

1 **ADMINISTRATIVE LAW JUDGE AMENDMENTS**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Wayne A. Harper**

5 House Sponsor: V. Lowry Snow

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions relating to administrative law judges.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ defines terms;

13 ▶ addresses the process by which a procurement unit may obtain administrative law
14 judge services;

15 ▶ provides that a conducting procurement unit shall notify the Department of Human
16 Resource Management when the conducting procurement unit awards a contract for
17 administrative law judge services;

18 ▶ provides that each new administrative law judge shall be hired by means of a hiring
19 panel;

20 ▶ modifies the content of the administrative law judge performance survey to include
21 questions regarding the elements of procedural fairness;

22 ▶ requires the Department of Human Resource Management to establish a procedural
23 fairness training program for administrative law judges; and

24 ▶ makes technical and conforming changes.

25 **Money Appropriated in this Bill:**

26 None

27 **Other Special Clauses:**



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **63G-6a-103**, as last amended by Laws of Utah 2015, Chapters 218 and 464

32 **63G-6a-403**, as last amended by Laws of Utah 2015, Chapter 97

33 **63G-6a-408**, as last amended by Laws of Utah 2015, Chapter 218

34 **63G-6a-707**, as last amended by Laws of Utah 2015, Chapters 97 and 218

35 **67-19e-102**, as enacted by Laws of Utah 2013, Chapter 165

36 **67-19e-103**, as enacted by Laws of Utah 2013, Chapter 165

37 **67-19e-104**, as enacted by Laws of Utah 2013, Chapter 165

38 **67-19e-106**, as enacted by Laws of Utah 2013, Chapter 165

39 **67-19e-108**, as enacted by Laws of Utah 2013, Chapter 165

40 ENACTS:

41 **63G-6a-409**, Utah Code Annotated 1953

42 **67-19e-104.5**, Utah Code Annotated 1953

43 **67-19e-110**, Utah Code Annotated 1953



45 *Be it enacted by the Legislature of the state of Utah:*

46 Section 1. Section **63G-6a-103** is amended to read:

47 **63G-6a-103. Definitions.**

48 As used in this chapter:

49 (1) "Administrative law judge" means the same as that term is defined in Section
50 67-19e-102.

51 (2) "Administrative law judge services" means services provided by an administrative
52 law judge.

53 [(+) (3) "Bidder" means a person who responds to an invitation for bids.

54 [(2) (4) "Change directive" means a written order signed by the procurement officer
55 that directs the contractor to suspend work or make changes, as authorized by contract, without
56 the consent of the contractor.

57 [(3) (5) "Change order" means a written alteration in specifications, delivery point,
58 rate of delivery, period of performance, price, quantity, or other provisions of a contract, upon

59 mutual agreement of the parties to the contract.

60 [~~(4)~~] (6) "Chief procurement officer" means the chief procurement officer appointed
61 under Subsection 63G-6a-302(1).

62 [~~(5)~~] (7) "Conducting procurement unit" means a procurement unit that conducts all
63 aspects of a procurement:

64 (a) except:

65 (i) reviewing a solicitation to verify that it is in proper form; and

66 (ii) causing the publication of a notice of a solicitation; and

67 (b) including:

68 (i) preparing any solicitation document;

69 (ii) appointing an evaluation committee;

70 (iii) conducting the evaluation process, except as provided in Subsection

71 63G-6a-707(5)(b) relating to scores calculated for costs of proposals;

72 (iv) selecting and recommending the person to be awarded a contract;

73 (v) negotiating the terms and conditions of a contract, subject to the issuing

74 procurement unit's approval; and

75 (vi) administering a contract.

76 [~~(6)~~] (8) (a) "Construction" means the process of building, renovating, altering,
77 improving, or repairing a public building or public work.

78 (b) "Construction" does not include the routine operation, routine repair, or routine
79 maintenance of an existing structure, building, or real property.

80 [~~(7)~~] (9) (a) "Construction manager/general contractor" means a contractor who enters
81 into a contract for the management of a construction project when the contract allows the
82 contractor to subcontract for additional labor and materials that are not included in the
83 contractor's cost proposal submitted at the time of the procurement of the contractor's services.

84 (b) "Construction manager/general contractor" does not include a contractor whose
85 only subcontract work not included in the contractor's cost proposal submitted as part of the
86 procurement of the contractor's services is to meet subcontracted portions of change orders
87 approved within the scope of the project.

88 [~~(8)~~] (10) "Contract" means an agreement for the procurement or disposal of a
89 procurement item.

90 ~~[(9)]~~ (11) "Contractor" means a person who is awarded a contract with a procurement
91 unit.

92 ~~[(10)]~~ (12) "Cooperative procurement" means procurement conducted by, or on behalf
93 of:

94 (a) more than one procurement unit; or

95 (b) a procurement unit and a cooperative purchasing organization.

96 ~~[(11)]~~ (13) "Cost-plus-a-percentage-of-cost contract" means a contract where the
97 contractor is paid a percentage over and above the contractor's actual expenses or costs.

98 ~~[(12)]~~ (14) "Cost-reimbursement contract" means a contract under which a contractor
99 is reimbursed for costs which are allowed and allocated in accordance with the contract terms
100 and the provisions of this chapter, and a fee, if any.

101 ~~[(13)]~~ (15) "Days" means calendar days, unless expressly provided otherwise.

102 ~~[(14)]~~ (16) "Definite quantity contract" means a fixed price contract that provides for
103 the supply of a specified amount of goods over a specified period, with deliveries scheduled
104 according to a specified schedule.

105 ~~[(15)]~~ (17) "Design-build" means the procurement of design professional services and
106 construction by the use of a single contract with the design-build provider.

