unique product identification number, product description, SKU or catalogue number.

(10) "Collusion" means when two or more persons act together to achieve a fraudulent or unlawful act. Collusion inhibits free and open competition in violation of law.

(11) "Cost Analysis" means the evaluation of cost data for the purpose of arriving at estimates of costs to be incurred, prices to be paid, costs to be reimbursed, or costs actually incurred.

(12) "Cost Data" means factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

(13) "Cronyism" is an anticompetitive practice that may violate federal and state antitrust and procurement laws. Cronyism in government contracting is a form of favoritism where contracts are awarded on the basis of friendships, associations or political connections instead of fair and open competition.

(14) "Director" means the Director of the Division, including, unless otherwise stated, the Director's duly authorized designee.

(15) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201.

(16) "Mandatory Requirement" means a condition set out in the specifications/statement of work that must be met without exception.

(17) "Minor Irregularity" is a variation from the solicitation that does not affect the price of the bid, offer, or contract or does not give a bidder/offeror an advantage or benefit not shared by other bidders/offerors, or does not adversely impact the interests of the procurement unit.

(18) "New Technology" means any invention, discovery, improvement, or innovation, that was not available to the acquiring agency on the effective date of the contract, whether or not patentable, including, but not limited to, new processes, emerging technology, machines, and improvements to, or new applications of, existing processes, machines, manufactures and software. Also included are new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable and any new process, machine, including software, and improvements to, or new applications of, existing processes, machines, manufactures and software.

(19) "Participating Addendum" means an agreement issued in conjunction with a Cooperative Contract that authorizes a public entity to use the Cooperative Contract.

(20) "Payment Bond" is a bond that guarantees payment for labor and materials expended on the contract.

(21) "Price Analysis" means the evaluation of price data without analysis of the separate cost components and profit.

(22) "Price Data" means factual information concerning prices for procurement items.

(23) "Record" shall have the meaning defined in Section 63G-2-103 of the Government Records Access and Management Act (GRAMA).

(24) "Section and Subsection" refers to the Utah Code.

(25) "Solicitations," in addition to the definition in 63G-6a -103 (48) also includes all documents, whether attached or incorporated by reference to the solicitation.

(26) "Surety bond" (performance bond) means a promise to pay one the obligee (owner) a certain amount if the principal (contractor) fails to meet some obligation, such as fulfilling the terms of a contract. The surety bond protects the obligee (owner) against losses resulting from the principal's failure to meet the obligation. In the event that the obligations are not met, the obligee (owner), will recover its losses via the bond.

(27) "Technology" means any type of technology defined in Section 63F-1-102(8).

(28) "Using Agency" means any state agency or any political subdivision of the state which utilizes the services procured under this Rule 23-1.

### **R23-1-717. Cost-benefit Analysis Exception: CM/GC.**

(1) A cost-benefit analysis is not required if the contract is awarded solely on the qualifications of the construction manager/general contractor and the management fee described in Section 63G-6a-708 provided:

(a) a competitive process is maintained by the issuance of a request for proposals that requires the offeror to provide, at a minimum:

(i) a management plan;

(ii) references;

(iii) statements of qualifications; and

(iv) a management fee only if requested by the Division. The management fee may not be requested by the Division if the management fee is not part of the criteria for the evaluation committee. The Division may use a fee table for this management fee.

(b) the management fee contains only the following:

(i) preconstruction phase services;

(ii) monthly supervision fees for the construction phase; and

(iii) overhead and profit for the construction phase.

(c) the evaluation committee may, as described in the solicitation, weight and score the management fee as a fixed rate or a fixed percentage of the estimated contract value.

(d) the contract awarded must be in the best interest of the procurement unit.

### **R23-1-1209. Requirements for Cost or Pricing Data.**

(1) For contracts that expressly allow price adjustments, cost or pricing data shall be required in support of a proposal leading to the adjustment of any contract pricing.

(2) Cost or pricing data exceptions:

(a) need not be submitted when the terms of the contract state established market indices, catalog prices or other benchmarks are used as the basis for contract price adjustments or when prices are set by law or rule;

(b) if a contractor submits a price adjustment higher than established market indices, catalog prices or other benchmarks established in the contract, the Director may request additional cost or pricing data; or

(c) the Director may waive the requirement for cost or pricing data provided a written determination is made supporting the reasons for the waiver. A copy of the determination shall be kept in the contract file.

### **R23-1-1210. Defective Cost or Pricing Data.**

(1) If defective cost or pricing data was used to adjust a contract price, the vendor and the Division may enter into discussions to negotiate a settlement.



(2) If a settlement cannot be negotiated, either party may seek relief as provided by applicable laws and rules.

