

2021 GENERAL LEGISLATIVE SESSION BILLS AND PROCUREMENT

HB043 – Emergency Procurement Declaration

SB186 – Anti-Boycott Israel Act

SB188 – Procurement Code Revisions

SB201 – Public Notice Amendments

HB043 – EMERGENCY PROCUREMENT DECLARATION

- Impacts 63G-6a-803 – Emergency Procurements
- Two main changes:
 - Transparency created by public reporting requirements
 - Limitations to the term length of a contract

TRANSPARENCY

- Effective May 5, 2021
- Within 14 days of the emergency procurement, must post specific documentation related to the emergency procurement
 - A written document describing the specific emergency that necessitated the emergency procurement;
 - The name of the highest ranking government official that approved the emergency procurement; and
 - Each written contract relating to the emergency procurement

TRANSPARENCY

- Administrative Rule R33
 - Requires agency to document “the selection of the procurement item.”
 - See R33-8-401

CONTRACT LENGTH

- 30 days – Emergency procurement
- 60 days – Emergency related to a natural disaster
- Note - Stipulations for legal services contracts

EMERGENCY PROCUREMENTS

- Administrative Rule R33-8-401 (4)
 - “Emergency procurements are limited to those procurement items necessary to mitigate the emergency.”

SB186 – ANTI-BOYCOTT ISRAEL ACT

- Effective *May 5, 2021*
- Utah Code 63G-27
- A public entity may not enter into a contract to acquire or dispose of goods or services from a company engaged in a boycott against the State of Israel

DEFINITIONS

- “Boycott action” – refusing to deal, terminating business activities, or limiting commercial relations
- “Boycott of the State of Israel” – engaging in a boycott action targeting the State of Israel; and companies or individuals doing business in or with the State of Israel; or companies authorized by, licensed by, or organized under the laws of the State of Israel to do business

PROCUREMENT IMPACTS

- Applies to:
 - Contracts of \$100,000 or more
 - Companies with 10 or more employees
- Contract must include written certification that:
 - The company is not currently engaged in a boycott of the State of Israel; and
 - Agrees not to engage in a boycott of the State of Israel for the duration of the contract

PROCUREMENT IMPACTS

- Implementation
 - Update solicitation forms
 - Update contract terms and conditions

SB188 – PROCUREMENT CODE REVISIONS

- Effective *May 5, 2021*
- Utah Code 63G-6a-606; 63G-6a-802; 63G-6a-1206.5
- Various minor Code revisions

63G-6A-606: EVALUATION OF BIDS

- A procurement unit 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 state and the procurement unit.**

63G-6A-802: AWARD OF CONTRACT WITHOUT ENGAGING IN A STANDARD PROCUREMENT PROCESS

- A procurement unit 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 procurement unit;
 - (c) the award of a contract is under circumstances, described in rules adopted by the rulemaking authority, that make awarding the contract through a standard procurement process impractical and not in the best interest of the procurement unit; **or**
 - **(d) the procurement item is intended to be used for, or in connection with the establishment of, a state store, as defined in Section 32B 1 102 (State liquor store).**

63G-6A-1206.5: CHANGE IN CONTRACT PRICE

- (1) As used in this section, "contract price":
 - (a) means the price under an existing contract between a procurement unit 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.

SB201 – PUBLIC NOTICE AMENDMENTS

- Effective *May 5, 2021*
- Utah Code 63G-6a-112
- Removes publication of a solicitation in a newspaper as an option.