107 ~~[(16)]~~ (18) "Design professional" means:

108 (a) an individual licensed as an architect under Title 58, Chapter 3a, Architects
109 Licensing Act; or

110 (b) an individual licensed as a professional engineer or professional land surveyor
111 under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing
112 Act.

113 ~~[(17)]~~ (19) "Design professional services" means:

114 (a) professional services within the scope of the practice of architecture as defined in
115 Section [58-3a-102](#);

116 (b) professional engineering as defined in Section [58-22-102](#); or

117 (c) master planning and programming services.

118 ~~[(18)]~~ (20) "Directed procurement" means a procurement of a procurement item in
119 which the source of the funds used to procure the procurement item:

120 (a) directs from whom the procurement item is to be procured; or

121 (b) imposes requirements on how the procurement is to be administered.

122 [~~(19)~~] (21) "Director" means the director of the division.

123 [~~(20)~~] (22) "Established catalogue price" means the price included in a catalogue, price
124 list, schedule, or other form that:

125 (a) is regularly maintained by a manufacturer or contractor;

126 (b) is either published or otherwise available for inspection by customers; and

127 (c) states prices at which sales are currently or were last made to a significant number
128 of any category of buyers or buyers constituting the general buying public for the supplies or
129 services involved.

130 [~~(21)~~] (23) "Fixed price contract" means a contract that provides a price, for each
131 procurement item obtained under the contract, that is not subject to adjustment except to the
132 extent that:

133 (a) the contract provides, under circumstances specified in the contract, for an
134 adjustment in price that is not based on cost to the contractor; or

135 (b) an adjustment is required by law.

136 [~~(22)~~] (24) "Fixed price contract with price adjustment" means a fixed price contract
137 that provides for an upward or downward revision of price, precisely described in the contract,
138 that:

139 (a) is based on the consumer price index or another commercially acceptable index,
140 source, or formula; and

141 (b) is not based on a percentage of the cost to the contractor.

142 [~~(23)~~] (25) "Grant" means an expenditure of public funds or other assistance, or an
143 agreement to expend public funds or other assistance, for a public purpose authorized by law,
144 without acquiring a procurement item in exchange.

145 [~~(24)~~] (26) "Head of a procurement unit" means:

146 (a) as it relates to a legislative procurement unit, any person designated by rule made
147 by the applicable rulemaking authority;

148 (b) as it relates to an executive branch procurement unit:

149 (i) the director of a division; or

150 (ii) any other person designated by the board, by rule;

151 (c) as it relates to a judicial procurement unit:

- 152 (i) the Judicial Council; or
- 153 (ii) any other person designated by the Judicial Council, by rule;
- 154 (d) as it relates to a local government procurement unit:
 - 155 (i) the legislative body of the local government procurement unit; or
 - 156 (ii) any other person designated by the local government procurement unit;
- 157 (e) as it relates to a local district, the board of trustees of the local district or a designee
- 158 of the board of trustees;
- 159 (f) as it relates to a special service district, the governing body of the special service
- 160 district or a designee of the governing body;
- 161 (g) as it relates to a local building authority, the board of directors of the local building
- 162 authority or a designee of the board of directors;
- 163 (h) as it relates to a conservation district, the board of supervisors of the conservation
- 164 district or a designee of the board of supervisors;
- 165 (i) as it relates to a public corporation, the board of directors of the public corporation
- 166 or a designee of the board of directors;
- 167 (j) as it relates to a school district or any school or entity within a school district, the
- 168 board of the school district, or the board's designee;
- 169 (k) as it relates to a charter school, the individual or body with executive authority over
- 170 the charter school, or the individual's or body's designee;
- 171 (l) as it relates to an institution of higher education of the state, the president of the
- 172 institution of higher education, or the president's designee; or
- 173 (m) as it relates to a public transit district, the board of trustees or a designee of the
- 174 board of trustees.

175 [~~25~~] (27) "Indefinite quantity contract" means a fixed price contract that:

- 176 (a) is for an indefinite amount of procurement items to be supplied as ordered by a
- 177 procurement unit; and
- 178 (b) (i) does not require a minimum purchase amount; or
- 179 (ii) provides a maximum purchase limit.

180 [~~26~~] (28) "Independent procurement authority" means authority granted to a

181 procurement unit under Subsection [63G-6a-106\(4\)\(a\)](#).

182 [~~27~~] (29) "Invitation for bids" includes all documents, including documents that are

183 attached or incorporated by reference, used for soliciting bids to provide a procurement item to
184 a procurement unit.

185 [~~(28)~~] (30) "Issuing procurement unit" means a procurement unit that:

186 (a) reviews a solicitation to verify that it is in proper form;

187 (b) causes the notice of a solicitation to be published; and

188 (c) negotiates the terms and conditions of a contract.

189 [~~(29)~~] (31) "Labor hour contract" is a contract where:

190 (a) the supplies and materials are not provided by, or through, the contractor; and

191 (b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and
192 profit for a specified number of labor hours or days.

193 [~~(30)~~] (32) "Multiple award contracts" means the award of a contract for an indefinite
194 quantity of a procurement item to more than one bidder or offeror.

195 [~~(31)~~] (33) "Multiyear contract" means a contract that extends beyond a one-year
196 period, including a contract that permits renewal of the contract, without competition, beyond
197 the first year of the contract.

198 [~~(32)~~] (34) "Municipality" means a city or a town.

199 [~~(33)~~] (35) "Offeror" means a person who responds to a request for proposals.

200 [~~(34)~~] (36) "Preferred bidder" means a bidder that is entitled to receive a reciprocal
201 preference under the requirements of this chapter.

202 [~~(35)~~] (37) "Procure" means to acquire a procurement item through a procurement.