#### **R23-1-1211. Cost Analysis.**

(1) Cost analysis includes the verification of cost data. Cost analysis may be used to evaluate:

- (a) specific elements of costs;
- (b) total cost of ownership and life-cycle cost;
- (c) supplemental cost schedules;
- (d) market basket cost of similar items;
- (e) the necessity for certain costs;
- (f) the reasonableness of allowances for contingencies;
- (g) the basis used for allocation of indirect costs; and,
- (h) the reasonableness of the total cost or price.

#### **R23-1-1212. Audit.**

The Division may, at reasonable times and places, audit or cause to be audited by an independent third party firm, by another procurement unit, or by an agent of the procurement unit, the books, records, and performance of a contractor, prospective contractor, subcontractor, or prospective subcontractor.

#### **R23-1-1213. Retention of Books and Records.**

Contractors shall maintain all records related to the contract. These records shall be maintained by the contractor for at least six years after the final payment, unless a longer period is required by law. All accounting for contracts and contract price adjustments, including allowable incurred costs, shall be conducted in accordance with generally accepted accounting principles for government.

#### **R23-1-1214. Inspections.**

Circumstances under which the Division may perform inspections include inspections of the contractor's manufacturing/production facility or place of business, or any location where the work is performed:

- (1) whether the definition of "responsible," as defined in Section 63G-6a-103(40) and in the solicitation documents, has been met or are capable of being met; and
- (2) if the contract is being performed in accordance with its terms.

#### **R23-1-1302. Construction Management Rule.**

As required by Section 63G-6a-1302, this rule contains provisions applicable to:

- (1) selecting the appropriate method of management for construction contracts;

- (2) documenting the selection of a particular method of construction contract management; and
- (3) the selection of a construction manager/general contractor.

#### **R23-1-1304. Methods of Construction Contract Management.**

(1) This Rule contains provisions applicable to the selection of the appropriate type of construction contract management.

(2) It is intended that the Director have sufficient flexibility in formulating the construction contract management method for a particular project to fulfill the needs of the procurement unit. The methods for achieving the purposes set forth in this rule are not to be construed as an exclusive list.

(3) Before choosing the construction contracting method to use, a careful assessment must be made by the Director of requirements the project shall consider, at a minimum, the following factors:

- (a) when the project must be ready to be occupied;
- (b) the type of project, for example, housing, offices, labs, heavy or specialized construction;
- (c) the extent to which the requirements of the procurement unit and the way in which they are to be met are known;
- (d) the location of the project;
- (e) the size, scope, complexity, and economics of the project;
- (f) the amount and type of financing available for the project, including whether the budget is fixed or what the source of funding is, for example, general or special appropriation, federal assistance moneys, general obligation bonds or revenue bonds, lapsing/nonlapsing status and legislative intent language;
- (g) the availability, qualification, and experience of the procurement unit's personnel to be assigned to the project and how much time the procurement unit's personnel can devote to the project;
- (h) the availability, qualifications and experience of outside consultants and contractors to complete the project under the various methods being considered;
- (i) the results achieved on similar projects in the past and the methods used; and
- (j) the comparative advantages and disadvantages of the construction contracting method and how they might be adapted or combined to fulfill the needs of the procuring agencies.

(5) The following descriptions are provided for the more common construction contracting management methods which may be used by the procurement unit. The methods described are not all mutually exclusive and may be combined on a project. These descriptions are not intended to be fixed in respect to all construction projects. In each project, these descriptions may be adapted to fit the circumstances of that project.

(a) Single Prime (General) Contractor. The single prime contractor method is typified by one business, acting as a general contractor, contracting with the procurement unit to timely complete an entire construction project in accordance with drawings and specifications provided by the

procurement unit. Generally the drawings and specifications are prepared by an architectural or engineering firm under contract with the procurement unit. Further, while the general contractor may take responsibility for successful completion of the project, much of the work may be performed by specialty contractors with whom the prime contractor has entered into subcontracts.

(b) Design-Build. In a design-build project, an entity, often a team of a general contractor and a designer, contract directly with a procurement unit to meet the procurement unit's requirements as described in a set of performance specifications and/or a program. Design responsibility and construction responsibility both rest with the design-build contractor. This method can include instances where the design-build contractor supplies the site as part of the package.

(c) Construction Manager/General Contractor (Construction Manager at Risk). The Division may contract with the construction manager early in a project to assist in the development of a cost effective design. In a Construction Manager/General Contractor (CM/GC) method, the CM/GC becomes the general contractor and is at risk for all the responsibilities of a general contractor for the project, including meeting the specifications, complying with applicable laws, rules and regulations, that the project will be completed on time and will not exceed a specified maximum price.

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

(1) In the selection of a construction manager/general contractor, a standard procurement process as defined in Section 63G-6a-103 may be used or an exception allowed under Part 8 of the Utah Procurement Code.

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

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

(1) The Board authorizes the Division for State building construction projects to use a design-build provider as one method of construction contracting management.

(2) A design-build contract may include a provision for obtaining the site for the construction project.

(3) A design-build contract or a construction manager/general contractor contract may include provision by the contractor of operations, maintenance, or financing.