203 [~~(36)~~] (38) "Procurement":

204 (a) means an expenditure of public funds, or an agreement to expend public funds, in
205 exchange for a procurement item;

206 (b) includes all functions that pertain to the acquisition of a procurement item,
207 including:

208 (i) the description of requirements;

209 (ii) the selection process;

210 (iii) solicitation of sources;

211 (iv) the preparation for soliciting a procurement item; and

212 (v) the award of a contract; and

213 (c) does not include a grant.

214 [~~(37)~~] (39) "Procurement item" means a supply, a service, construction, or technology.

215 [~~(38)~~] (40) "Procurement officer" means:

216 (a) as it relates to a procurement unit with independent procurement authority:

217 (i) the head of the procurement unit;

218 (ii) a designee of the head of the procurement unit; or

219 (iii) a person designated by rule made by the applicable rulemaking authority; or

220 (b) as it relates to the division or a procurement unit without independent procurement
221 authority, the chief procurement officer.

222 [~~(39)~~] (41) "Professional service" means a service that requires a high degree of
223 specialized knowledge and discretion in the performance of the service, including:

224 (a) legal services;

225 (b) consultation services;

226 (c) architectural services;

227 (d) engineering;

228 (e) design;

229 (f) underwriting;

230 (g) bond counsel;

231 (h) financial advice;

232 (i) construction management;

233 (j) medical services;

234 (k) psychiatric services; [~~or~~]

235 (l) counseling services[~~;~~]; or

236 (m) administrative law judge services.

237 [~~(40)~~] (42) "Protest officer" means:

238 (a) as it relates to the division or a procurement unit with independent procurement
239 authority:

240 (i) the head of the procurement unit;

241 (ii) a designee of the head of the procurement unit; or

242 (iii) a person designated by rule made by the applicable rulemaking authority; or

243 (b) as it relates to a procurement unit without independent procurement authority, the
244 chief procurement officer or the chief procurement officer's designee.

245 [~~(41)~~] (43) "Request for information" means a nonbinding process where a
246 procurement unit requests information relating to a procurement item.

247 [~~(42)~~] (44) "Request for proposals" includes all documents, including documents that
248 are attached or incorporated by reference, used for soliciting proposals to provide a
249 procurement item to a procurement unit.

250 [~~(43)~~] (45) "Request for statement of qualifications" means all documents used to
251 solicit information about the qualifications of the person interested in responding to a potential
252 procurement, including documents attached or incorporated by reference.

253 [~~(44)~~] (46) "Requirements contract" means a contract:

254 (a) where a contractor agrees to provide a procurement unit's entire requirements for
255 certain procurement items at prices specified in the contract during the contract period; and

256 (b) that:

257 (i) does not require a minimum purchase amount; or

258 (ii) provides a maximum purchase limit.

259 [~~(45)~~] (47) "Responsible" means being capable, in all respects, of:

260 (a) meeting all the requirements of a solicitation; and

261 (b) fully performing all the requirements of the contract resulting from the solicitation,
262 including being financially solvent with sufficient financial resources to perform the contract.

263 [~~(46)~~] (48) "Responsive" means conforming in all material respects to the invitation for
264 bids or request for proposals.

265 [~~(47)~~] (49) "Sealed" means manually or electronically sealed and submitted bids or
266 proposals.

267 [~~(48)~~] (50) (a) "Services" means the furnishing of labor, time, or effort by a contractor,
268 not involving the delivery of a specific end product other than a report that is incidental to the
269 required performance.

270 (b) "Services" does not include an employment agreement or a collective bargaining
271 agreement.

272 [~~(49)~~] (51) "Sole source contract" means a contract resulting from a sole source
273 procurement.

274 [~~(50)~~] (52) "Sole source procurement" means a procurement without competition
275 pursuant to a determination under Subsection [63G-6a-802\(2\)\(a\)](#) that there is only one source

276 for the procurement item.

277 [~~(51)~~] (53) "Solicitation" means an invitation for bids, request for proposals, notice of a
278 sole source procurement, request for statement of qualifications, request for information, or any
279 document used to obtain bids, proposals, pricing, qualifications, or information for the purpose
280 of entering into a procurement contract.

281 [~~(52)~~] (54) "Specification" means any description of the physical or functional
282 characteristics, or nature of a procurement item included in an invitation for bids or a request
283 for proposals, or otherwise specified or agreed to by a procurement unit, including a description
284 of:

285 (a) a requirement for inspecting or testing a procurement item; or

286 (b) preparing a procurement item for delivery.

287 [~~(53)~~] (55) "Standard procurement process" means one of the following methods of
288 obtaining a procurement item:

289 (a) bidding, as described in Part 6, Bidding;

290 (b) request for proposals, as described in Part 7, Request for Proposals; or

291 (c) small purchases, in accordance with the requirements established under Section

292 [63G-6a-408](#).

293 [~~(54)~~] (56) "State cooperative contract" means a contract awarded by the division for
294 and in behalf of all public entities.

295 [~~(55)~~] (57) "Statement of qualifications" means a written statement submitted to a
296 procurement unit in response to a request for statement of qualifications.

297 [~~(56)~~] (58) (a) "Subcontractor" means a person under contract with a contractor or
298 another subcontractor to provide services or labor for design or construction.

299 (b) "Subcontractor" includes a trade contractor or specialty contractor.

300 (c) "Subcontractor" does not include a supplier who provides only materials,
301 equipment, or supplies to a contractor or subcontractor.

302 [~~(57)~~] (59) "Supplies" means all property, including equipment, materials, and printing.

303 [~~(58)~~] (60) "Tie bid" means that the lowest responsive and responsible bids are
304 identical in price.

305 [~~(59)~~] (61) "Time and materials contract" means a contract where the contractor is
306 paid:

- 307 (a) the actual cost of direct labor at specified hourly rates;
- 308 (b) the actual cost of materials and equipment usage; and
- 309 (c) an additional amount, expressly described in the contract, to cover overhead and
- 310 profit, that is not based on a percentage of the cost to the contractor.

311 Section 2. Section **63G-6a-403** is amended to read:

312 **63G-6a-403. Prequalification of potential vendors.**

313 (1) As used in this section:

314 (a) "Closed-ended prequalification process" means a process to prequalify potential

315 vendors under this section that is characterized by:

316 (i) a short, specified period of time during which potential vendors may be

317 prequalified; and

318 (ii) a specified date at which prequalifications expire.

319 (b) "Open-ended prequalification process" means a process to prequalify vendors and

320 potential vendors under this section that is characterized by an indeterminate period of time

321 during any part of which vendors or potential vendors may be prequalified and the

322 prequalification of previously prequalified vendors or potential vendors may be periodically

323 renewed.

324 (c) "Vendor" means:

325 (i) a bidder;

326 (ii) an offeror; or

327 (iii) a contractor, including an architect or an engineer.

328 (2) A procurement unit may, in accordance with this section:

329 (a) using a closed-ended prequalification process or an open-ended prequalification

330 process:

331 (i) prequalify potential vendors to provide any procurement item or type of

332 procurement item specified by the procurement unit; or

333 (ii) rank architects, engineers, or other professional service providers to begin the fee

334 negotiation process, as provided in this chapter; and

335 (b) limit participation in a standard procurement process to the prequalified potential

336 vendors for the specified procurement item or type of procurement item.

337 (3) To prequalify potential vendors or rank professional service providers, a

338 procurement unit shall issue a request for statement of qualifications.

339 (4) A procurement unit that issues a request for statement of qualifications:

340 (a) shall:

341 (i) publish the request for statement of qualifications in accordance with the

342 requirements of Section 63G-6a-406; and

343 (ii) state in the request for statement of qualifications:

344 (A) the procurement item or type of procurement item to which the request for
345 statement of qualifications relates;

346 (B) the scope of work to be performed;

347 (C) the instructions and deadline for submitting a statement of qualifications;

348 (D) the criteria by which the procurement unit will evaluate statements of
349 qualifications;

350 (E) whether the prequalification process is a closed-ended prequalification process or
351 an open-ended prequalification process;

352 (F) if the prequalification process is a closed-ended prequalification process, the period
353 of time during which the list of prequalified potential vendors will remain in effect, which may
354 not be longer than 18 months after the list of prequalified potential vendors is made available to
355 the public under Subsection (11)(b);

356 (G) if the prequalification process is an open-ended prequalification process, when a
357 potential vendor may submit a statement of qualifications for the potential vendor to be
358 considered for inclusion on the list of prequalified potential vendors; and

359 (H) that a procurement unit may limit participation in an invitation for bids or a request
360 for proposals to the potential vendors that are prequalified to provide the specified procurement
361 item or type of procurement item; and

362 (b) may request the person submitting a statement of qualifications to provide:

363 (i) basic information about the person;

364 (ii) the person's experience and work history;

365 (iii) information about the person's management and staff;

366 (iv) information about the person's licenses, certifications, and other qualifications;

367 (v) any applicable performance ratings;

368 (vi) financial statements reporting the person's financial condition;

369 (vii) information about the person's work site safety program, including any
370 requirement that the person imposes on subcontractors for a work site safety program; and

371 (viii) any other pertinent information.

372 (5) (a) In order to renew a prequalification, a vendor or potential vendor that has been
373 previously prequalified through an open-ended prequalification process shall submit a
374 statement of qualifications no more than 18 months after the previous prequalification of that
375 vendor or potential vendor.

376 (b) A previously prequalified vendor or potential vendor submitting a statement of
377 qualifications under Subsection (5)(a) shall comply with all requirements applicable at that
378 time to a potential vendor seeking prequalification for the first time.

379 (6) A procurement unit may at any time modify prequalification requirements of an
380 open-ended prequalification process.

381 (7) The criteria described in Subsection (4)(a)(ii)(D):

382 (a) shall include the prequalification requirements unique to the procurement;

383 (b) may include performance rating criteria; and

384 (c) may not be so restrictive that the criteria unreasonably limit competition.

385 (8) A procurement unit may, before making a final list of prequalified vendors, request
386 additional information to clarify responses made to the request for statement of qualifications.

387 (9) A potential vendor shall be included on the list of prequalified potential vendors if
388 the potential vendor:

389 (a) submits a timely, responsive response to the request for statement of qualifications;
390 and

391 (b) meets the criteria for qualification described in Subsection (4)(a)(ii)(D).

392 (10) If a request for statement of qualifications will result in only one potential vendor
393 being placed on the list of prequalified potential vendors:

394 (a) the procurement unit shall cancel the request for statement of qualifications; and

395 (b) the list may not be used by the procurement unit.

396 (11) The procurement unit shall:

397 (a) before making the list of prequalified potential vendors available to the public,
398 provide each potential vendor who provided information in response to the request, but who
399 did not meet the minimum qualifications for placement on the list, a written justification

400 statement describing why the potential vendor did not meet the criteria for inclusion on the list;
401 and

402 (b) make the list of prequalified potential vendors available to the public within 30
403 days after:

404 (i) completing the evaluation process, if the prequalification process is a closed-ended
405 prequalification process; or

406 (ii) updating the list of prequalified potential vendors, if the prequalification process is
407 an open-ended prequalification process.

408 (12) For the procurement of administrative law judge services, a procurement unit shall
409 review and evaluate each statement of qualifications received under this section by means of an
410 evaluation committee described in Section [63G-6a-409](#).

411 Section 3. Section **63G-6a-408** is amended to read:

412 **63G-6a-408. Small purchases.**

413 (1) As used in this section:

414 (a) "Annual cumulative threshold" means the maximum total annual amount,
415 established by the applicable rulemaking authority under Subsection (2)(a)(i), that a
416 procurement unit may expend to obtain procurement items from the same source under this
417 section.

418 (b) "Individual procurement threshold" means the maximum amount, established by
419 the applicable rulemaking authority under Subsection (2)(a)(ii), for which a procurement unit
420 may purchase a procurement item under this section.

421 (c) "Single procurement aggregate threshold" means the maximum total amount,
422 established by the applicable rulemaking authority under Subsection (2)(a)(iii), that a
423 procurement unit may expend to obtain multiple procurement items from one source at one
424 time under this section.

425 (2) (a) The applicable rulemaking authority may make rules governing small purchases
426 of any procurement item, including construction, job order contracting, design professional
427 services, other professional services, information technology, and goods.

428 (b) Rules under Subsection (2)(a) may include provisions:

429 (i) establishing expenditure thresholds, including:

430 (A) an annual cumulative threshold;

- 431 (B) an individual procurement threshold; and
- 432 (C) a single procurement aggregate threshold;
- 433 (ii) establishing procurement requirements relating to the thresholds described in
- 434 Subsection (2)(b)(i); and
- 435 (iii) providing for the use of electronic, telephone, or written quotes.
- 436 (c) If a procurement unit obtains administrative law judge services through a small
- 437 purchase standard procurement process, rules made under Subsection (2)(a) shall provide that
- 438 the process for the procurement of administrative law judge services include an evaluation
- 439 committee described in Section [63G-6a-409](#).
- 440 (3) Expenditures made under this section by a procurement unit may not exceed a
- 441 threshold established by the applicable rulemaking authority, unless the chief procurement
- 442 officer or the head of a procurement unit with independent procurement authority gives written
- 443 authorization to exceed the threshold that includes the reasons for exceeding the threshold.
- 444 (4) Except as provided in Subsection (5), an executive branch procurement unit may
- 445 not obtain a procurement item through a small purchase standard procurement process if the
- 446 procurement item may be obtained through a state cooperative contract or a contract awarded
- 447 by the chief procurement officer under Subsection [63G-6a-2105\(1\)](#).
- 448 (5) Subsection (4) does not apply if:
- 449 (a) the procurement item is obtained for an unanticipated, urgent or unanticipated,
- 450 emergency condition, including:
- 451 (i) an item needed to avoid stopping a public construction project;
- 452 (ii) an immediate repair to a facility or equipment; or
- 453 (iii) another emergency condition; or
- 454 (b) the chief procurement officer or the head of a procurement unit that is an executive
- 455 branch procurement unit with independent procurement authority:
- 456 (i) determines in writing that it is in the best interest of the procurement unit to obtain
- 457 an individual procurement item outside of the state contract, comparing:
- 458 (A) the contract terms and conditions applicable to the procurement item under the
- 459 state contract with the contract terms and conditions applicable to the procurement item if the
- 460 procurement item is obtained outside of the state contract;
- 461 (B) the maintenance and service applicable to the procurement item under the state

462 contract with the maintenance and service applicable to the procurement item if the
463 procurement item is obtained outside of the state contract;

464 (C) the warranties applicable to the procurement item under the state contract with the
465 warranties applicable to the procurement item if the procurement item is obtained outside of
466 the state contract;

467 (D) the quality of the procurement item under the state contract with the quality of the
468 procurement item if the procurement item is obtained outside of the state contract; and

469 (E) the cost of the procurement item under the state contract with the cost of the
470 procurement item if the procurement item is obtained outside of the state contract;

471 (ii) for a procurement item that, if defective in its manufacture, installation, or
472 performance, may result in serious physical injury, death, or substantial property damage,
473 determines in writing that the terms and conditions, relating to liability for injury, death, or
474 property damage, available from the source other than the contractor who holds the state
475 contract, are similar to, or better than, the terms and conditions available under the state
476 contract; and

477 (iii) grants an exception, in writing, to the requirement described in Subsection (4).

478 (6) Except as otherwise expressly provided in this section, a procurement unit:

479 (a) may not use the small purchase standard procurement process described in this
480 section for ongoing, continuous, and regularly scheduled procurements that exceed the annual
481 cumulative threshold; and

482 (b) shall make its ongoing, continuous, and regularly scheduled procurements that
483 exceed the annual cumulative threshold through a contract awarded through another standard
484 procurement process described in this chapter or an applicable exception to another standard
485 procurement process, described in Part 8, Exceptions to Procurement Requirements.

486 (7) This section does not prohibit regularly scheduled payments for a procurement item
487 obtained under another provision of this chapter.

488 (8) (a) It is unlawful for a person to intentionally or knowingly divide a procurement
489 into one or more smaller procurements with the intent to make a procurement:

490 (i) qualify as a small purchase, if, before dividing the procurement, it would not have
491 qualified as a small purchase; or

492 (ii) meet a threshold established by rule made by the applicable rulemaking authority,

493 if, before dividing the procurement, it would not have met the threshold.

494 (b) A person who engages in the conduct made unlawful under Subsection (8)(a) is
495 guilty of:

496 (i) a second degree felony, if the value of the procurement before being divided is
497 \$1,000,000 or more;

498 (ii) a third degree felony, if the value of the procurement before being divided is
499 \$250,000 or more but less than \$1,000,000;

500 (iii) a class A misdemeanor, if the value of the procurement before being divided is
501 \$100,000 or more but less than \$250,000; or

502 (iv) a class B misdemeanor, if the value of the procurement before being divided is less
503 than \$100,000.

504 (9) A division of a procurement that is prohibited under Subsection (8) includes doing
505 any of the following with the intent or knowledge described in Subsection (8):

506 (a) making two or more separate purchases;

507 (b) dividing an invoice or purchase order into two or more invoices or purchase orders;

508 or

509 (c) making smaller purchases over a period of time.

510 (10) A person who violates Subsection (8) is subject to the criminal penalties described
511 in Section [63G-6a-2405](#).

512 (11) The Division of Finance within the Department of Administrative Services may
513 conduct an audit of an executive branch procurement unit to verify compliance with the
514 requirements of this section.

515 (12) An executive branch procurement unit may not make a small purchase after
516 January 1, 2014, unless the chief procurement officer certifies that the person responsible for
517 procurements in the procurement unit has satisfactorily completed training on this section and
518 the rules made under this section.

519 Section 4. Section **63G-6a-409** is enacted to read:

520 **63G-6a-409. Procurement of administrative law judge services.**

521 (1) Subject to the provisions of this section, a procurement unit shall use a standard
522 procurement process under this chapter for the procurement of administrative law judge
523 services.

524 (2) For the procurement of administrative law judge services, the evaluation committee
525 shall consist of:

526 (a) the head of the conducting procurement unit, or the head's designee;

527 (b) the head of an executive branch procurement unit other than the conducting
528 procurement unit, appointed by the executive director of the Department of Human Resource
529 Management, or the head's designee; and

530 (c) the executive director of the Department of Human Resource Management, or the
531 executive director's designee.

532 (3) Within 30 days after the day on which a conducting procurement unit awards a
533 contract for administrative law judge services, the conducting procurement unit shall give
534 written notice to the Department of Human Resource Management that states:

535 (a) that the conducting procurement unit awarded a contract for administrative law
536 judge services;

537 (b) the name of the conducting procurement unit; and

538 (c) the expected term of the contract.

539 Section 5. Section **63G-6a-707** is amended to read:

540 **63G-6a-707. Evaluation of proposals -- Evaluation committee.**

541 (1) To determine which proposal provides the best value to the procurement unit, the
542 evaluation committee shall evaluate each responsive and responsible proposal that has not been
543 disqualified from consideration under the provisions of this chapter, using the criteria described
544 in the request for proposals, which may include:

545 (a) experience;

546 (b) performance ratings;

547 (c) inspection;

548 (d) testing;

549 (e) quality;

550 (f) workmanship;

551 (g) time, manner, or schedule of delivery;

552 (h) references;

553 (i) financial solvency;

554 (j) suitability for a particular purpose;

- 555 (k) management plans;
- 556 (l) the presence and quality of a work site safety program, including any requirement
- 557 that the offeror imposes on subcontractors for a work site safety program;
- 558 (m) cost; or
- 559 (n) other subjective or objective criteria specified in the request for proposals.
- 560 (2) Criteria not described in the request for proposals may not be used to evaluate a
- 561 proposal.
- 562 (3) ~~The~~ Except as provided in Subsection [63G-6a-409\(2\)](#), the conducting
- 563 procurement unit shall:
 - 564 (a) appoint an evaluation committee consisting of at least three individuals; and
 - 565 (b) ensure that the evaluation committee and each member of the evaluation
 - 566 committee:
 - 567 (i) does not have a conflict of interest with any of the offerors;
 - 568 (ii) can fairly evaluate each proposal;
 - 569 (iii) does not contact or communicate with an offeror concerning the procurement
 - 570 outside the official evaluation committee process; and
 - 571 (iv) conducts the evaluation in a manner that ensures a fair and competitive process
 - 572 and avoids the appearance of impropriety.
 - 573 (4) The evaluation committee may, with the approval of the head of the conducting
 - 574 procurement unit, enter into discussions or conduct interviews with, or attend presentations by,
 - 575 the offerors.
 - 576 (5) (a) Except as provided in Subsections (5)(b) and (8), each member of the evaluation
 - 577 committee is prohibited from knowing, or having access to, any information relating to the
 - 578 cost, or the scoring of the cost, of a proposal until after the evaluation committee submits its
 - 579 final recommended scores on all other criteria to the issuing procurement unit.
 - 580 (b) The issuing procurement unit shall:
 - 581 (i) if applicable, assign an individual who is not a member of the evaluation committee
 - 582 to calculate scores for cost based on the applicable scoring formula, weighting, and other
 - 583 scoring procedures contained in the request for proposals;
 - 584 (ii) review the evaluation committee's scores and correct any errors, scoring
 - 585 inconsistencies, and reported noncompliance with this chapter;

586 (iii) add the scores calculated for cost, if applicable, to the evaluation committee's final
587 recommended scores on criteria other than cost to derive the total combined score for each
588 responsive and responsible proposal; and

589 (iv) provide to the evaluation committee the total combined score calculated for each
590 responsive and responsible proposal, including any applicable cost formula, weighting, and
591 scoring procedures used to calculate the total combined scores.

592 (c) The evaluation committee may not:

593 (i) change its final recommended scores described in Subsection (5)(a) after the
594 evaluation committee has submitted those scores to the issuing procurement unit; or

595 (ii) change cost scores calculated by the issuing procurement unit.

596 (6) (a) As used in this Subsection (6), "management fee" includes only the following
597 fees of the construction manager/general contractor:

598 (i) preconstruction phase services;

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

600 (iii) overhead and profit for the construction phase.

601 (b) When selecting a construction manager/general contractor for a construction
602 project, the evaluation committee:

603 (i) may score a construction manager/general contractor based upon criteria contained
604 in the solicitation, including qualifications, performance ratings, references, management plan,
605 certifications, and other project specific criteria described in the solicitation;

606 (ii) may, as described in the solicitation, weight and score the management fee as a
607 fixed rate or as a fixed percentage of the estimated contract value;

608 (iii) may, at any time after the opening of the responses to the request for proposals,
609 have access to, and consider, the management fee proposed by the offerors; and

610 (iv) except as provided in Subsection (8), may not know or have access to any other
611 information relating to the cost of construction submitted by the offerors, until after the
612 evaluation committee submits its final recommended scores on all other criteria to the issuing
613 procurement unit.

614 (7) (a) The deliberations of an evaluation committee may be held in private.

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

617 deliberations.

618 (8) An issuing procurement unit is not required to comply with Subsection (5) if the
619 head of the issuing procurement unit or a person designated by rule made by the applicable
620 rulemaking authority:

621 (a) signs a written statement:

622 (i) indicating that, due to the nature of the proposal or other circumstances, it is in the
623 best interest of the procurement unit to waive compliance with Subsection (5); and

624 (ii) describing the nature of the proposal and the other circumstances relied upon to
625 waive compliance with Subsection (5); and

626 (b) makes the written statement available to the public, upon request.

627 Section 6. Section **67-19e-102** is amended to read:

628 **67-19e-102. Definitions.**

629 ~~[(+)]~~ In addition to the definitions found in Section [67-19-3](#), the following definitions
630 apply to this chapter~~[-]~~:

631 (1) (a) "Administrative law judge" means an individual who is employed or contracted
632 by a state agency ~~[that]~~ who:

633 (i) presides over or conducts formal administrative hearings on behalf of an agency;

634 (ii) has the power to administer oaths, rule on the admissibility of evidence, take
635 testimony, evaluate evidence, and make determinations of fact; and

636 (iii) issues written orders, rulings, or final decisions on behalf of an agency.

637 (b) "Administrative law judge" does not mean:

638 (i) an individual who reviews an order or ruling of an administrative law judge; or

639 (ii) the executive director of a state agency.

640 ~~[(e)]~~ (2) "Committee" means the Administrative Law Judge Conduct Committee
641 created in Section [67-19e-108](#).

642 (3) "Department" means the Department of Human Resource Management created in
643 Section [67-19-5](#).

644 (4) "Executive director" means the executive director of the department.

645 ~~[(2) This chapter applies to all agencies of the state except the:]~~

646 ~~[(a) Board of Pardons and Parole;]~~

647 ~~[(b) Department of Corrections; and]~~

648 ~~[(c) State Tax Commission.]~~

649 Section 7. Section **67-19e-103** is amended to read:

650 **67-19e-103. Administrative law judges -- Applicability -- Destruction of evidence.**

651 ~~[(1) All agency administrative law judges who conduct formal administrative hearings~~
652 ~~are subject to this chapter.]~~

653 ~~[(2) All administrative law judges are subject to the code of conduct promulgated by~~
654 ~~the department in accordance with Section [67-19e-104](#).]~~

655 (1) (a) Except as provided in Subsections (1)(b) and (2), the provisions of this chapter
656 apply to an administrative law judge who conducts formal adjudicative proceedings.

657 (b) Except as provided in Subsection (2), the provisions of this chapter do not apply to
658 an administrative law judge who is employed by or contracts with:

659 (i) the Board of Pardons and Parole;

660 (ii) the Department of Corrections; or

661 (iii) the State Tax Commission.

662 (2) The code of conduct established by the department under Subsection [67-19e-104\(4\)](#)
663 applies to all administrative law judges.

664 (3) An administrative law judge who tampers with or destroys evidence submitted to
665 the administrative law judge is subject to the provisions of Section [76-8-510.5](#). This section
666 does not apply to documents destroyed in accordance with Title 63G, Chapter 2, Government
667 Records Access and Management Act.

668 Section 8. Section **67-19e-104** is amended to read:

669 **67-19e-104. Rulemaking authority.**

670 The department shall make rules, in accordance with Title 63G, Chapter 3, Utah
671 Administrative Rulemaking Act:

672 (1) establishing minimum performance standards for all administrative law judges;

673 (2) providing procedures for filing, addressing, and reviewing complaints against
674 administrative law judges;

675 (3) providing standards for complaints against administrative law judges; ~~[and]~~

676 (4) promulgating a code of conduct for all administrative law judges in all state
677 agencies[-]; and

678 (5) establishing a procedural fairness training program as described in Section

679 [67-19e-109.](#)

680 Section 9. Section **67-19e-104.5** is enacted to read:

681 **67-19e-104.5. Hiring of administrative law judges.**

682 (1) ~~§~~→ **[Each] Except as provided in Subsection (6), each** ←~~§~~ administrative law judge
 682a hired on or after May 10, 2016, shall be hired in
 683 accordance with this section.

684 (2) If an applicant for an administrative law judge position is selected for an interview
 685 in accordance with applicable law and department rule, the agency shall interview the applicant
 686 by means of a hiring panel.

687 (3) The hiring panel described in Subsection (2) shall consist of:

688 (a) the head of the hiring agency;

689 (b) the head of another agency, appointed by the executive director; and

690 (c) the executive director.

691 (4) Each individual described in Subsection (3) may designate another individual to
 692 serve on the hiring panel on the individual's behalf.

693 (5) After the hiring panel completes the interviews for an administrative law judge
 694 position:

695 (a) the hiring panel shall select the top three applicants for the administrative law judge
 696 position; and

697 (b) the head of the hiring agency shall:

698 (i) consider any opinions or feedback from the other members of the hiring panel with
 699 respect to the top three applicants; and

700 (ii) (A) hire an applicant from the top three applicants to fill the administrative law
 701 judge position; or

702 (B) decide not to hire any of the top three applicants and restart the hiring process to
 703 fill the administrative law judge position.

703a ~~§~~→ **(6) This section does not apply to an administrative law judge who is appointed by the**
 703b **governor.** ←~~§~~

704 Section 10. Section **67-19e-106** is amended to read:

705 **67-19e-106. Performance surveys.**

706 (1) For administrative law judges contracted or employed before July 1, 2013,
 707 performance surveys shall be conducted initially at either the two-, three-, or four-year mark
 708 beginning January 1, 2014. By July 1, 2018, all administrative law judges shall be on a
 709 four-year staggered cycle for performance evaluations.

710 (2) The performance survey shall include as respondents a sample of each of the
711 following groups as applicable:

- 712 (a) attorneys who have appeared before the administrative law judge as counsel; and
- 713 (b) staff who have worked with the administrative law judge.

714 (3) The department may include an additional classification of respondents if the
715 department:

716 (a) considers a survey of that classification of respondents helpful to the department;
717 and

718 (b) establishes the additional classification of respondents by rule made in accordance
719 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

720 (4) A survey response is anonymous, including any comment included with a survey
721 response.

722 (5) If the department provides any information to an administrative law judge or the
723 committee, the information shall be provided in such a way as to protect the confidentiality of a
724 survey respondent.

725 (6) If the department establishes an additional classification, in accordance with
726 Subsection (3), a survey shall be provided to a potential survey respondent within 30 days of
727 the day on which the case in which the person appeared before the administrative law judge is
728 closed, exclusive of any appeal. Staff and attorneys may be surveyed at any time during the
729 survey period.

730 (7) The performance survey shall include questions relating to whether the
731 administrative law judge's behavior furthers the following elements of procedural fairness:

732 (a) neutrality, including:

733 (i) consistent and equal treatment of the individuals who appear before the
734 administrative law judge;

735 (ii) concern for the individual needs of the individuals who appear before the
736 administrative law judge; and

737 (iii) careful deliberation;

738 (b) respectful treatment of others; and

739 (c) providing individuals a voice and opportunity to be heard.

740 [~~(7) Survey categories~~]

741 (8) The performance survey may include questions concerning an administrative law
742 judge's:

743 (a) legal ability, including the following:

744 (i) demonstration of understanding of the substantive law and any relevant rules of
745 procedure and evidence;

746 (ii) attentiveness to factual and legal issues before the administrative law judge;

747 (iii) adherence to precedent and ability to clearly explain departures from precedent;

748 (iv) grasp of the practical impact on the parties of the administrative law judge's
749 rulings, including the effect of delay and increased litigation expense;

750 (v) ability to write clear opinions and decisions; and

751 (vi) ability to clearly explain the legal basis for opinions;

752 (b) temperament and integrity, including the following:

753 (i) demonstration of courtesy toward attorneys, staff, and others in the administrative
754 law judge's department;

755 (ii) maintenance of decorum in the courtroom;

756 (iii) demonstration of judicial demeanor and personal attributes that promote public
757 trust and confidence in the administrative law judge system;

758 (iv) preparedness for oral argument;

759 (v) avoidance of impropriety or the appearance of impropriety;

760 (vi) display of fairness and impartiality toward all parties; and

761 (vii) ability to clearly communicate, including the ability to explain the basis for
762 written rulings, court procedures, and decisions; and

763 (c) administrative performance, including the following:

764 (i) management of workload;

765 (ii) sharing proportionally the workload within the department; and

766 (iii) issuance of opinions and orders without unnecessary delay.

767 ~~[(8)]~~ (9) If the department determines that a certain survey question or category of
768 questions is not appropriate for a respondent group, the department may omit that question or
769 category of questions from the survey provided to that respondent group.

770 ~~[(9)]~~ (10) (a) The survey shall allow respondents to indicate responses in a manner
771 determined by the department, which shall be:

772 (i) on a numerical scale from one to five; or
773 (ii) in the affirmative or negative, with an option to indicate the respondent's inability
774 to respond in the affirmative or negative.

775 (b) To supplement the responses to questions on either a numerical scale or in the
776 affirmative or negative, the department may allow respondents to provide written comments.
777 ~~[(10)]~~ (11) The department shall compile and make available to each administrative
778 law judge that administrative law judge's survey results with each of the administrative law
779 judge's performance evaluations.

780 Section 11. Section **67-19e-108** is amended to read:

781 **67-19e-108. Administrative Law Judge Conduct Committee.**

782 (1) There is created the Administrative Law Judge Conduct Committee to investigate,
783 review, and hear complaints filed against administrative law judges.

784 (2) The committee shall be composed of:

785 (a) the executive director ~~[of the department]~~, or the executive director's designee, as
786 chair; and

787 (b) four executive directors, or their designees, of agencies that employ or contract with
788 administrative law judges, to be selected by the executive director as needed.

789 (3) The department shall provide staff for the committee as needed.

790 Section 12. Section **67-19e-110** is enacted to read:

791 **67-19e-110. Required training.**

792 (1) Each year that an administrative law judge receives a performance evaluation
793 conducted by the department under this chapter, the administrative law judge shall complete
794 the procedural fairness training program described in this section.

795 (2) The department shall establish a procedural fairness training program that includes
796 training on how an administrative law judge's actions and behavior influence others'
797 perceptions of the fairness of the adjudicative process.

798 (3) The procedural fairness training program shall include discussion of the following
799 elements of procedural fairness:

800 (a) neutrality, including:

801 (i) consistent and equal treatment of the individuals who appear before the
802 administrative law judge;

803 (ii) concern for the individual needs of the individuals who appear before the
804 administrative law judge; and
805 (iii) unhurried and careful deliberation;
806 (b) respectful treatment of others; and
807 (c) providing individuals a voice and opportunity to be heard.
808 (4) The department may contract with a public or private person to develop or provide
809 the procedural fairness training program.

Legislative Review Note
Office of Legislative Research and General Counsel